

Date: March 21, 1997

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0777

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esq.

Department Counsel

FOR THE APPLICANT

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STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant dated October 28, 1996 (Item 1) (copy attached) which detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR alleged excessive alcohol consumption (Criterion G) detailed in paragraph 1. In a sworn written Answer, dated November 15, 1996, the Applicant responded to the allegations set forth in the SOR and elected to have her case determined after a hearing.

On December 23, 1996, the case was assigned to me to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for this Applicant. I received it on December 30, 1996; and on January 14, 1997, a Notice of Hearing was issued which set the hearing for February 5, 1997; however, on January 24, 1997, Applicant requested a continuance as she had a work conflict. Department Counsel did not object, and the matter was continued until Monday, February 10, 1997. On February 3, 1997, Applicant's counsel entered his appearance.

At the open hearing the Government introduced into evidence six exhibits (GE) but called no witnesses. Applicant testified, called two other witnesses, and introduced four exhibits (AE) into evidence. The transcript was received on February 20, 1997.

FINDINGS OF FACT

Applicant admitted all the factual allegations contained in subparagraphs 1.a, 1.b, 1.c, and 1.d of the SOR; her admissions are incorporated herein as findings of fact. After a thorough review of the evidence in the record, I make the following additional Findings of Fact.

The 45-year old Applicant is a ----- who has worked for a defense contractor since June 1995 (Company #1) and is seeking a secret clearance. She previously worked for a defense contractor (Company #2) from 1994 to 1995, but did not hold a clearance there. GE 1 & 2. She has a B.S. in computer science. GE 6. She has been consistently employed since June 1973. TR 56.

Applicant has consumed alcohol at times to excess and to the point of intoxication from 1969 when she was a college freshman to February 1996. In April 1992 a friend and co-worker who was the wife of her supervisor challenged Applicant on having a drinking problem based on her appearance and the odor of alcohol. TR 66. At that time she was drinking excessively, both sherry and liquor, and had black-outs for many years before she sought treatment. GE 3, 4, TR 58. But she never had thought disorders such as delusions or hallucinations while she was abusing alcohol. She never lost a job because of alcohol abuse and was never arrested for any alcohol infraction. TR 58-60

Applicant received inpatient treatment and subsequent outpatient treatment from April 1992 to April 1993 at a hospital for a condition diagnosed, in part, as alcohol dependence. She also sought treatment from a psychiatrist (Psychiatrist #1) from August 24, 1992 to April 6, 1993, who diagnosed her with dysthymic disorder with secondary alcoholism, with some liver damage and memory loss. GE 4. She started attending Alcoholics Anonymous (AA), but went irregularly and sometimes would buy liquor after her AA meeting and drink at home. GE 6; TR 67. She relapsed with three months her longest period of abstinence in the 1993-1995 period. GE 3,6.

Since Applicant relapsed with more and more frequency, was abusing alcohol on a daily basis, and had attendance and timeliness problems on the job (Company #1), she consulted with another psychiatrist (Psychiatrist #2). TR 56-58, 64-65, 73; GE 3. He began treating her on January 29, 1996, for depression with complicating alcohol dependence. AE A.; TR 51. Subsequently, she returned for inpatient alcohol treatment at the same hospital from February 9, 1996 to February 12, 1996, for a condition diagnosed as substance use disorder - alcohol and alcohol dependence. The discharge diagnosis was alcohol abuse - dependence. GE 5, 6.

Applicant has not had a drink since February 9, 1996, is attending AA (367 meetings in 364 days), and has an AA sponsor. TR 51-55; 67; GE 3, AE A, C, D. Her current psychiatrist (Psychiatrist #2) provided his expert opinion that Applicant's "risk of relapse is low for both alcohol use and for depression." Further, this psychiatrist finds "her judgment and capacity for responsibility . . . entirely intact." AE A.

Applicant maintains her sobriety by attending AA: she has tokens for three, six, nine and 12 months of sobriety. TR 60-63, 68. She works with her sponsor, sees Psychiatrist #2, and has a supportive family. TR 60-63. No one at her current place of employment within the last year has complained about any questionable judgment or unreliability. TR 62. She no longer minimizes her drinking and has a structured lifestyle as she now wants sobriety. TR 71-73.

