

DATE: June 18, 1997

In Re:

Applicant for Security Clearance

ISCR OSD Case No. 97-0152

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 4 March 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 2 April 1997, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 14 April 1997; the record in this case closed 26 May 1997, the day the response was due at DOHA. The case was assigned to me on 16 June 1997. I received the case on 17 June 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 41-year old employee of a defense contractor--seeks a secret security clearance.

The allegations of the SOR revolve around Applicant's alleged history of alcohol abuse, as recorded in his sworn statement to the DIS on 7 January 1997 (Item 4)⁽²⁾ and his treatment for alcohol abuse from 1 July 1994 to 26 April 1995 (Item 5).⁽³⁾ The record reflects that Applicant abused alcohol on some occasions between 1974 and 1978 while he was in the military. He abused alcohol on at least one occasion in 1983 (Item 3).⁽⁴⁾ In 1994 and possibly 1995, Applicant abused alcohol and sought treatment.⁽⁵⁾ Except for the 1983 DWI not alleged in the SOR, the record contains no evidence of alcohol related incidents at work or away from work, and contains no evidence of habitual or binge consumption of alcohol to the point of impaired judgment.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

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:

(3) diagnosis by a credentialed medical professional of alcohol abuse. . .; ⁽⁶⁾

Conditions that could mitigate security concerns include:

(1) the alcohol related incidents do not indicate a pattern; ⁽⁷⁾

(2) the problem occurred a number of years ago and there is no indication of a recent problem;

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 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."

CONCLUSIONS

The Government has established its case under criterion G; however, the alcohol abuse is mitigated. The record reflects that Applicant abused alcohol on some occasions in between 1974 and 1978, at least once in 1983, and on some occasions in 1994-1995. However, except for one 1983 DWI not alleged in the SOR, Applicant's alcohol abuse has caused no adverse incidents or situations indicative of impaired judgment. To his credit, when personal problems in 1994 caused Applicant to increase his drinking, he sought professional help. ⁽⁸⁾ The record contains no evidence of alcohol abuse since his discharge from treatment in April 1995. Under the Directive, alcohol consumption raises security concerns only when it is excessive as measured by certain prescribed disqualifying factors, but it does not forbid alcohol consumption. Where, as here, the only actual alcohol incident was so long ago as to be remote, and the latest evidence of excessive alcohol consumption was over two years ago, no reasonable basis exists to deny Applicant the requested clearance. Applicant's alcohol consumption has been moderate since at least April 1995. I find criterion G. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. The two page statement describes Applicant's alcohol consumption in pertinent part: "During 1974 to 1978, while on active duty with the [military], I drank beer when going on . . . leave. I sometimes drank more than I should have, but never got out of control or to the point of not knowing what I was doing. I very seldom drank any hard liquor. I have always been a beer drinker. After being honorably discharged from the [military], I continued drinking beer. My consumption varied from not drinking any beer for a couple of months, then maybe a six pack over a period of a week. In early 1994, I was feeling low and depressed. I was worried about being laid off at my place of employment and there was an illness in my family. I did not have any close friends and was having difficulty making friends with females. I was drinking a couple of six packs of beer a week and on a couple of occasions drank a six pack in an evening. In Jul[y] [19]94, I voluntarily went to [an outpatient facility] to seek counseling. I had weekly to twice monthly outpatient therapy until Apr[il] [19]95. I did not stop drinking beer completely during therapy. I never felt I had a problem with alcohol. I realized it did make me feel more depressed if I drank several cans all in one evening. Since completing my therapy treatment I may go for one week without any beer and then drink five or six beers over a one week period. Over the recent Christmas holidays my consumption was about three beers a week. On New Years Eve I did drink three rum and cokes. . . I do not consider myself to have a problem with alcohol, nor do I feel I drink to excess. I am not dependent on alcohol to function. I have never consumed alcohol while at work nor have I reported to work under the influence. I have not had any alcohol related arrests or incidents during the last ten years. My only alcohol related treatment was during my mental health counseling at [the outpatient facility], mentioned above. I never received any follow up treatment nor was there any further counseling recommended.
3. The discharge diagnosis--made by an M.S. not otherwise identified--was alcohol abuse on axis I; avoidant personality disorder on axis II. The discharge summary records the following problems and accomplishments toward short and long-term goals: "Alcohol abuse--Increased consciousness of impact of alcohol on his depression. Continues to abuse alcohol once weekly. Suicidal ideation--denies. Social isolation--He has increased his activities which has helped to lessen his depression. He talks to his classmates in his college classes. He got himself a cat." His condition at discharge was noted as "Improved. Able to get out more [and] talk with others. Still abuses alcohol once week. No suicidal ideation. Less isolated."
4. Applicant had a DWI--not alleged in the SOR--for which he paid a fine.
5. Applicant's clearance application (Item 3) reports this treatment as being for a mental health condition and not alcohol abuse. While the discharge summary (Item 5) records alcohol abuse as the principal diagnosis, the record clearly records the interconnection between Applicant's mental state at the time and his alcohol consumption.

6. Although Item 5 does not clearly establish the credentials of the treating professional, I consider this factor as fairly raised by the evidence.

7. The only established alcohol incident occurred over 14 years ago, and was not alleged in the SOR; however, even if the incident is properly considered, one incident cannot indicate a pattern and a 14-year old incident is certainly remote.

8. I accept the discharge summary's diagnosis of alcohol abuse, because it comports with Applicant's own description of his drinking before he went into treatment. The statements of ongoing alcohol abuse are less credible because they contain no description of the nature and extent of alcohol consumption which supports the conclusion. The discharge summary might just as well state that Applicant continued to consume alcohol. However, the medical record contains no recommendation for further treatment, no recommendation for abstinence from alcohol, no suggestion that Applicant left treatment against medical advice. Even if I accept the flat statement that alcohol abuse continued, Applicant's description of his alcohol consumption does not demonstrate that alcohol abuse has continued past April 1995.