

DATE: September 19, 1997

In re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0003

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR THE GOVERNMENT

Barry Sax, Esq.

Department Counsel

FOR THE APPLICANT

M. Clay Martin, Esq

Applicant's Attorney

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 January 14, 1997, 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 February 13, 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 accordingly to this Administrative

Judge on March 18, 1997, and on March 24, 1997, a hearing was scheduled for April 10, 1997. At the hearing held as scheduled, four Government exhibits (Gov Ex) and four Applicant exhibits (App Ex) were admitted into evidence. Testimony was taken from the Applicant and two witnesses for the Applicant. A transcript of the hearing was received by this office on April 18, 1997.

Applicant admitted the allegations listed in the SOR, with the exception of subparagraph 1. (e). Applicant admits he was charged with Driving under the Influence (DUI) and that he was under the influence at the time of his arrest, but denies he was driving the vehicle at the time of the arrest.

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 36 years old and is a graphic art illustrator who currently holding a secret security clearance. He has worked for Company A since November 1992.⁽¹⁾ Applicant does a very good job at work, and is very professional in handling the job. He produces a very good work product. Each year he has received a merit raise. He has never drank at work, never reported to work drunk, and never drank at lunch.

Applicant had his first drink while he was in high school, in the mid 1970's. [Tr. 41] Applicant was first arrested in December 1985. He had been at a Christmas party drinking and dancing. When leaving the party, he saw some individuals grab his cousin. Applicant went to his cousin's assistance. The individuals were police officers and Applicant was arrested. Applicant was charged with public intoxication and resisting arrest. Applicant forfeited a cash bond of approximately \$200.00.

In January 1987 Applicant had been out drinking with a friend. His friend's driving attracted the attention of the police. While the police were in pursuit of the car the friend stopped and ran away from the car. Applicant stayed in the car. Applicant was not driving but the police lied and said he was driving. Applicant was charged with DUI, but was acquitted.⁽²⁾

In November 1990 Applicant had been out drinking and playing pool. He was arrest for DUI when he drove home from the pool hall. He pled guilty to DUI, paid a \$300.00 fine, had his license suspended for 90 days, and attended a highway intoxication seminar.

On January 1, 1992, Applicant had attended a New Year's Eve party. He was drinking at the party. He decided to leave the party and go home. He knew he was too drunk to drive so he chose to sleep in his vehicle. (Gov Ex 4) Applicant was charged with DUI. Applicant pled guilty to public intoxication. Applicant paid a \$250.00 fine plus court costs and was sentenced to one year probation.

In April 1996 Applicant was fishing and drinking with friends. His friends left him off at his car. Applicant realized he was too drunk to drive home so he got into the back seat and went to sleep. (Gov Ex 4) Applicant was arrested for public intoxication and for carrying a pistol without a permit (CPWP). The public intoxication charge was dropped and Applicant was found guilty of CPWP. He was fined \$250.00 plus court costs, sentenced to 30 days in jail, suspended, and given one year unsupervised probation.

On October 21, 1996, Applicant made a sworn statement. In that statement Applicant said his drinking habits have remained the same since 1988. (Gov Ex 4) In the same statement, he stated that he did not believe he had a drinking problem. This intention was to continue drinking once or twice a month. At the hearing Applicant stated it was his current intention to refrain from all drinking. Applicant has gone to AA twice. Applicant plans to refrain from all drinking, because drinking interferes with his well-being and his livelihood. [Tr. 60] Applicant wants to stay away from alcohol because it has always gotten him into trouble in the past. Applicant admits that during the last four incidents he had consumed alcohol to excess prior to the arrests.⁽³⁾ [Tr. 69]

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. oreover, 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. . .
- (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.

Over a 12-year period Applicant has five alcohol-related arrests. Prior to four of these arrests Applicant had drunk alcohol to excess. Applicant first realized there was a problem when he received the SOR in February 1997. This was the first time that his alcohol problem was laid out all at once. Once he reviewed the SOR, he decided he should stop drinking and go to AA. He has attended AA twice.

His realization that alcohol is a problem for him and his abstinence from all alcohol since

February 1997, is regarded as a positive change in behavior supportive of sobriety. (See MC 3). But this realization came only after the SOR had been received and Applicant was aware that his job might be affected by his drinking. 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. Attendance at two AA meetings is insufficient to demonstrate a strong commitment and a change in lifestyle toward the use of alcohol. There is no evidence of Applicant understanding the AA program, has become involved in the steps of the program, has gotten a sponsor, or comprehends all that is involved in AA participation.

As recently as October 21, 1996, Applicant showed little insight into his alcohol problem, as evidenced by his statement that alcohol was not a problem for him and that he intended to continue drinking once or twice a month. His efforts in reform are too recent to overcome his history of drug abuse.

The absence of any alcohol related incidents at his company 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. He has attended AA only twice.

With less than a year of sustained sobriety and his minimal involvement with AA, 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. Applicant's commitment must be more than a declaration that he has stopped using alcohol and that he will go to AA in the 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., 1.d., 1.e., and 1.f. are resolved against him. Subparagraph 1.g. is resolved in Applicant's favor for that allegation alleged that he continues to consume alcohol. Applicant stopped consuming alcohol in February 1997.

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

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For 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. Applicant has held a secret security clearance at various times since 1983. [Tr 34]
2. At the time of the arrest he was asleep in the back seat of the vehicle. The charge was changed to public intoxication to which he pled guilty.
3. Applicant denies he had drank to excess prior to the incident where he went to assist his cousin.