

June 20, 1997

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Applicant for security clearance

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ISCR Case No. 96-0886

AMENDED DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Arturo I. Villarreal, Esquire

Applicant's Counsel **STATEMENT OF 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 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 the 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 December 30, 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 March 19, 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 March 24, 1997, and Applicant's reply was received on May 21, 1997. The case was received by the undersigned for resolution on June 5, 1997. The issues raised here are whether the Applicant's alcohol consumption, and his alleged drug involvement 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, the File of Relevant Material and Applicant's Response. The Applicant is 41 years of age, and is employed by a defense contractor, who seeks a 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 1975 until he last consumed alcohol in October of 1996 (Government Exhibit (GX) 3). He "first used alcohol (mostly beers) during . . . [his] freshman year in college (about 1975). . . . [He] used alcohol intermittently/socially once a week, from approximately 1975 to Feb 96, and would consume three to four beers in one setting, and occasional mixed cocktails. . . . His drinking decreased to twice a month after . . . [his] last DUI arrest of Feb 96" (GX 5 at page 3).

His first alcohol related arrest occurred in February of 1995. He subsequently pled no contest to Aggravated Driving Under the Influence (GX 4 at page 7, and GX 5 at pages 1~2). As a result of his conviction, the Applicant was, in part, ordered to attend DWI school, and to attend an eight hour Group Alcohol Screening (GX 5 at pages 1~2).

The Applicant's second alcohol related arrest occurred in February of 1996 (GX 4 at page 7). In June, he pled guilty to a charge of Reckless Driving, but had consumed alcohol prior to his arrest (GX5 at page 2). Since executing his sworn statement in October of 1996, the Applicant has ceased the consumption of alcohol (GX 3), and has begun to attend Alcoholics Anonymous (AA) meetings (Applicant's Exhibit (AppX) 6).

Criterion H - Drug Involvement

2.a.~2.c. The Applicant was arrested in February of 1995, in part, for Possession of Marijuana (GX 6). The arresting officer gave the following credible rendition of what occurred:

Under the driver's side seat, where . . . [the Applicant] had been sitting, I discovered a clear baggie with [a] prescription bottle in it. The bottle was brown opaque in nature and I could clearly see a leafy substance which, based on my training and experience, I identified as Marijuana. . . . Also in the baggie was a blue lighter and a 12 fl. Oz. Diet Sprite can modified in such a fashion which facilitated the smoking of Marijuana. . . **[The Applicant] admitted shaping the can and putting holes in one side of it so he could smoke with the can.** (GX 6 at pages 3~4, emphasis supplied).

The Applicant marijuana possession occurred after he had been granted a security clearance in December of 1989 (GX 4 at page 8).

Mitigation

The Applicant appears to be attending AA on a fairly regular basis (AppX 6); and is highly thought of by those with whom he works (AppXs 8~20), and by others in the community (AppXs 21~24).

Considering all of the evidence, and in light of the fact that the Applicant has two alcohol related convictions; the Applicant bears the 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 . .

Condition that could mitigate security concerns:

(3) positive changes in behavior supportive of sobriety;

Drug Involvement

Conditions that could raise a security concern:

(1) any drug abuse (drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction);

(2) illegal drug possession

Conditions that could mitigate security concerns:

(1) the drug involvement was not recent;

(2) the drug involvement was an isolated or infrequent event;

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), and criterion H (drug involvement); 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 improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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

Considering first the Applicant's alcohol abuse, he admittedly abused the intoxicant during a period of about 20 years, as evidenced by two alcohol related convictions. His abuse culminated with his last alcohol related conviction in June of 1996. Although there is absolutely **no** diagnosis, here, indicating that the Applicant is alcohol dependent, since October of last year he has taken it upon himself to cease the consumption of the intoxicant, and is participating in AA in support of his sobriety. I thus conclude that the Applicant's past consumption of alcohol is no longer of present security significance.

Turning next to his involvement with marijuana, although I do not believe his self serving statements denying his involvement (GX 3, and GX 5 at page 2), I also do not believe that this apparently isolated incident is of present security significance. His marijuana possession occurred in the distant past, more than two years ago, and there is absolutely no other evidence of drug abuse. I therefore conclude that his past involvement is not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's prima facie case regarding his alcohol consumption and drug involvement. The Applicant has thus met the mitigating conditions of Criteria G, H, and of Section F.3. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Criteria G and H.

FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

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

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge