

April 17, 1997

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR OSD Case No. 96-0801

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esquire *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On November 8, 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 the attached Statement of Reasons (SOR) to ----- (Applicant), which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 25, 1996. The case was assigned to the undersigned on December 23, 1996, and a Notice of Hearing was issued on January 16, 1997.

A hearing was held on March 6, 1997, at which the Government presented seven documentary exhibits. The Applicant presented one documentary exhibit, called one witness, and testified on his own behalf.

The official transcript was received on April 7, 1997.

FINDINGS OF FACT

The Applicant is 37 years old, unmarried and he is employed by a defense contractor as a Radar Technician. He seeks a Secret-level security clearance previously granted in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admits to an abusive pattern of drinking to excess and to the point of intoxication from about 1979, to at least September 1996. From time to time during this period, the Applicant tried to stop drinking, but was unsuccessful. (See, Applicant's Answer to SOR).

The Applicant began drinking alcohol in the military at the age of nineteen. In the beginning, he consumed four to six beers every other week on his days off. In 1980, he increased his drinking to three or four beers several nights during the week. Most of his drinking took place at parties, bars or other social events. During several parties, the Applicant drank from six to twelve beers. From 1986, until 1989, the Applicant completely abstained from alcohol, but later returned to his earlier drinking habits.

As a result of his continued abusive drinking, the Applicant was arrested on four separate occasions for Driving Under the Influence of Alcohol. The Applicant's arrests for Driving Under the Influence of Alcohol occurred on June 30, 1983; March 5, 1986; March 15, 1995; and May 22, 1996. On each occasion, the Applicant was intoxicated at the time of the arrest. On each occasion, the Applicant was found guilty, and was sentenced by the court to pay a fine, and complete either a drivers education class, an alcohol screening evaluation or an alcohol rehabilitation program.

After the Applicant's third arrest for Driving Under the Influence of Alcohol on March 15, 1995, the Applicant tried to stop drinking, but was unable to do so. He also made a decision not to drink and drive again.

Although the Applicant's intentions were good, his abusive drinking was still out of control, and on May 22, 1996, he was arrested a fourth time for Driving Under the Influence of Alcohol. The Applicant was driving home from a bar where he had been drinking. The Applicant was driving over the speed limit and following the vehicle in front of him too closely, when he was stopped by the police. The Applicant stated that he had about six to eight beers prior to the arrest. The Applicant was convicted, and this time, in addition to the normal sentencing conditions, he was sentenced to be evaluated by an alcohol assessment counselor. The Applicant's drivers license was also revoked for one year and will not be reinstated until June 1997.

In September 1996, the Applicant was evaluated by the alcohol assessment counselor. It was determined from the evaluation that the Applicant was to participate in the "Relapse Prevention Program," and that he should also attend Alcoholics Anonymous. The Applicant was told by the counselor that he drinks too much, and that he should completely abstain from the use of alcohol. In June 1996, the Applicant made the decision to stop using alcohol, and he has completely abstained since his last arrest.

The Applicant has attended one counseling session of the Relapse Prevention Program, and has been unable to attend Alcoholics Anonymous meetings because of his work schedule and his restriction on driving. Other than the court appointed alcohol treatment programs, the Applicant has not received any other treatment for his problem with alcohol.

Mitigation.

The Applicant's mother testified that the Applicant has provided her with financial support for many years and is very

reliable and trustworthy, and is overall, a very "good boy".

Three letters of recommendation from the Applicant's supervisor, coworkers and friends reveal that the Applicant is highly professional and extremely competent on the job, and is a dedicated and valuable employee. He is also a person whom they can trust. (See, Applicant's Exhibit A).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors 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 cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Alcohol Consumption

Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving under the influence....
- (4) habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "In evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- I. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately

concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of off-duty alcohol abuse which demonstrates poor judgment, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In DOHA cases the Government has the initial burden to go forward with *prima facie* evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's *prima facie* case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the interests of national security to grant him or her 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 he or she may demonstrate the same attitude towards security rules and regulations.

In this case, the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has abused alcohol to excess. The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against him. Accordingly, he has not met his ultimate burden of persuasion under Criterion G.

The Applicant has admitted to a long history of alcohol abuse beginning in 1979, extending over a period of seventeen years, to at least May 1996. During this period, his excessive alcohol consumption is evidenced by four arrests and convictions for Driving Under the Influence of Alcohol. The most recent arrest occurred in May 1996, just eleven months ago. The Applicant has, in the past, attempted to stop drinking, but has been unsuccessful. In June 1996, the Applicant again realized that he can no longer drink alcohol, and has apparently made a commitment to stop drinking. The Applicant is commended for his recent decision to stop abusing alcohol. However, the recency of his alcohol abuse and the lack of any evidence of reform preclude a favorable finding in this case. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. Accordingly, Criterion G, (Alcohol Consumption) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's *prima facie* case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.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 interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge