

DATE: _September 19, 1997

In Re:

Applicant for security clearance

ISCR OSD Case No. 97-0229

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Melvin A. Howry, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On March 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, 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 18, 1997.

The case was received by the undersigned on May 23, 1997. A notice of hearing was issued on May 29, 1997, and the case was heard on June 23, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on July 7, 1997.

RULINGS ON PROCEDURE

Applicant's post-hearing submission is marked and admitted in evidence as Applicant's Exhibit F.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. Applicant admitted three out of the four alcohol involvement allegations, but denied he continues to consume alcohol.

Applicant is 39 years old and employed as a computer controller by a defense contractor. He seeks a secret level clearance.

According to GE #2, Applicant's consumption of alcohol between 1979 and 1983 occurred in social settings only. In 1983, his drinking increased while he was on active duty in the military. From 1983 to approximately 1996, Applicant

consumed alcohol about two or three times a week, either in restaurants or at home. Applicant abstained from drinking from January 1996 to November 1996 and also from December 2, 1996 to January 29, 1997. Applicant consumed three mixed drinks on January 30, 1997. Although he informed the Government on February 12, 1997, he planned to control his drinking, he stated at the hearing his last drink of alcohol was on February 29, 1997.

Applicant was upset over his divorce and became intoxicated on February 20, 1990 (31 years old) when he was arrested for: (1) driving while under the influence of alcohol; (2) driving with more than the legal limit of blood alcohol; and, (3) failure to show financial responsibility.⁽¹⁾ He pled guilty to having more than the legal limit of alcohol in his blood while driving, and the other two charges were dismissed. He performed 60 days of community service on the weekends and completed a six week alcohol program.

About six years later Applicant became upset over family problems, including his brother's divorce. He was arrested on January 24, 1996 (when he was 36 years old) for driving while under the influence of alcohol, and driving with more alcohol in his blood than allowed, with one prior. He plead guilty to driving with more alcohol in his blood than the legal limit.⁽²⁾ He was ordered to complete a 60 day work furlough program. After 29 days, he was released because of good behavior. He was also sentenced to three years probation and will not complete the probation until April 1999. His license was restricted for 18 months for work purposes only. The restriction will not be lifted until October 1997, when Applicant is scheduled to complete an 18 month court-ordered treatment program. He started the treatment program in July 1996 and, on the advice of his counselor, began Alcoholics Anonymous (AA) on February 4, 1997, because his counselor believed he should abstain from any alcohol use.⁽³⁾ Applicant has been in group/individual counseling since July 1996. He has only accomplished Step One of the 12 Steps (realizing that his life has become unmanageable and that he is powerless over alcohol) of AA since February 1997 and still has no sponsor because other AA members have told him that he should find a sponsor and locate a home group he is totally comfortable with before committing undivided effort to the Steps. (TR. 59) While in counseling, he has also followed his counselor's suggestion by increasing his physical activity during the few weak moments he has encountered. (TR. 59-60)

Seven character references, who have known Applicant for up to five years, consider him competent, honest and reliable. Applicant is current on two department store accounts and also his mortgage. Recent medical tests reveal Applicant has normal kidney and liver function. On June 27, 1997, the program director noted Applicant was making good progress in the program with a recommendation to complete the program and continue to make changes in his lifestyle to support sobriety. Applicant's positive progress report, containing a good prognosis, and his favorable credibility, justifies a finding Applicant will continue to make adjustments to support a lifestyle conducive to sobriety.

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:

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 similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

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 Criterion G (excessive alcohol consumption) 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 excessive alcohol consumption from approximately 1983 when Applicant joined the military to January 1996 when Applicant was arrested in January 1996 for have more alcohol in his blood than allowed by law. In addition to Applicant's documented convictions for alcohol-related offenses in 1990 and January 1996, Applicant could have been justifiably prosecuted for driving under the influence on 10 other occasions. Finally, Applicant's participation in counseling since July 1996 and his abstinence since February 29, 1997 must be weighed and balanced against the simple facts his driving restriction will not be lifted until October 1997 and he will not be discharged from probation until April 1999. He is aware that any violation of probation could mean serving the balance of his work furlough or even incarceration for a significant period of time.

However, I conclude that the strong court sentence in Applicant's most recent alcohol-related conviction has represented a "wake-up" call for Applicant. Applicant has demonstrated good judgment by obeying all conditions of probation, particularly conditions of all treatment. Even though he does not have a sponsor yet and has only accomplished Step One of the 12 Step Program, his demeanor and conduct at the hearing indicates he is definitely committed to completing the treatment programs and intensifying his commitment to AA and the Step program. Important in Applicant's recovery has been his willingness to utilize the advice of his counselor. For example, upon his counselor's recommendation, Applicant joined AA on a permanent basis in February 1997 to increase his overall therapeutic regimen. When he was experiencing a few weak moments with an urge to consume alcohol, Applicant, on the advice of his counselor,

increased his exercise regimen.

Applicant's favorable treatment report of June 27, 1997, his compliance with court-ordered probation terms, and the favorable character evidence of Applicant's good judgment on the job, convince me that Applicant's commitment to recovery will be as strong after he is released from probation as his recovery effort has been since July 1996.

FORMAL FINDINGS

After weighing and balancing the specific and general policy factors (whole person concept), Formal Findings required by Enclosure 3 of the Directive are:

Paragraph 1 (excessive alcohol consumption): FOR THE APPLICANT.

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

Paul J. Mason

Administrative Judge

1. In addition to the two documented alcohol-related convictions, Applicant recalled driving his car under the influence of alcohol on approximately 10 other occasions, but was not stopped by law enforcement.
2. At the time of the arrest, he had become depressed over his brother's divorce and gotten intoxicated.
3. According to Applicant, the treatment program has been "...an educational experience for me, and I have decided because of that counseling that it is in my interest to abstain from consuming alcohol." (TR. 24)