

DATE: October 9, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 97-0372

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 19, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant responded to the SOR in writing on May 31, 1997 and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on July 1, 1997. On July 28, 1997, a hearing was convened for the purpose of considering whether it is clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of four exhibits, Applicant relied on three exhibits and on his own testimony. Applicant supplemented the record with an additional exhibit after the conclusion of the hearing. This exhibit was accepted into evidence without objection by Department Counsel. A transcript of the proceedings was received on August 6, 1997.

FINDINGS OF FACT

In his answer to the Statement of Reasons, Applicant admitted all factual allegations set forth under paragraph 1 (Criterion G) except subparagraph 1.m., and all of the factual allegations set forth under paragraph 2 (Criterion H). Applicant denied the two factual allegations set forth under paragraph 3 (Criterion E) but admitted the single, factual

allegation set forth under paragraph 4⁽¹⁾(Criterion J). Applicant's admissions are hereby incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 43 year-old employee of a defense contractor who is attempting to obtain a secret clearance. Although he had served in the United States Army from 1977 to 1981, there is no evidence in the record that he has previously held a security clearance. His suitability for a security clearance has been called into question because of alcohol consumption, drug involvement, personal conduct and criminal conduct.

Applicant began consuming alcohol regularly in 1971 when he was 17 years old. As he recalls in "(his) Story," (Gov. Exh. 3), he began drinking because he felt inadequate. He did not believe that he "fit in with other kids"; he felt that he was "dumb, ugly and not liked by other people." Because alcohol helped him to overcome these feelings and enabled him to experience happiness for the first time, he continued to indulge--on weekends at first, but gradually his weekends became longer and eventually, he was drinking alcohol daily. He was arrested for DWI the first time in 1974-75.⁽²⁾ He was fined \$50.00 and ordered not to drive in State X for six months. At that point his parents told him to get help for his problem, or to move out of the house. When he realized what it would cost to rent an apartment, he decided to try Alcoholics Anonymous (AA). He attended one meeting and concluded that he did not have a problem with alcohol "like the other people" at the meeting (Gov. Exh. 3). Because he continued to drink, his parents told him to move out.⁽³⁾

After he moved out of his parent's home, Applicant's alcohol consumption increased to the point where he was drinking a 12 pack of beer every day, and "going through jobs" every three or four months. He was arrested for DWI again in 1977; he was fined \$250.00 and his license was revoked. In October 1978, Applicant joined the Army. He reduced his alcohol consumption while he was attending a difficult training program at one of the service's technical schools. After he realized that he could not keep up with his classes and continue to drink, he sought counseling and was put on antabuse. He continued in the counseling program and stayed on antabuse until he finished the training program. Applicant then stopped taking antabuse, stopped participating in the counseling program, and celebrated the completion of a difficult course. He was sent overseas and resumed drinking alcohol on a daily basis. He was eventually discharged--with an honorable discharge--for drug and alcohol abuse on August 5, 1981.

Applicant returned to the United States and continued to abuse alcohol. En route to his home immediately after being discharged, he was arrested for DWI and driving without a license on August 7, 1981. Two days later, he was arrested again for burglary, vehicle theft, and larceny from an automobile. He had consumed alcohol before this arrest. Shortly after these arrests, Applicant entered a 21 day alcohol treatment program. After completing the inpatient portion of the treatment at Facility G, he was referred to VA Hospital O and then to a Half-way House Z for additional treatment. He was discharged from the half-way house because he returned late one night intoxicated.

On December 31, 1981, Applicant went to court and was sentenced for the offenses committed on August 7 and 9, 1981. After spending all of 1982 in jail, he was released on February 14, 1983.

After a brief period of sobriety following his release from jail, Applicant began drinking heavily again. In July 1983, he sought help from County X General Hospital. He was referred to a long term (18 month) rehabilitation program at another facility. Applicant remained in that program for three months before walking away from the program shortly before Thanksgiving 1983. He was on the street drinking again. It was winter and he was cold so he went to social services. They gave him a bus ticket for VA Hospital Q--in another state. He completed the 28 day inpatient treatment program and was discharged to Half-way House Z for additional treatment. He moved out of House Z in April and into a rooming house; he attended AA meetings for a while. He gradually began drinking again, and by the summer of 1986, he was back in the General Detox Facility of the County X General Hospital. From there he was referred to another 28 day rehabilitation program at Facility H. He was asked to leave the treatment program after two weeks because of a rules violation. He moved in with a female friend and got a better job. He reduced his alcohol consumption considerably but would still get drunk once or twice a year when the woman with whom he was living left town. This lifestyle and drinking pattern continued until April 1988 when he was arrested for another DWI. After this DWI, he lost his job, his car, and his drivers license.⁽⁴⁾ The court sentenced Applicant to 45 days in a pre-release program as a result of the DWI.

