

DATE: October 8, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0179

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Pamela C. Benson, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 27 February 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 4 March 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 17 April 1997; the record in this case closed 9 June 1997, the day the response was due at DOHA. The case was assigned to me on 24 September 1997. I received the case on 29 September 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, although he denied being intoxicated during the incident alleged in subparagraph 1.c.; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 35-year old employee of a defense contractor--seeks access to classified information.

The allegations of the SOR revolve around Applicant's extensive history of alcohol abuse, which has resulted in multiple alcohol-related incidents. Applicant began drinking beer at age 16--approximately 1977--while in high school. From then until age 18, Applicant typically drank 4-6 beers on Friday and Saturday nights while at parties with friends; he got intoxicated about once a month. From age 18 to 20--while in college--Applicant's drinking increased to drinking 4-6 beers two or three times a week; Applicant got intoxicated about twice a month (6-8 beers). During this time⁽²⁾--on 1 January 1982--Applicant had his first DWI, when he was arrested for a blood alcohol level of .25 %.⁽³⁾

While he was married--approximately May 1983 to June 1990--Applicant's drinking decreased to 4-6 beers two

weekends a month; he drank to the point of intoxication about once a month. After his divorce in 1993, Applicant drank three weekends a month, usually on Friday night with friends; he got intoxicated about once a month. On 30 September 1993--a Thursday--Applicant was arrested for disorderly conduct when he and some friends were asked to leave a bar where they had been drinking.⁽⁴⁾ On 22 August 1994--a Monday--Applicant was arrested for his second DWI when he was stopped for speeding (50 in a 30 zone) and driving in the wrong lane (against traffic).⁽⁵⁾ He had a blood alcohol level of .20%. On 10 February 1996--an early Saturday morning--Applicant had his third DWI when he was arrested for speeding (80 in a 55 zone); he had a blood alcohol level of .13%.⁽⁶⁾ On 9 April 1996, Applicant pleaded guilty to DWI and was given a suspended sentence on condition that he have a chemical dependency evaluation and follow the recommendations of that evaluation; Applicant underwent the evaluation the same day. The evaluation concluded Applicant should undergo chemical dependency treatment with appropriate after care and attend a 12-week AA orientation.⁽⁷⁾ Applicant objected to the requirement for chemical dependency, and in August 1996, obtained a separate evaluation which got him relieved of the obligation for chemical dependency treatment (Item 9).⁽⁸⁾ Neither evaluation reflects the qualifications of the evaluator to render a diagnosis of alcohol abuse or alcohol dependence. Applicant completed the AA orientation program in September 1996.

Applicant continues to consume alcohol in violation of one of the conditions of probation that he abstain from alcohol. He feels this requirement is wrong, and asserts that he has no problem with alcohol. He assert that his alcohol consumption has not affected his work performance, but has not provided any evidence of his work performance. He denies he has any problem with alcohol now, although he acknowledges his alcohol consumption has caused him problems in the past.

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:

- (1) alcohol-related incidents away from work. . .
- (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;

Conditions that could mitigate security concerns include:

- (3) positive changes in behavior supportive of sobriety

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. The record clearly establishes many years of alcohol abuse by Applicant. By his own admission, Applicant has abused alcohol to the point of intoxication at least monthly from age 16--approximately 1977--to November 1996. That abuse has resulted in DWI arrests in 1982, 1994, and 1996, and a disorderly conduct arrest in 1993. Applicant's legal difficulties as a result of his alcohol abuse caused him to be evaluated for alcohol abuse on two occasions. Neither evaluation is entitled to much weight, because the qualifications of the evaluators do not appear in the record and because Applicant appears to have minimized his alcohol abuse history to both evaluators. Nevertheless, my examination of Applicant's entire drinking history causes me to conclude that the April 1996 evaluation is based on a more complete recitation of Applicant's abuse history.

Applicant's alcohol abuse satisfies the disqualifying factors for alcohol-related incidents, and habitual or binge consumption to the point of impaired judgment. While there is no formal diagnosis of alcohol abuse or dependence to trigger either of the disqualifying factors which require that diagnosis, neither can Applicant take advantage of the mitigating factor which requires strong evidence of rehabilitation after that diagnosis. Applicant's alcohol abuse indicates a pattern and is recent. Further, Applicant does not truly exhibit signs of positive changes in behavior supportive of sobriety. While Applicant claims to have decreased his drinking since February 1996, he steadfastly denies any real alcohol problem. His denials are belied by the established facts of this case. Consequently, I am unable to conclude that Applicant will not relapse into alcohol abuse. I find criterion G. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: 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.

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. He also had an arrest for disorderly conduct (alleged in the SOR as occurring in 1984, but placed by Applicant in 1982-3 before his marriage) when Applicant was arrested in a bar where he had been drinking. Applicant denies being intoxicated at the time of arrest, and the evidence of record does not establish that Applicant's consumption of alcohol contributed to the disorderly conduct charge in any way.
3. Applicant was observed by the arresting officers making wide turns and traveling in opposing traffic lanes before being stopped for running a red light. Applicant was unsteady on his feet, had glassy eyes and an odor of alcohol on his breath, and failed a field sobriety test before failing the breath test.
4. Unlike the other disorderly conduct incident, Applicant does not deny being intoxicated at the time of this arrest. Consequently, I conclude that alcohol contributed to the arrest in this instance.
5. The arresting officer noted Applicant to be unsteady on his feet and leaning on the car for support. Applicant had bloodshot, glassy eyes and slurred speech. He failed several field sobriety tests before failing a breath test.
6. The arresting officer noted that Applicant had a strong odor of alcohol on his breath and had bloodshot, glassy eyes; he stumbled getting out of the car and failed both a field sobriety test and a nystagmus gaze test. Applicant was also noted that Applicant became very angry when he was stopped and showed no appreciation for the fact that he had been driving while intoxicated. The picture painted by the arrest report is in sharp contrast to Applicant's sworn statement (Item 11), which claimed that Applicant was arrested because he was running late after attending happy hour with some friends (Applicant was arrested at 0100 Saturday morning), and his answer to the SOR (Item 3), which claimed he attended a going away party for a colleague at his place of employment, knew he had too much to drink and drank water for an hour before getting behind the wheel of his car.
7. The evaluation was based on Applicant's plea to the DWI and Applicant's description of his drinking history and the circumstances of the February 1996 arrest: Applicant reported drinking 6-7 beers at a local bar between 8 p.m. and 1 a.m. when he was arrested for speeding. Applicant reported his drinking history as beginning at age 17 and continuing to present, using alcohol once every two weeks, drinking up to 6 beers per occasion. He reported his August 1994 DWI. Applicant scored Level 2 on the MACH interview.
8. However, the second evaluation is based on Applicant's misrepresentation of his alcohol abuse history and legal problems. Applicant disclosed only the two DWIs, not the third DWI or the disorderly conduct in 1993. Further, he maintained to the evaluator that he was abstinent from alcohol since mid-May. Applicant's November 1996 statement reflects he has drunk one or two beers every other month since the February 1996 arrest.