

DATE: _September 8, 1997

In Re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0049

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

Appearances

FOR GOVERNMENT

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FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 24, 1997, 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 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 Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 24, 1997 and elected to have his case determined on the basis of the written record. Applicant was furnished copies of the File of Relevant Materials (FORM) on June 4, 1997 and is credited with receiving them on June 9, 1997. He did not provide a written response to the FORM within the time allotted (30 days) by the Directive. The case was assigned to this Administrative Judge on July 21, 1997.

STATEMENT OF FACTS

Applicant is 54 years of age and has been employed by his current defense contractor (Company A) since about 1987. He has held a clearance at the level of secret since November 10, 1987 and seeks to retain the same.

Summary of Allegations and Responses

Applicant is alleged to have (1) consumed alcohol, at times to excess and to the point of intoxication, from about 1966 to at least June 1996, (2) consumed alcohol in about May 1996 at his place of employment (Company A), (3) been intoxicated on at least two occasions in May 1996 at his place of employment (having to be driven home on one of the occasions), (4) experienced alcohol-related marriage problems, (5) received treatment from June 1 to 6, 1996, at B Hospital for alcohol detoxification, (6) been evaluated on June 11, 1996, by Dr. C of State A, and given a diagnosis of alcohol dependence, and (7) received treatment for alcohol abuse from June 12 to 31, 1996, at the D Group in State A,

in the facility's Level I Program, before entering the Level II Group in August 1996 (attending for only one month before leaving the program early over recommendations that he remain).

For his response, Applicant admitted most of the allegations, denying only his leaving the Level II Group early against recommendations (claiming to be partially deaf and assured by Dr. C that he didn't have to continue with his program if he couldn't understand the discussions, which he could not). Applicant claims that he continues to attend AA meetings that he can understand and adds a number of explanations about (a) the pattern and circumstances of his drinking, (b) the effects of his drinking on his work and marriage, and (c) the benefits he has obtained from his therapy and ongoing AA participation.

Relevant and Material Findings

The allegations in the SOR, which are admitted by Applicant, are incorporated herein by reference and adopted as findings of fact. Additional findings follow.

Applicant was introduced to alcohol (mainly beer) in the Army (about 1966) and drank beer regularly for some thirty years. Sometime in 1993, Applicant experienced a loss of hearing for unknown reasons and compensated for his frustration and distraught with more frequent drinking, initially with beer, before switching to whiskey. By May 1996, he was regularly consuming two pints of whiskey a day. His use of alcohol began to affect his work and his marriage. He was caught drinking at work on two occasions in May 1996: On the first occasion (sometime in mid-May), he had to be escorted home, and on the second occasion, he was advised by his site manager (a Dr. E) to go home and get refreshed. He requested and received permission from Dr. E the following day to take a few weeks off to get himself together.

While at home on work leave, Applicant committed to quitting his use of alcohol altogether. Experiencing withdrawal symptoms, he conferred with his primary care physician (Dr. Y) . Dr. Y, in turn, referred Applicant to B Hospital on June 1, 1996 for alcohol detoxification. Applicant spent five days in inpatient detoxification at the hospital and arranged to see a licensed psychologist (Dr. C) following his discharge from the hospital. Upon being diagnosed by Dr. C (on June 11, 1996) for alcohol dependence, Applicant entered Group D's 8-week Level I primary outpatient treatment program. His participation entailed weekly individual and group meetings. He completed the program's first phase of a designed two-level, 8-week course and embarked on the second phase (Level II) at the urging of Dr. Y. After attending 4 to 5 sessions of the Level II program, he concluded that he could not understand the material enough to get anything out of the sessions. After notifying his site manager (Dr. E) of his intention to discontinue the program, he ceased participation in the scheduled sessions.

Contemporaneous with his participation in Group D's Level I program, Applicant became involved with AA. He attended AA sessions three times a week initially and has since reduced his attendance to once or twice weekly. Acknowledging that he is an alcoholic and cannot drink, Applicant assures that he does not intend to drink again. Based on the evidence of record, Applicant is entitled to inferences that he has retained his sobriety since June 1, 1996 and has remained alcohol-free for a sustained period of approximately 13 months.

Besides alcohol and hearing problems, Applicant has also suffered from depression and for the past 12 years has been under treatment with Dr. E. He takes prescribed medication for his depression and sees Dr. E once every four weeks.

