

DATE: September 19, 1997

In re:

Applicant for Security Clearance

ISCR OSD Case No. 96-0871

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR THE GOVERNMENT

Barry Sax, Esq.

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

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, as amended by Change 3, issued a Statement of Reasons (SOR) dated December 10, 1996, 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 national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

On January 23, 1997, Applicant, at that time acting *pro se*, responded to the allegations set forth in the SOR and requested a hearing. The case was assigned to me on March 18, 1997, and on March 24, 1997 a hearing was scheduled for April 10, 1997. At the hearing held as scheduled, six Government exhibits and five Applicant exhibits were admitted into evidence. Testimony was taken from the Applicant and one witness for the Applicant. A transcript of the hearing was received by this office on April 18, 1997.

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of the same, I make the following findings of fact:

Applicant is 49 years old and has been a wind tunnel operator at the same location since November 1971.⁽¹⁾ Applicant has a good reputation at work, is a top worker in his field and very reliable, and has outstanding job performance.

From 1969 until 1993 Applicant drank little alcohol.⁽²⁾ Applicant and his wife began to have marital problems in 1993. In March 1994 Applicant and his wife separated. She moved out of the house for 6 months. They reconciled and she

moved back into the home for six months. In February 1995, Applicant's wife told Applicant she wanted a divorce. A month later, in March 1995, the divorce became final ending a 27-year marriage.

Applicant started drinking alcohol in 1993. His drinking started with a few mixed drinks with dinner. On August 6, 1995, he was arrested after drinking with an old high school buddy that he had not seen in 30 years. His blood alcohol content was .19%.⁽³⁾ Applicant pled guilty to Driving Under the Influence (DUI) and served 48 hours in jail, served one year probation, and had his driver's license restricted. Following his arrest until two weeks before Christmas 1995 Applicant did not drink any alcohol.

Following the arrest Applicant said he drank 3 or 4 beers about twice weekly at home. On February 28, 1996, when the sworn statement (Gov Ex 3) was made, Applicant intended to maintain drinking beer at a moderate or less rate. He said that the arrest was an isolated incident and that alcohol would never cause him any more problems. Applicant's prediction turned out to be wrong.

Because his license was restricted because of the 1995 DUI conviction, Applicant was unable to drive anywhere other than work. He sat at home and drank. (Gov Ex 4) In June 1996 he was drinking more and by August 1996 his drinking had progressed to the point where he was drinking two six-packs of beer a night. On September 4, 1996, Applicant got very intoxicated and called his ex-wife. Applicant indicated he was going to kill himself. The following day, September 5, 1996, Applicant enrolled in a treatment program. He was diagnosed as "alcohol dependence" [Gov Ex 5]. His treatment lasted 20 days, from September 5 through September 24, 1996.

Following this treatment he thought he was cured and did not accept that he was an alcoholic. By October 15, 1996, when he completed another signed, sworn statement [Gov Ex 4], Applicant was attending outpatient treatment 4 nights per week. In October 1996 he attended AA almost daily. Since his release he had missed two meetings, due to work. He also drank beer on two occasions following his release from treatment. Each time he had 3 beers. In his statement Applicant again stated that it was his hope that alcohol would not cause him any problems in the future. This was not to be.

He remained sober for 29 days. He then returned to drinking. At Thanksgiving 1996 he had 4 days off from work. It was the first Thanksgiving that his family was not together. He got depressed and got "super drunk." [Tr 45] He then went 11 days without drinking. Facing two weeks of Christmas vacation from work, Applicant began to drink again. On Thursday, December 12, 1996 he stopped and bought liquor on his way home from work. He called into work on Friday morning and took a vacation day. Friday he sat, drank, watched movies, and looked out the window. [Tr 46]. He drank through Friday and Saturday. December 14, 1996, Saturday afternoon he got in his car to take the movies back to the movie rental store.

Applicant was involved in a serious motor vehicle accident. Applicant's vehicle almost rear ended another automobile. His vehicle went into the ditch and turned over. [Tr 38] Applicant's injuries required 10 stitches to his head. Applicant spent the night in jail. Prior to the accident Applicant consumed alcohol.⁽⁴⁾ Applicant was convicted of reckless driving and violation of the open container law.⁽⁵⁾

On Sunday morning December 15, 1996, following his release from jail, Applicant drank two 6-packs of beer he had in his refrigerator. After drinking the two 6-packs he called the treatment center. He returned to the treatment center and was readmitted for 5 days of inpatient treatment. Applicant's diagnosis was "alcohol dependence" and major depression. The discharge summary (Gov Ex 6) states Applicant was very motivated for treatment. Applicant reported, during treatment, that he started drinking to cope with his divorce and that if it were not for the feelings of depression he would not drink. (Gov Ex 6). He reportedly uses alcohol as a crutch. He could not handle the depression and entering an empty house after work each day.

On December 20, 1996, he was discharged from the inpatient program and admitted to an intensive outpatient program. [App Ex B] Since December 20, 1996 he has attended AA meetings 5 to 8 times a week. Following the December 1996 accident Applicant attitude toward AA changed. He stated, in the Psychosocial Assessment (Gov Ex 6, page 6) that he describes himself as an agnostic. Applicant was having difficulty accepting the ideology of step one of the AA program. This last drink was on December 15, 1996.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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:

- (1) alcohol-related incidents away from work, such as driving while under the influence, fighting. . .
- 3) diagnosis by a credentialed medical professional of alcohol abuse
- (4) habitual or binge consumption of alcohol to the point of impaired judgment

Conditions that could mitigate security concerns include:

- (3) positive changes in behavior supportive of sobriety

* * *

In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, then the Applicant must remove that doubt with substantial evidence in explanation, mitigation, or extenuation, or refutation, sufficient to demonstrate that despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless

security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

Excessive alcohol consumption often leads to the exercise of questionable judgement, 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 toward security rules and regulations.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of the Applicant, this Judge concludes that the Government has established its case with regard to criterion G. On reviewing the corresponding mitigating factors (MF), there is a sufficient pattern to his alcohol-related incidents and his problem is too recent to favorably apply MC 1 or 2, respectively.

Applicant drank very little alcohol from 1969 until 1993. Applicant started drinking when he began to experience marital problems. In March 1995 his 27-year marriage ended in divorce. On August 6, 1995, he was arrested for DUI with a blood alcohol content of .19% at the time of arrest. Applicant had 20 days of inpatient treatment from September 5, 1996 through September 24, 1996. The intensive outpatient program he entered on September 24, 1996 helped him remain sober 29 days. He returned to drinking and was involved in a serious motor vehicle accident on December 14, 1996. His last drink was on December 15, 1996.

His abstinence from all alcohol since December 15, 1996, is regarded as a positive change in behavior supportive of sobriety. (See MC 3). However, whereas Applicant has been diagnosed as suffering from alcohol dependence, he is required for mitigation under the Adjudicative Guidelines to successfully complete an inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in AA or similar organization, abstain from alcohol for a period of at least twelve months, and receive a favorable prognosis by a credentialed medical professional. Applicant has not abstained from alcohol for a period of at least 12 months nor is there a favorable prognosis by a credentialed professional.

Common sense may warrant a favorable outcome, notwithstanding the failure to satisfy pertinent mitigating conditions. Whether or not an applicant has reformed, depends on recognition and acknowledgment of his alcohol problem, and demonstration by conduct over a measurable period of time that he is committed to his recovery. As recently as December 15, 1996, Applicant showed little insight into his alcohol problem, as evidenced by his consumption of two 6-packs of beer following his release from jail. His efforts in reform are too recent to overcome his very serious history of drug abuse.

The absence of any alcohol related incidents at his company⁽⁶⁾ are to his credit, but it does not mandate the grant of a clearance. The responsibilities to safeguard classified information do not cease at the end of the work day. At this juncture, it is too soon to tell whether AA will provide a viable support network for him in his recovery or to conclude that his alcohol dependence is safely behind him. Especially since Applicant is having difficulty accepting Step 1 of the AA program.

With less than a year of sustained sobriety, it is still too soon to draw convincing conclusions that Applicant is a safe risk to avert any recurrence of alcohol abuse in the foreseeable future. So, while Applicant is to be commended and encouraged in his efforts at seeking professional help for his alcohol problems, he needs more time to persuasively season his commitments to stay sober and away from alcohol abuse in the future.

For the present time, it is sufficient to conclude that Applicant's mitigation efforts, though encouraging are not of sufficient strength and endurance to enable him to absorb the Government's pressing security concerns associated with

his past abuses of alcohol.

Accordingly, subparagraphs 1.a., 1.b., 1.c., and 1.d. are resolved against him.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 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 national interest to grant or continue a security clearance for Applicant.

Claude R. Heiny

Administrative Judge

1. Although Applicant has worked at the same location since 1971, the name of the company he works for has changed.
2. Applicant's use of alcohol was limited to communion wine at church.
3. Intoxication under the state law was .10% or higher.
4. On December 12, 1996 he drank 12 beers, on December 13, 1996 he drank 18 beers, and on December 14, 1996 he drank 18 beers. Applicant last drink was moments before he got into his car. [Tr 48].
5. No other action was taken because the blood test was lost.
6. A co-worker did comment that Applicant's off duty drinking had not affected his work. Although he never came into work under the influence, Applicant came to work looking like he had had a rough night and came to work and then returned home a few times. [Tr 19]