

DATE: April 29, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0771

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Teresa A. Kolb, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 25 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 19 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 23 December 1996; the record in this case closed 14 February 1997, the day the response was due at DOHA. 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, but denied the conclusory allegation of Paragraph 1.; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 36-year old employee of a defense contractor--seeks to retain a secret clearance.

The allegations of the SOR revolve around Applicant's extensive history of alcohol abuse. Applicant first abused alcohol in approximately 1977, when he consumed alcohol as a minor. In July 1977, he was arrested for an open container offense. He had a driving while intoxicated (DWI) arrest in November 1981. In January 1984, Applicant applied for a security clearance while in the military.⁽²⁾ However, despite security concerns about his alcohol consumption, Applicant

continued to drink excessively. He had another DWI in February 1992,⁽³⁾ and again in November 1995.⁽⁴⁾ Applicant has drunk six to twelve can of beer a week from 1978 to May 1996. While he admits that he has used alcohol irresponsibly in the past, he denies that alcohol has adversely affected his home life, career, finances or health. He denies receiving counseling or treatment as a result of alcohol consumption. He intends to consume alcohol moderately in the future; he considers his present level of alcohol consumption to be moderate.

Applicant has a satisfactory work record. His ----- manager and shift supervisor vouch for his character and work ethic; however, neither appears aware of his alcohol abuse history.

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, such as driving while under the influence. . .

Conditions that could mitigate security concerns include:

None.

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 his 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 Applicant's alcohol abuse. He had alcohol-related arrests in 1977 and 1981. In 1984, he became aware of the security significance of his alcohol consumption when those arrests were the focus of a subject interview relating to Applicant's military security clearance. Yet, despite this awareness, Applicant again had DWI arrests in 1992 and 1995. In his 1996 sworn statement (Item 5)--as in his 1984 sworn statement (Item 7)--Applicant denies having an alcohol problem. However, the record

belies that claim. While consumption of 6-12 beers a week is not necessarily inherently abusive, it is clear that Applicant has, on occasion, consumed those beers abusively. Further, I note that the drink of choice the night of the most recent DWI was not beer, but tequila. Applicant's work performance suggests that alcohol has not affected his performance. However, the Government's legitimate security concerns extend to Applicant's off-duty hours; Applicant's character references appear to have no knowledge of this area of Applicant's life. While Applicant's alcohol abuse has not resulted in more frequent alcohol-related incidents, the four documented incidents--two within the last two years--are sufficient to raise significant concerns about Applicant's fitness for access to classified information. The Government need not wait until Applicant's alcohol abuse worsen or he actually mishandles classified information before acting. Applicant's responses demonstrate little insight into the problems alcohol abuse has caused in his life and are insufficient to ameliorate those concerns. He considers his present level of consumption to be moderate; I do not, as evidenced by his arrests. Applicant promises that alcohol-related incidents will not recur; he made similar representations in 1984, yet had two additional DWI arrests. I conclude that Applicant is likely to abuse alcohol in the future. Accordingly, 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

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's alcohol consumption raised security concerns even then. On 16 March 1984, Applicant addressed the issue of his two alcohol-related incidents: "I realize the indications this may give one. I would like to state for the record, that I do not have and have never had a drinking problem. I never drink at home and on the occasion when I do step out socially with my spouse, I never drink anything stronger than beer. A DWI arrest is a painfully learning experience and I feel at this time that I have matured beyond this type of behavior. . . The shadow of the DWI is constantly pervading my thoughts on [occasions when I do drink] as it is a permanent black mark on my record. . ." (Item 7).
3. Applicant described the arrest: ". . . I had drank about six to eight cans of beer over a three hour period at a local night club. Driving home, I was stopped by a [police] officer for weaving on the road. During the traffic stop, the officer smelled alcohol on my breath and requested me to take a breathalyzer test. I submitted to the test, which registered above the legal limit." (Item 5).

4. Applicant described this arrest: ". . . I had drank about four or five 6 ounce glasses of tequila over a four hour period at a local night club. Driving home, I was stopped by a [police] officer for weaving on the road. During the traffic stop, the officer smelled alcohol on my breath and requested me to take a breathalyzer test. I submitted to the test, which registered above the legal limit." (Item 5).