POLICIES

Both F.3 of the Directive's Change 2 and the Adjudication Guidelines ("Guidelines") of the Change 3 amendments to the Directive (effective January 1, 1996) list adjudicative guidelines for determining eligibility for access to classified information. In addition to the relevant adjudicative guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in the preamble of the Guidelines: Nature, extent and seriousness of the conduct, the circumstances surrounding the conduct, the frequency and recency of the conduct, the individual's age and maturity at the time of the conduct, the voluntariness of the participation, the presence or absence of rehabilitation, other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation or duress and the likelihood of recurrence.

Viewing the issues raised and evidence as a whole, the following adjudicative guidelines are pertinent herein:

Alcohol Consumption

Disqualifying Conditions

1. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence.
4. Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions

3. Positive changes in behavior supportive of sobriety.
4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of alcoholics anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

Burdens of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Put another way, the Judge cannot draw inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controversial fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's inability to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant comes to these proceedings with a long history of alcohol-related problems. From the time he entered military service in 1966 to just before he sought treatment in June 1996 - a span of some 30 years - Applicant regularly consumed alcohol. Alcohol consumption became a major problem for him following his precipitous hearing loss in 1993. Turning to daily abusive drinking, Applicant experienced alcohol-related problems at work on several occasions in May 1996. Alcohol abuse also became a source of friction in his marriage. His alcohol condition was severe enough to prompt his primary physician (Dr Y) to suggest hospitalization for detoxification measures, which Applicant accepted and completed successfully. On the professional advice of his referred psychologist (Dr. C), Applicant undertook outpatient counseling with Group D's Level I program, where he was diagnosed as alcohol dependent. Several disqualifying conditions of the Adjudicative Guidelines are applicable herein: DC 2 (alcohol-related incidents at work), DC 3 (diagnosed alcohol dependence by a credentialed medical professional) and DC 4 (habitual or binge

consumption). His alcohol problems were serious enough to create security related risks and enable the Government to carry its initial proof burden.

To his credit, Applicant sought professional counseling and treatment and is credited with completing his 5-day detoxification program at B Hospital June 1996. However, his ensuing outpatient commitment with Group D produced mixed results at best: A completed first phase with the Level I Program, but discontinued participation in the follow-on Level II program after attending only a few sessions. What kind of prognosis Applicant was working under when he discontinued his Level II program for recited comprehension difficulties cannot be determined from the record. All that can be concluded from the record is that Applicant began attending AA meetings contemporaneous with his initiated outpatient counseling sessions with Group D's Level I and continues to attend AA on a regular basis as of the close of the record on July 21, 1996. For this ensuing period, Applicant is credited with refraining from alcohol of any kind. Whether his continued AA participation and credited 13 months of abstinence are enough to sustain his claims of full rehabilitation and discounted risks of alcohol abuse in the foreseeable future cannot be favorably resolved without additional documentary input from the treatment professionals and AA colleagues who have consulted and worked with Applicant. Standing alone, Applicant's 13 months of sustained abstinence and supportive AA participation are not sufficient to absolve him of the still fresh risks of recurrent abuse of alcohol.

Applicant, to be sure, has exhibited some positive shifts in both his behavior and disposition for alcohol abuse over the last 13 months. He exhibits considerable awareness of his dependency condition (in itself a significant restorative step from his previous withdrawal state) and some major rehabilitative improvements in his disposition for alcohol. Details of Applicant's treatment regimen (including his prognosis) AA participation (*e.g.*, step work, selection of a sponsor, and meeting activities) are lacking, however, without which it is much too difficult to gauge both the quality of his AA commitments and the overall strength of his recovery. Time in abstinence (just 13 months) alone is not enough to compensate for the lack of particulars about the extent and depth of his recovery efforts. Based on the present record, Applicant cannot as yet make the convincing case that he is no longer at risk to resume drinking. Neither time nor strength of treatment regimen are sufficient on this record to enable Applicant to overcome reasonable doubts about his ability to steer clear of recurrent alcohol abuse. In balance, Applicant fails to carry his mitigation burden on the facts in evidence, and still existing doubts about his reliability must be resolved unfavorably to Applicant at this time with respect to sub-paragraphs 1.a through 1.d and 1.g.

By contrast, Applicant is credited with successfully completing both his detoxification program at B Hospital and his first phase of outpatient treatment at Group D and is entitled to favorable conclusions with respect to these allegations. Seeking treatment for alcohol abuse is always to be encouraged, and Applicant is certainly to be commended for coming to grips with his alcohol problem and reaching out for professional assistance. Thus, sub-paragraphs 1.e and 1.f are concluded favorably to Applicant.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in F.3 of the Directive and Directive's Change 3 Guidelines in the preamble.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION G: AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge