

DATE: _September 25, 1997

In Re:

Applicant for security clearance

ISCR Case No. 97-0223

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Matthew A. Malone, Esq..

Department Counsel

FOR THE APPLICANT

Joseph Egan, Esq.

STATEMENT OF CASE

On March 20, 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, amended by Change 3, February 13, 1996, 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 denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on April 29, 1997.

The case was received by the undersigned on June 4, 1997. A notice of hearing was issued on June 27, 1997, and the case was heard on July 24, 1997. The Government and Applicant submitted documentary evidence. The transcript was received on August 8, 1997.

RULINGS ON PROCEDURE

At the hearing, Applicant objected to the admission in evidence of GE #2 (hospital treatment records) and GE #3 (hospital treatment records) because both exhibits contain double and triple hearsay. Applicant's objection was overruled because of the business records exception to the hearsay rule. (TR. 12)

Next, Applicant objected to GE #4 and GE #5 as not being authenticated and violating Applicant's Fifth Amendment privilege against self-incrimination by exposing him to criminal prosecution should he take the witness stand and admit any fact in evidence. (Tr. 19) Applicant's objection was overruled because the statements constitute party admissions and do not expose Applicant to criminal prosecution under the Directive. Applicant was then advised not to take the witness stand. (TR. 27)

Pursuant to Paragraph F. 2., an applicant is required to give full, frank and truthful answers to relevant and material questions needed by DOHA to reach a relevant security decision. Even though Applicant believes that testifying would

violate his Fifth Amendment Privilege against self-incrimination, because there are no matters in issue, I do not believe the case needs to be returned to the Director for denial of Applicant's application for security clearance. Applicant's decision not to testify about facts in issue is a factor I shall take into consideration in the ultimate decision.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the record. Applicant admitted all allegations of the SOR in his notarized Answer, dated April 29, 1997.

Applicant is 40 years old and employed as a mechanic for a defense contractor. He seeks a secret level clearance.

Applicant started drinking alcohol in 1972 when he was about 15 years old. His drinking frequency was about six beers on the weekends. When he finished high school in approximately 1975, he was drinking about 12 beers a day. In 1987, he was drinking a pint of whiskey a day, and when he separated from his wife in May 1992, he was drinking a fifth of whiskey a day. After treatment in March 1995, the record contains no information regarding Applicant's drinking frequency from March 1995 to October 1996. However, some time in early October 1996, Applicant began drinking about once a week after problems emerged between he and his girlfriend. He continued to drink once a week until the middle of January 1997, when he reduced his drinking. The last time he consumed alcohol was in January 1997 when he drank a couple of beers with an old friend as they talked about outside work.

Applicant received inpatient treatment for two days in February 1994 and three days in April 1994 for an admitting diagnosis of alcohol abuse. On discharge, the diagnosis became alcohol dependence. His marital problems were the primary cause of treatment on both occasions.

Applicant received inpatient treatment from July 1994 to March 1995 for seizures due to his alcohol withdrawals.

Applicant intentionally furnished false information on a Security Clearance Application, Standard Form 86, on September 18, 1996, when he answered "no" to question 27, requesting information about drug use since age 16 or in the last seven years, whichever is shorter. During an interview on January 16, 1997, Applicant intentionally failed to disclose his marijuana use and his purchase of marijuana between 1972 and 1992. On January 16, 1997, Applicant intentionally falsified material facts in a sworn statement when he stated he used alcohol only three times since his admission in inpatient treatment in July 1994.

Applicant's two character statements reflect that his supervisor since July 1996 considers Applicant a superior craftsman with outstanding leadership abilities that persuaded the supervisor to appoint him lead technician. The manager of the project has seen no problems with Applicant's performance and has found Applicant to be reliable.

Although there are no controverted allegations, Applicant's decision not to testify about matters alleged in the SOR, undermines Applicant's credibility.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Excessive Alcohol Consumption (Criterion G)

Factors Against Clearance:

1. Alcohol-related incidents away from work, such as driving while under the influence....

5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Factors for Clearance:

None.

Personal Conduct (Criterion E)

Factors Against Clearance:

2. the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...used to determine...security clearance eligibility or trustworthiness. ...
3. deliberately providing false or misleading information concerning relevant and material matters to an investigator...in connection with a personnel security pr trustworthiness determination.

Factors for Clearance:

None.

Criminal Conduct (Criterion J)

Factors Against Clearance:

1. any criminal conduct, regardless of whether the person is formally charged.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under alcohol involvement (Criterion G), personal conduct (Criterion E), and criminal conduct (Criterion J), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection,

objective or direct evidence is not required.

Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has established a case of excessive alcohol consumption within the purview of Criterion G. Applicant has abused alcohol to habitual levels since 1972. In 1972, when he was 15, Applicant was consuming about six beers on the weekends. When he finished high school in 1975, he was drinking about 12 beers a day. By 1987, he was drinking a pint of whiskey day. Finally, when he separated from his wife in May 1992, he was drinking a fifth of whiskey a day. GE #2 and GE#3 reflect Applicant was drinking until he received detoxification in February 1994 and April 25 1994 for a diagnosis of alcohol dependence. Applicant received inpatient treatment from July 1994 and March 1995 for his alcohol abuse. There is no indication Applicant was drinking between July 1994 and March 1995, nor is there any indication he was drinking between March 1995 and October 1996. However, he admitted drinking about once a week from October 1996 to January 1997. Because Applicant has falsified his alcohol use on two occasions in the past, I am unable to confidently conclude he will not resort to alcohol abuse in the future.

Applicant's intentional falsifications of the security form on September 18, 1996, the interview and sworn statement of January 1997, constitutes the deliberate omission of relevant and material facts from official documents used to determine security clearance eligibility. Applicant's fear of losing his clearance or his job is no justification for lying to the federal government. A person applying for a security clearance has an obligation to be truthful throughout the security process. When the person is forthright with the Government, he clearly exercises the kind of good judgment which is a critical element of a security clearance holder. Applicant's decision to completely deny all drug use or provide only a partial picture of his alcohol history, manifests poor judgment and provides a strong suggestion Applicant may have difficulty complying with security rules when those rules do not comport with his own objectives or interests.

Applicant's knowing falsifications establish criminal conduct within the meaning of 18 USC 1001. Applicant's drug and alcohol use constitutes material information to the Government because without the information, the Government is deprived of important information regarding Applicant's qualifications for making a security clearance. Considering (1) the diagnosis of alcohol dependence, (2) Applicant's long and serious history of excessive alcohol involvement, (3) the lack of any ongoing therapy or association with Alcoholics Anonymous (AA), and, (4) the lack of any sustained period of abstinence, Applicant's favorable character evidence falls far short of overcoming the evidence presented under Criterion G, Criterion E and Criterion J.

FORMAL FINDINGS

Having weighed the specific policy factors with the general policy factors (whole person concept), Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Excessive alcohol involvement): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. Against the Applicant.

Paragraph 2 (Personal Conduct); AGAINST THE APPLICANT.

- a. Against the Applicant.

b. Against the Applicant.

c. Against the Applicant.

Paragraph 3 (Criminal Conduct): AGAINST THE APPLICANT.

a. 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.

Paul J. Mason

Administrative Judge