

DATE: July 28, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0825

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 10, 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 December 31, 1996. The case was assigned to the undersigned on January 27, 1997, and a Notice of Hearing was issued on February 26, 1997.

A hearing was held on April 23, 1997, at which the Government presented seven documentary exhibits. The Applicant presented four documentary exhibit, and he testified on his own behalf. The official transcript was received on May 28, 1997.

FINDINGS OF FACT

The Applicant is 50 years old, married and he is employed by a defense contractor as a anager. He seeks a to retain 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 1963 to at least July 1996, and considers himself to be an alcoholic. 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 at the age of seventeen. From 1980 until 1990, the Applicant drank alcohol on a sporadic basis and became intoxicated on a number of occasions. By 1990, the Applicant normally consumed two to four glasses of wine before, during, or after dinner toward the end of the week, on Thursdays, Fridays, Saturdays and Sundays. During social situations the Applicant would drink at least six or seven glasses of wine. The Applicant's drinking continued at that frequency thereafter. The Applicant's excessive drinking has caused blackouts and memory loss, as well as an ulcer and an inflamed pancreas.

From 1980 to 1996, the Applicant would periodically stop drinking for six months or so, in a conscious effort to control his heavy drinking, but later resumed his regular pattern of drinking. The Applicant attributed his abusive drinking to his long work hours, and marital discord, which caused his loss of emotional balance between work and home. The Applicant used alcohol to help him relax. (Tr. Pg. 27).

In 1980 the Applicant was arrested and convicted for Driving Under the Influence of Alcohol. Prior to the arrest, he had about five or six drinks. The Applicant was fined \$250.00, ordered to complete two days on a work farm and required to attend a four week class on alcohol education. The Applicant attended an Alcohol Information Class but did not find it very helpful.

Although the Applicant's intentions were good, his abusive drinking was still out of control, and on February 4, 1996, he was arrested again for Driving Under the Influence of Alcohol. Again, the Applicant had about five or six drinks prior to the arrest. The Applicant was sentenced to a 24 month deferred prosecution program, was fined \$125.00, and was ordered to seek alcohol treatment. The Applicant presently remains on probation for this offense. On numerous other occasions where he was not arrested, the Applicant drank alcohol and drove his vehicle. (Tr. Pg. 34).

Medical Records indicate that in July 1996, the Applicant entered a two year intensive outpatient Chemical Dependency treatment program. Although he was initially motivated to receive alcohol treatment by the fact that it was court imposed, the Applicant soon realized that he needed the treatment program. During this treatment, the Applicant was diagnosed with Alcohol Dependence, Continuous. (See, Government Exhibit 6). Two weeks into the treatment program, however, the Applicant suffered a relapse, and drank a glass of champagne at his wedding reception. (Tr. Pgs. 39 and 40).

The Applicant has not consumed alcohol since his relapse in July 1996, an abstinence period of twelve months. Presently, he is continuing in his alcohol treatment program, and is attending Alcoholics Anonymous meetings three or four times per week. He is also receiving individual psychotherapy twice per month. The Applicant states that he is diligently working the treatment program, and he has made a firm commitment to maintain a sober lifestyle. The Applicant testified persuasively that he is comfortable in his sobriety, and has no desire to return to his former pattern of alcohol abuse. The Applicant will complete the treatment program sometime in 1998. (Tr. Pg. 58).

Mitigation.

A letter from the Applicant's counselor at the Chemical Dependency Program indicates that the Applicant has made consistent progress while in the program, and that his attitude is excellent. He is motivated to address his drinking problem, and demonstrates an amazing amount of energy and commitment to recovery. (See, Applicant's Exhibit B, enclosure 3).

Monthly status reports from July 1996, through March 31, 1997, reveal that the Applicant attends over and above the required number of Alcohol Anonymous meetings and is very committed to the program. Overall, he has made exceptional progress. (See, Applicant's Exhibit C).

The Applicant's Probation Officer indicates that Applicant has complied with all of the court stipulations and reports to him in a timely manner. (See, Applicant's Exhibit B, enclosure 2).

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
- (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 judgement.

Conditions that could mitigate security concerns:

- (3) positive changes in behavior supportive of sobriety.

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 abused alcohol beginning in 1963, extending over a period of 34 years, to at least July 1996. During this period, his excessive alcohol consumption is evidenced by two arrests and convictions for Driving Under the Influence of Alcohol. The most recent arrest occurred in February 1996, just seventeen months ago, for which he presently remains on probation. In addition, the Applicant has suffered from health problems directly related to his excessive drinking.

The Applicant has attempted several times in the past to stop drinking. Each time the Applicant has tried to stop drinking he has been unsuccessful. As recently as July 1996, just two weeks after entering his alcohol treatment program, the Applicant relapsed, and drank again.

At the present time, although it appears that the Applicant now realizes that he can no longer drink alcohol, it is too early to tell whether he will return to his old ways. The Applicant is only in the middle of his treatment program and will not complete it until July 1998. Under the particular facts of this case, although the Applicant has not had any alcohol to drink for twelve months, his history of relapse requires that he complete his treatment program as well as the aftercare requirements.

The Applicant is commended for his recent decision to stop abusing alcohol. He now appears to exhibit a high level of motivation for recovery, and has taken positive steps to establish a sober life. He is very involved in working his treatment program, and is regularly attending Alcoholics Anonymous meetings, and psychotherapy. Hopefully, he will continue on his path to recovery. However, the recency of his alcohol abuse, and his past pattern of relapse, preclude a favorable finding at this time. Additional time in recovery is necessary in order to guarantee the Government that the

Applicant will not return to drinking and can be found sufficiently reliable and trustworthy. 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.

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