Applicant's evaluation from September 1995 to September 1996 reflects generally commendable and satisfactory criteria indicators in 18 areas except for three indications of "needs improvement" in the "key criteria" areas of Management ("12. Represents the Corporation effectively through interactions with members of client's organization and contractors") and Business ("20 Writes in a clear, concise and organized manner" and "21. Expresses ideas orally in a clear, concise and organized manner"). While the evaluation raised the concern that "The government sponsors and allies respect her technical expertise but have criticized her writing and see her as defensive," overall she was rated as "an excellent match for our work program in 1997" and was assessed as showing great improvement. AE B.

Witness #1, her friend, has known Applicant since summer 1995 when they met at a dance studio and sees her socially several times a week. She learned of Applicant's "problem with alcohol" six months after they first met, and she referred her to a psychiatrist whom Applicant did contact (Psychiatrist #2) and to an AA club which she started to attend. TR 27-28. She confirmed that, subsequently, Applicant stopped drinking alcohol and regularly goes to AA meetings. TR 29, 33. Applicant "blossomed," has shown "confidence and courage," is thoughtful, reliable, and conscientious. TR 29-30, 34-35

Witness #2, her AA sponsor for one year, has known Applicant for eighteen months since she first met her in 1995 at an AA meeting. TR 37-41. Applicant has not had a drink for the one year she has had her AA sponsor. Applicant calls her sponsor daily, goes to meetings regularly, is dedicated to AA meetings and to her sobriety; she is honest, reliable and conscientious. TR 41-46.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Criterion G - Alcohol Consumption

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:

- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (3) diagnosis by a credentialed medical professional of alcohol abuse or 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 include:

- (3) positive changes in behavior supportive of sobriety;
- (4) following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

The burden of producing evidence initially falls on the Government to establish a case which demonstrates that it is not clearly consistent with the national interest to grant or continue access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls to the Applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the Government's case, and to demonstrate that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion G - Alcohol Consumption

Within the context of Department of Defense Directive 5220.6, based on the evidence of record, the Government did

establish a case with regard to Criterion G. With respect to her habitual or episodic use of intoxicants to excess, Applicant has a long history of alcohol abuse but significantly had no alcohol-related incidents. Her alcohol abuse began in college in 1969, and she continued to drink to excess into adulthood until February 1996. While she voluntarily sought treatment in 1992-93 after she had job-related problems, successfully completed treatment for her alcohol dependency, and attended AA, Applicant did then relapse and again had problems on the job. Consequently, she meets alcohol consumption disqualifying conditions 2, 3, 4, and 5, *supra*.

To mitigate Applicant needs to show either (1) the alcohol related incidents do not indicate a pattern; (2) the problem occurred a number of years ago and there is no indication of a recent problem, (3) positive changes in behavior supportive of sobriety; or (4) following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional." Here there is no need to meet mitigating condition (1) as there are no reported alcohol related incidents.

Significantly, Applicant again sought treatment in 1996 and had her last drink on February 9, 1996. Thus, she has voluntarily sought treatment for her alcohol abuse on two occasions, and she did successfully complete the 1996 program. Applicant now has a resolve for sobriety and attends AA on a daily basis, has a sponsor in AA, and has demonstrated for a twelve-month period of time that she can maintain her resolve. Thus, she can now be evaluated as having successfully completed the 1996 treatment program. Further, she has a favorable prognosis by a medical professional, her psychiatrist who finds her "risk of relapse is low" as well as testimony from her AA sponsor and her close friend on her commitment to her sobriety and to AA. Also, she has met the 12 months necessary for abstinence from alcohol after her diagnosis of alcohol abuse, and there is no indication of a recent problem. Further she has shown evidence of positive changes in her behavior and life-style supportive of sobriety, including an overall favorable job evaluation. All of these factors lead me to conclude that there is minimal risk of future relapse.

After also considering the F.3. factors of the Directive and in the preamble to Change 3 as well as the Adjudicative Process factors, I find for Applicant under Paragraph 1 and subparagraph 1.a., 1. b, 1.c., and 1.d.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the Adjudication Policy and the other general factors, this Administrative Judge makes the following formal findings:

Paragraph 1. Criterion G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge