

DATE: September 4, 1997

In Re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0045

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Pamela C. Benson

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On March 31, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

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

Applicant's answer to the SOR dated April 23, 1997 was received by DOHA on May 17, 1997. In it, he requested that his case be decided without a hearing. Applicant received the Government's File of Relevant Material (FORM) consisting of 14 items on May 30, 1997. He did not respond to the Government's FORM. The case record was closed on June 29, 1997, and assigned to this DOHA Administrative Judge for decision on July 14, 1997.

FINDINGS OF FACT

In his answer to the Statement of Reasons, Applicant admitted all factual allegations set forth under paragraph 1 (Criterion G) except the allegation--set forth under subparagraph 1.g.--that he (Applicant) continued to consume alcohol--which he denied, and all factual allegations set forth under paragraph 2 (Criterion F) except the allegations in subparagraph 2.f. Except as otherwise noted, Applicant's admissions are hereby incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor who is attempting to obtain a secret clearance. Although he had served in the United States Navy from 1989 to 1993, there is no evidence in the record that he has previously held a

security clearance. His suitability for a security clearance has been called into question because of alcohol consumption and financial considerations.

Applicant began consuming alcohol in 1986 when he was 17 years old. Initially, he would drink four or five beers with friends on a weekly or twice monthly basis. His alcohol consumption increased thereafter but there are conflicting accounts about the level to which it increased, and about the rate at which Applicant is currently consuming.

Alcohol consumption was the principal cause or a contributing factor in Applicant's three arrests. He was arrested in 1988 for violating the open container statute of State A. In 1990 while a member of the U.S. Navy, he was arrested and convicted by special court martial for misappropriating government property. After consuming a quantity of alcohol, he and a fellow serviceman had moved some furniture from the lounge of a military barracks to an unfurnished apartment which they had just rented. Most recently, Applicant was arrested in July 1993 for driving while intoxicated (DWI) in State B. As a result of this arrest, his driver's license was suspended, he was sentenced to 30 days in jail (which was suspended), and he was ordered to pay costs of \$276.00

Subsequent to and because of his DWI arrest, Applicant was evaluated by a military medical facility on October 8, 1993. According to the narrative portion of the intake evaluation, Applicant had been consuming "seven beers per episode" twice weekly and was on rare occasions consuming as many as 14 beers or six mixed drinks, and he appeared to "meet the criteria...for alcohol abuse."⁽¹⁾ As a result, he was recommended for "Level II treatment at the Counseling and Assistance Center" (Form Item # 6).

Applicant entered, but did not complete out-patient treatment for alcohol abuse at the military medical facility. On November 24, 1993, his treatment was terminated due to non-compliance--he had two unexcused absences and had been 30 minutes tardy for another session. According to the records, he stop attending treatment because he did not like the way his "group was facilitated." Elsewhere in the treatment records, there is information that Applicant had been drinking 8-10 beers--as often as two or three times per week, that hangovers had affected his job on a couple of occasions, and that he had driven after drinking "many times" (Form Item # 6). Applicant was discharged from the U.S. Navy as an "Alcohol Rehabilitation Failure" on March 9, 1994 (FORM Item # 9).

When Applicant was interviewed by the Defense Investigative Service (DIS) in July 1996, he signed a sworn statement, admitting that his "pattern of (alcohol) consumption" was the same as it was in 1988--four to five beers per occasion on a weekly to twice monthly basis, and as many as seven beers per occasion once every two to three weeks. He did not consider himself to have "a problem with alcohol abuse." and did not express an interest or intention to reduce his alcohol consumption (Form Item # 5). However, in his April 1997 answer to the SOR, Applicant denied an allegation that he continued to consume alcohol. His answer does not elaborate; he does not state when he stopped consuming alcohol, nor does he indicate that his abstinence is due to a precipitating event and is supported by participation in AA or some other abstinence support group. Because of his history of alcohol use and abuse, Applicant's simple denial of the allegation--that he continues to consume alcohol--does not provide a sufficient basis for finding that he has stopped drinking alcohol.

In addition to his problem with alcohol, Applicant has also experienced financial problems. He admits each of the overdue obligations identified in the SOR,⁽²⁾ and attributes all of his current indebtedness--totaling approximately \$9,500.00--to "a bad divorce and heavy duty child support payments." In July 1996, he assured the DIS, in his signed, sworn statement, that he intended to pay each of the debts when he "was able to" (FORM Item # 5). However, he did not provide for even a minimal payment toward any of these obligations in the Personal Financial Statement (PFS)--which is part of his signed sworn statement to the DIS. And Applicant has not proffered any evidence of a minimal payment on these obligations in the 12 months that have passed since the PFS was prepared.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and

unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

ALCOHOL CONSUMPTION

(Criterion G)

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.

Conditions that could mitigate security concerns include:

None Applicable.

FINANCIAL CONSIDERATIONS

(Criterion F)

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations;

(3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None Applicable

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that 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 that Court's rationale, .

doubts are to be resolved against an applicant.

CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criteria G and F.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has established its case with respect to Criterion G. Although Applicant has been reluctant to admit that he abuses alcohol, he has admitted that he has been using alcohol regularly for at least ten years. And his admissions of alcohol use taken together with the information in the record are sufficient to document a history of alcohol abuse. Applicant was arrested three times in alcohol-related incidents between 1988 and 1993; he has reported to work with a hangover on two occasions; he has driven "many times" after consuming alcohol; he was diagnosed at a military medical facility as meeting the "criteria... for alcohol abuse;" and he failed to complete treatment for alcohol abuse at a military medical facility. Moreover, the information in Applicant's treatment records indicate a rate of alcohol use which was substantially higher than that to which he has admitted in his signed, sworn statement.

Applicant's abuse of alcohol is a security concern because excessive alcohol consumption can lead to the exercise of questionable judgment, to a failure to control impulses, and it increases the risk of unauthorized disclosure of classified information.

In mitigation, Applicant proffers his personal assurance that he does not believe he has "a problem with alcohol abuse," and he proffers a denial of current alcohol use. There is no explanation of when or how he stop consuming alcohol after ten years of regular use and abuse. There is no evidence that he has made positive changes in his life style which support sobriety, and there is no evidence that he has completed inpatient or outpatient rehabilitation. In short there is no evidence from which this Administrative Judge can conclude that Applicant has put his alcohol problem behind him. Subparagraph 1.a. through 1.g. of Criterion G are concluded against Applicant.

Applicant's financial situation is not hopeless; he is substantially delinquent in financial obligations totaling less than \$10,000.00. However, without evidence that he is making even the most minimal effort to pay down his delinquent obligations, his promise that he intends to satisfy these obligations when he "is able" is not sufficient. His promise to do something in the future does not constitute a "good faith effort" to address the security concerns raised by his indebtedness. Subparagraph 2.a. through 2.g. of Criterion F are concluded against Applicant.

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. Against the Applicant

Paragraph 2 (Criterion F) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. The record does not disclose the identity of the individual who made the diagnosis, nor does it state that the diagnosis was made by a "credentialed medical professional."
2. Applicant disputes the total amount of his obligation to Creditor X as alleged in subparagraph 2.f. Rather than the \$2064.45 alleged in the SOR, he estimates that he owes approximately \$1,600.00 to this creditor (Form Item # 6).