

Date: July 18, 1997

In re:

Applicant for Security Clearance

ISCR Case No. 97-0149

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, 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 (DoD) Directive 5220.6 (Directive), dated January 2, 1992, as amended by Change 3, issued a Statement of Reasons (SOR) dated February 13, 1997 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 March 14, 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 11, 1997. Applicant was notified that he could respond to the FORM by May 29, 1997. Applicant did not submit any such response. 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 and 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 F (Financial Considerations) allegations in the SOR:

Applicant is a 40 year old male employed as a technician by Company A, a defense contractor, since about 1995. His employer is seeking a security clearance for Applicant (level not mentioned in the case file). Applicant admitted each of the allegations in the SOR. Those admissions are accepted and incorporated into the following findings of fact:

Allegation 1.a. -- Applicant is indebted to gasoline company A in the amount of \$26.00, for an amount delinquent since at least July 1993. As of March 1997, this debt had not been satisfied.

Allegation 1.b. -- Applicant is indebted to Bank B in the amount of \$3,316.20, for an account charged off in about October 1993. As of October 9, 1996, Bannot 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, in State B 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 and order to pay \$46.00 court costs, hd 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 had been 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 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 stated). 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. He told the clinic that he had not consumed alcohol for five and later six weeks. The stated long term goals were Applicant's continued attendance at AA and remaining "alcohol free."

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 up to "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."

Allegation 1.h. --Applicant received treatment from September 30, 1995 to November 27, 199 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.

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 form 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 would continue to do consume alcohol, although not every day and not "during or in work."

POLICIES

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 whether a person is a 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. and Enclosure 2.

Because each security cases 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.

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 a 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.

Condition 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 Reasons. If the Government meets its burden (either by an applicant's admissions 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 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." 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 instances of what I conclude were failed treatments for alcohol abuse and dependence, in 1993 and 1995.

Government Exhibits 7, 8, 9 and 10 document Applicant's treatment. GX 7 is the record of treatment he received after his 1993 DWI arrest and conviction. It is clear that Applicant was advised to attend AA meetings on regular basis and to remain alcohol free. It appears that Applicant did not drink during the course of his treatment but it is also clear that he began consuming alcohol again at some unknown point after the completion of the treatment.

GX 8 establishes that by September 1995, he was again consuming substantial amounts of alcohol, to the point that he received hospital treatment on September 5, 1995, at which time he had been drinking beer all that 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 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 old. He acknowledged a long history of alcoholism and a previous attempt at detoxification "years ago," which may be the 1993 treatment after his DWI conviction. He also acknowledged no "significant periods of sobriety in the past 22 years," i.e., since 1973. He admitted a legal history of "2 DUIs." He indicated 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, 1997 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 lack of understanding by Applicant of the negative impact of his alcohol abuse on his life, particularly on his employment and his security clearance eligibility. Considering his diagnoses and promises during his 1995 treatments and his admission that he continues to consume alcohol, I conclude that it is not unlikely that he will abuse alcohol in the future to the same degree that he did in the past. In other words, it is not clear to me that Applicant has learned any lessons from what he has gone through. My conclusions are necessarily based on the evidence before me and that evidence, establishing a long pattern 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 abuse has had any direct impact on his work, it is well recognized that security clearance eligibility is a 24 hour a day requirement. A person who fails to adequately control his life in the private sector is not entitled to the level of confidence and trust required of anyone seeking access to the nation's secrets. I have given particular attention to Applicant's January 11, 1997 response to the SOR. I accept Applicant's statement that he has possessed a security clearance for 23 years with no problems and that he has worked six days a week without missing any time at work due to

his drinking. Nevertheless, his admitted consumption of alcohol, in the context of his history of abuse, and continuing even after he learned of its possible negative effect on how the Government viewed his security clearance suitability, cannot be ignored.

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. For 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

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. 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 or continue a security clearance for Applicant.

Barry M. Sax

Administrative Judge

1. It is not clear from some of the Government's exhibits (GX 7 and 9) that the individuals making the diagnoses qualify as "credentialed medical professionals" as that term is used in the Directive guidelines for alcohol consumption. However, the hospital physician who signed off on GX 8, page 2, and diagnosed "alcohol abuse" does so qualify.
2. Although the SOR cites only one DWI arrest, in 1993, Applicant has stated that he had a previous DWI arrest as well (GX 9).