

April 7, 1997

In RE:

SSN:

Applicant for security clearance

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ISCR OSD Case No. 96-0783

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On October 31, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The SOR is attached.

Applicant filed an Answer to the SOR on or about November 26, 1996.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 10, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on February 14, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on

March 24, 1997. The issue raised here is whether the Applicant's alcohol consumption militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 40 years of age, and is employed by a defense contractor, who seeks a secret security clearance on his behalf.

Criterion G - Alcohol Consumption

1.a.~1.d. The Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1974 to at least July of 1996. His excessive consumption of alcohol is evidenced by two alcohol related convictions: one in 1994, and the other in March of 1996. In 1994, he was convicted of Driving with a Blood Alcohol Level in excess of .08%; and as a result of his guilty plea, he was placed on summary probation for 36 months, and ordered to participate in a counseling program (Government Exhibit (GX) 4 at pages 2 and 4, GX 5 at page 1, and GX 6 at page 1). In March of 1996, he was again convicted of Driving with a Blood Alcohol Level in excess of .08%; and as a result of his plea of nolo contendere, he was placed on summary probation for 36 months, ordered to complete an 18 month alcohol program, and also **ordered to abstain from the use of alcohol** (GX 4 at pages 2 and 3, GX 5 at pages 1~2, and GX 6 at pages 1 and 2). The Applicant continued to consume alcohol, despite this court order (GX 5 at page 2, and GX 6 at pages 3 and 5).

The Applicant describes his recent drinking pattern in the following terms:

I began with . . . [my current employer] in June 1989. My drinking decreased to [a] 12 pack on weekends, a[nd] occasional(*sic*) a few times after work, which led to the 2 DUI arrests.

After Mar[ch's] 2nd arrest, I cut down my drinking [to] one to two beer[s] a month (at home). I plan to drink at this level until the completion of my program and beyond. (GX 5 at page 2.)

Mitigation.

The Applicant offers little, if anything, in the way of mitigation.

Considering all of the evidence, and in light of the fact that the Applicant still consumes alcohol despite his court order; the Applicant bears a heavy burden of persuasion in demonstrating his suitability for security clearance access.

POLICIES

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Alcohol Consumption

Condition that could raise a security concern:

(1) alcohol-related incidents away from work, such as driving while under the influence . . .

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[e]ach clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a prima facie case under criterion G (alcohol consumption); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

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. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant has admittedly consumed alcohol to excess and to the point of intoxication over a period of at least six years. His excessive consumption is evidenced by two alcohol related incidents. His last conviction for DUI was two years ago; and **despite a court order to abstain from alcohol consumption, he still consumed the intoxicant** (GX 5 at page 2, and GX 6 at pages 3 and 5). As there is little if any evidence to show that the Applicant is trustworthy; I must conclude that his consumption of alcohol clearly continues to be of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his alcohol consumption. The Applicant has thus not met the mitigating conditions of Criterion G, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Criterion G.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge