

Date: July 25, 1997

In re:

Applicant for Security Clearance

ISCR Case No. 96-0882

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, 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 9, 1996, to the Applicant that 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 conduct proceedings and determine whether clearance should be granted, denied or revoked.

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

On January 11, 1997, Applicant responded to the allegations set forth in the SOR. Applicant elected to have the case determined on the written record in lieu of a hearing. A File of Relevant Material (FORM) was issued by Department Counsel on April 7, 1997. The case file indicates that Applicant did not respond to the FORM. This case was assigned to me on July 14, 1997, after being reassigned from another Administrative Judge.

FINDINGS OF FACT

After a thorough review of all of the evidence in this case, including Applicant's response to the SOR (As indicated, Applicant did not respond to the File of Relevant Material), and upon due consideration of all of the evidence, this Administrative Judge makes the following findings of fact as to the Criterion G (Alcohol consumption) allegations in the SOR:

Applicant is a 42-year-old male employed since about 1974 as a designer or draftsman by a defense contractor. He seeks to retain the Secret Security Clearance originally granted to him by DoD in 1977.

Allegation 1.a. -- Applicant has consumed alcohol, at times to excess and to the point of intoxication, from approximately 1977 through August 1996, as alleged in the SOR, and has continued to consume alcohol through at least

January 11, 1997, the date of his response to the SOR.

Allegation 1.b. -- Applicant was not observed at his place of employment on several Monday mornings prior to June 1993 to have the odor of alcohol on his person. Applicant denied this allegation and the Government did not introduce any evidence in support of the allegation (*See* FORM, p.3. at Footnote 2).

Allegation 1.c. -- Applicant was arrested on June 12, 1993 and charged with Driving While Intoxicated (DWI). He had a blood alcohol level of .18 %. He was found guilty, sentenced to serve 90 days in jail, suspended, fined \$350.00, ordered to pay \$46.00 court costs, had his driver's license suspended for one year and was ordered to attend an Alcohol Safety Action Program (ASAP). Prior to 1993, Applicant had been arrested once before for DWI (date unknown).

Allegation 1.d. -- As a result of his 1993 DWI arrest and conviction, Applicant was suspended from work for five days in June 1993 by his employer. Applicant was on duty and driving a company rented car at the time of his arrest.

Allegation 1.e. -- Applicant received treatment from July 15, 1993 to October 11, 1993 at a clinic A in his state of residence. His condition was diagnosed as Alcohol Abuse. At the time, he was "beset with many problems, intoxicated, evicted from home, being divorced," and had possible suicidal thoughts. He had been drinking two six-packs or more (time frame not known). The stated short term goals in his treatment plan were for him to attend AA meetings on a regular basis and to abstain from drinking. During his treatment period, he told the clinic that he had not consumed alcohol for five and then six weeks. The stated long term goals were Applicant's continued attendance at AA and remaining "alcohol free"(Government Exhibit (GX) 7).

Allegations 1.f. and 1.g. -- Applicant received treatment on September 7, 1995 at Hospital B, for a condition diagnosed as Alcohol Dependence. Applicant then received inpatient treatment from September 7, 1995 to November 27, 1995 at a treatment center in State C, for a condition diagnosed as Alcohol Dependence. Prior to his admission to the hospital, Applicant had been "drinking all day" and "a lot all week." Applicant had been drinking "3 - 6 packs" of beer "daily" since he was "18 years old." Applicant hadn't "achieved any significant periods of sobriety in the past 22 years" (GX 8 and 9).

Allegation 1.h. --Applicant received treatment from September 30, 1995 to November 27, 1995 by a Licensed Mental Health Counselor for aftercare counseling for a condition diagnosed as Alcohol Dependence. The Counselor recommended that Applicant totally abstain from using alcohol (Response to SOR).

Allegation 1.i. -- Despite the repeated treatment and diagnoses of Alcohol Abuse in 1993 and Alcohol Dependence in 1995, and a recommendation that he totally abstain from consuming alcohol, Applicant has continued to drink alcohol, until at least January 1997. In his Response to the SOR in January 1997, Applicant indicated the likelihood that he was still drinking and intended to continue to drink, although not every day and not during or while at work."

POLICIES

General Policy Factors (Whole Person Concept)

The adjudication process established by DoD Directive 5220.6 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 that 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 circumstances or consequences involved; the age of the Applicant; the presence or absence 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. (as expanded in Enclosure 2, at page 2-1).

Because each security clearance case presents its own 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.

Specific Criterion Factors

In addition to the General Guidance discussed above, an Administrative Judge must also evaluate the evidence under the specific Additional Procedural Guidance found at Enclosure 2 of the Directive (in this case, Criterion G, found on page 2-14). 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, child or spouse abuse, or other criminal incidents related to alcohol use;
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence⁽¹⁾.
- (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 security concerns include:

None apply

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's 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 required by the Directive, the Administrative Judge can only draw those inferences and conclusions that 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

An applicant's admission of the information in specific allegation relieves the Government of having to prove those allegations. If specific allegations and/or information is denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reason. If the Government meets its burden (by an applicant's admissions and/or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criterion in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person who seeks access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. When the fact 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the credibility of Applicant's written testimony, this Administrative Judge concludes that the Government has established its case as to all SOR Criterion G allegations except for allegation 1.b., as to which the Government has not offered any evidence.

In his response to the SOR, Applicant denies allegations 1.a., 1.b., and 1.c. He admits allegations 1.d. through and including 1.i. Considered along with other evidence, the record evidence establishes that Applicant has a long history of excessive alcohol consumption highlighted by two drunk driving offenses,⁽²⁾

an alcohol-related five-day suspension from work in 1993, and four examples of what I consider were failed treatments for alcohol abuse and dependence, in 1993 and 1995.

Government Exhibits 7, 8, 9, and 10 document the history of Applicant's alcohol-related problems and treatment. GX 7 is the record of treatment received after Applicant's 1993 arrest and conviction for DWI. It expressly advises that Applicant attend AA meetings on a regular basis and remain alcohol free. It appears that Applicant did not drink alcohol during his treatment but it is also clear that he began drinking again at some point after the treatment was completed.

GX 8 establishes that by September 1995, he was again consuming substantial amounts of alcohol, to the point that he receive hospital treatment on September 5, 1995, at which time he had been drinking beer all day, and a "lot all week." He acknowledged being in the midst of a divorce, having received a court order barring him from his household property, and being under considerable stress. He was diagnosed as suffering from alcohol intoxication, abuse, and dependence. He was transferred by ambulance to a detoxification center.

GX 9 establishes that Applicant had been drinking "3-6 packs of beer" daily and had been drinking since he was 18-years of age. He acknowledged a long history of alcoholism and a previous attempt at detoxification "years ago, which may have been referring to the 1993 treatment after his DWI conviction, He also acknowledged "no significant periods of sobriety in the past 22 years," i.e., since about 1973. He admitted a legal history of "2 DUIs." He claimed an ability to "identify the warning signs for relapse." His final diagnosis, dated September 20, 1995, was "alcohol dependence . . .severe." GX 10 is a September 20, 1995 letter from the detoxification center certifying Applicant's suitability for returning to work.

Applicant's abuse of alcohol is particularly significant in the context of his suitability for access to classified information because of the long history of abuse, resulting in two DWI arrests, a pattern of failed treatments, and what I conclude is a continuing denial of the nature of his problem with alcohol and its negative impact on his life, particularly on his employment and his suitability for access to classified information. Considering the consistent diagnoses in 1993 and 1995, his agreement during treatment to abstain from alcohol and attend AA meetings, and his admission that he is continuing to consume alcohol, I am compelled to conclude that he is likely to abuse alcohol in the future as he has done in the past. In other words, it is not clear to me the Applicant has learned anything significant from what he has gone through over the years relating to his problems with alcohol. My conclusions are necessarily based on the evidence of record, and that evidence, establishing a long history of alcohol-related poor judgment, unreliability, and untrustworthiness, remains unrefuted by any substantial evidence to the contrary.

While there is no evidence Applicant's alcohol has had a direct impact on his work, it is well recognized that security clearance eligibility is a 24-hour-a-day requirement. Alcohol abuse, even if it occurs during off-duty hours, poses a security risk. *See Cole v. Young*, 351 U.S. 536, 550 n.13 (1956); *Croft v. Department of the Air Force*, 40 M.S.P.R. 320,321 n.1 (1989); Appeal Board Decision, ISCR Case No. 96-0575 at p.4 (July 22, 1997). A person who fails to adequately control his life in the private sector cannot expect to be awarded the level of confidence and trust required of someone seeking access to the nation's secrets. I have given particular attention to Applicant's most recent statement, his

