

DATE: February 3, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0314

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 2, 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, issued a Statement of Reasons (SOR) to the Applicant, which 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 determine whether a clearance should be denied or revoked.

The SOR is attached.

Applicant filed an Answer to the SOR on or about May 27, 1997.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 18, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on July 29, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on February 3, 1998. The issue raised here is whether the Applicant's admitted alcohol abuse militates against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is a 33 year old mechanic, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Criterion G - Alcohol Consumption

1.a~1.d. The Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1982 until

1988, and then again from 1991 until he last consumed the intoxicant in November of 1996 (Government Exhibit (GX) 5 at pages 1~2). In a sworn statement, the Applicant describes his alcohol consumption in the following terms: "[a]ge 17-21 [1982~1985], 6-12 beers once a month . . . during time spans of approximately eight hour periods" (GX 5 at page 1). In 1986 his consumption "increased to 6-12 beers on Friday night and or Saturday . . ." and "[b]y 1988 . . . [his] use had gradually increased . . . [to drinking] 6-12 beers Wednesday through Saturday Night" (GX 5 at page 1).

In March of 1988, the Applicant received about 30 days of inpatient treatment "for alcohol rehabilitation" (GX 6 at page 2, *see also* GX 5 at page 2). Thereafter, he "remained abstinent" until 1991 (GX 5 at page 1). However, in 1991, he "started drinking once again at a rate of one six pack of beer once a month" (GX 5 at page 1). "By 1996 . . . [his] use had increased to twelve beers on Saturdays" (GX 5 at page 2).

In April of 1996, the Applicant was arrested, and subsequently found guilty of Driving Under the Influence of Alcohol and/or Drugs (GX 7). Prior to being arrested, he "had consumed six beers over a period of approximately four hours" (GX 5 at page 2).

In November of 1996, the Applicant was arrested a second time. He subsequently pled guilty to Driving Under the Influence of Alcohol and/or Drugs with a Prior Conviction (GX 8). Prior to this arrest, he "had consumed twelve beers" during an 11 hour period (GX 5 at page 2).

Mitigation

The Applicant has abstained from the use of alcohol since his most recent arrest, and is attending a Drinking Drivers Program, which he is scheduled to complete in May of 1998 (GX 5 at page 2).

Considering all of the evidence, and in light of the fact that the Applicant has two recent alcohol related convictions; the Applicant bears the heavy burden of persuasion in demonstrating his suitability for security clearance access.

POLICIES

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither 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 clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Alcohol Consumption

Condition that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving while under the influence . . . ;

Condition that could mitigate security concerns:

- (3) positive changes in behavior supportive of sobriety;

As set forth in the Directive, "[e]ach clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.

- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, 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 make out a prima facie case under criterion G (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 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 be repeated, and that the Applicant presently qualifies for a security clearance.

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.

CONCLUSIONS

The Applicant has abused alcohol over a period of about 12 years during the time frame 1982~1996, as evidenced by two alcohol related convictions. His last serious problem with the intoxicant was in November of 1996. This was his second alcohol related arrest in only seven months. The Applicant is to be commended for his current sobriety, but in light that he last consumed alcohol only eight months ago (the date of the Government's FORM ends the time line used for adjudication purposes in this case), it is too soon to conclude that his consumption of alcohol is not of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his alcohol consumption. The Applicant has thus not met the mitigating conditions of Criterion G, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Criterion G.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

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

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national

security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge