

DATE: April 29, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0757

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Barry M. Sax, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 24 October 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 November 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 24 December 1996; the record in this case closed 15 February 1997, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 23 April 1997. I received the case on 23 April 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 37-year old employee of a defense contractor--seeks a security clearance.

The allegations of the SOR revolve around Applicant's extensive history of alcohol abuse. Applicant first abused alcohol in approximately 1977. He had a driving under the influence arrest in May 1981, and another alcohol-related arrest in June 1982. In October 1991, Applicant was treated for alcohol dependence and alcoholic liver disease.⁽²⁾ He stayed

sober approximately six to eight months, when he decided he "deserved to get drunk once a month if I wanted to." (Item 4). He began a pattern of drinking twelve to eighteen beers per day for two or three days in a row once a month. He had another driving under the influence arrest on October 1994. In May 1995, his spouse and father intervened to have Applicant placed in another treatment program.⁽³⁾ Initially, Applicant strenuously resisted treatment, but later developed greater commitment to recovery. After release from treatment, Applicant remained sober for several months; however, he began drinking vodka with a co-worker⁽⁴⁾ and resumed drinking after work as well. In October 1995, Applicant worked a double shift; he became bored and drank vodka on the job. On his way home he was arrested for driving under the influence; he was placed on probation for twelve months and ordered to attend AA meetings.⁽⁵⁾

Applicant asserts that he has not had a drink since his October 1995 arrest (Item 4), actively attends AA, and has a sponsor (Item 2).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (CRITERION G)

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) alcohol-related incidents away from work. . .
- (2) alcohol-related incidents at work, such as . . . drinking on the job;
- (3) diagnosis by a credentialed medical professional of . . . alcohol dependence;
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns include:

- (3) positive changes in behavior supportive of sobriety

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish her security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability

or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion G. The record clearly establishes many years of alcohol abuse by Applicant. He had alcohol-related arrests in 1981 and 1982, and in 1991 was forced into treatment by the intervention of his family. Applicant was diagnosed as alcohol-dependent by a credentialed medical professional. During his inpatient and outpatient treatment, he gained some insight into his alcohol dependence. However, he was unable to maintain long-term sobriety, and relapsed into alcohol abuse within six or eight months. He had another alcohol-related arrest in October 1994, and in May 1995 was again forced into treatment by the intervention of his family. Initially, Applicant resisted treatment, but eventually developed additional insight into his dependence. Again he was diagnosed as alcohol-dependent by a credentialed medical professional. However, once again he was unable to obtain a durable recovery, and relapsed into alcohol abuse within six months. This time, his abuse included drinking on the job. He had another alcohol-related arrest in October 1995, after which he claims to have abstained from alcohol.

Applicant meets all the disqualifying conditions of alcohol abuse: he has four alcohol-related arrests away from work; he has abused alcohol on the job; he has twice been diagnosed as alcohol dependent; he has engaged--at various times in his life--in both habitual and binge consumption of alcohol; he has twice resumed abusive consumption of alcohol after diagnosis of alcoholism by a credentialed medical professional and completion of an alcohol rehabilitation program.

While Applicant demonstrates some positive changes in behavior supportive of sobriety, the record contains insufficient evidence to conclude that Applicant has finally put his alcohol abuse behind him. The record contains little evidence to demonstrate the level or quality of Applicant's commitment to sobriety. Other mitigating conditions do not apply: Applicant's alcohol-related incidents certainly indicate a pattern of alcohol abuse over many years. The alcohol abuse is also recent--at least to October 1995. While Applicant has apparently been sober since October 1995, I note he was on probation from his last DUI until at least November 1996; further, I cannot consider his last rehabilitation in May 1995 to have been successful given his relapse within six months of completing the program. In addition, the discharge prognosis was not favorable--more like lukewarm. Given Applicant's relapse, and the dearth of evidence concerning Applicant's commitment to AA or other recovery methodology, I am unable to conclude that Applicant has acquired the tools necessary to maintain sobriety. I find criterion G. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant reported drinking fifteen cans of beer per day over the last fourteen years; he entered treatment because of outside intervention and because he discovered he had liver disease.
3. Admission notes report a history of daily drinking over the last fifteen years, with Applicant spending \$150.00-200.00 a week on alcohol.
4. The co-worker was drinking on the job and getting away with it; Applicant began to join the co-worker on occasion. Applicant was drinking a pint of vodka once or twice a week for about six weeks before his last DUI arrest.
5. Although the FORM does not contain a date of conviction for this offense, Applicant had not been to court on the offense when he filled out his NAQ (Item 3) on 13 November 1995; accordingly, I infer that Applicant's probation on this offense ran until at least November 1996.