Because the woman with whom he had been living left the area in 1992 to care for her ailing mother in another state, Applicant had to find an alternative living arrangement. He moved into a sober house, began attending AA meetings regularly, and was assigned a sponsor. Applicant lived there for a year and a half and worked at a regular job. In the fall of 1994, he moved out of the sober house and into a house owned by his employer. He began working longer hours and did not have time to attend AA meetings. He began to drink again during lunch breaks and after work. In July 1995, Applicant quit his job after a dispute with his employer. There is no evidence to dispute his claim that he was sober at the time. However, he began drinking heavily after leaving this employment because he was nervous and did not know what would happen to him--where he would end up. He could not find another job; it was near the end of the month; and he did not have money for the rent.

On July 31, 1995, Applicant asked the person--who was already his sponsor--for help. His sponsor suggested that he go through the treatment program at Facility B. Applicant accepted this advice and was admitted to Facility B on August 3, 1995 (Gov. Exh. 4). The admitting diagnosis was: "Alcohol dependence, continuous" and "Cannabis dependence, continuous." Applicant completed the program on August 28, 1995 and was discharged--with a guarded prognosis-- to Halfway House Z where he remained until January 1, 1996. He then moved into a sober house where he has been living with three roommates who are all involved in AA.

In addition to abusing alcohol, Applicant has also abused illegal drugs. He first used marijuana in 1970. From that time until July 31, 1995, there were occasions when he abused marijuana daily as an alternative to alcohol. He used marijuana because "it seemed like marijuana replaced (his) craving for alcohol," "it seemed like a better high," and he "didn't have the hangovers and troubles drinking brought on" (Gov. Exh 2). While Applicant was abusing marijuana, he was also purchasing it in ½ and 1 ounce quantities. In addition to purchasing and using marijuana, Applicant also purchased and abused hashish and LSD in about 1979 and 1980. He also abused cocaine and heroin in about 1979 and 1980.

When Applicant completed his SF 86 (Questionnaire for National Security Position) on June 10, 1996, as the initial step in applying for his security clearance, he certified that:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

under the bold-lettered caption:

Certification That My Answers Are True

Applicant then answered "no" to the question 24a which asked:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.), or prescription drugs?

During his first interview with the Defense Investigative Service (DIS) on September 19, 1996, Applicant did not mention his abuse of marijuana. After this interview, he provided a detailed account of his alcohol abuse history in an eight-page, signed sworn statement (see Gov Exh. 3). This eight page statement appears to include all of the significant information about his 20 years of abusing alcohol, but does not provide any information about his abuse of illegal drugs--primarily marijuana. Later when he was questioned about the "no" answer on the SF 86 during a second interview with the DIS on April 9, 1997, Applicant explained that he had "skipped" over the question quickly because he thought it pertained only to "hard drugs" (Gov. Exh. 2).⁽⁵⁾ He further explained that he had not mentioned his abuse of marijuana during the September 19 interview because he did not think it was important. He believed then--and still believes--that his principal addiction was to alcohol (Gov. Exh. 2). The Government did not proffer any evidence that Applicant was specifically asked about his abuse of illegal drugs during the September 19 interview.

When Applicant testified at his administrative hearing, he admitted that he had read and understood question 24a when

he completed the SF 86. He had answered "no" because he did not want to lose his job and because he did not consider "drugs as a major part of (his) history" (Tr. 27, 65). He now acknowledges that he made a mistake in not answering the question truthfully (Tr. 68).

Applicant has not used alcohol or marijuana since July 31, 1995. He describes major differences in the sobriety he has achieved during the past two years in contrast with the sobriety he had achieved after earlier periods of treatment. In previous attempts at sobriety, he made his own rules and ignored "the real ones" (p. 6, Gov. Exh. 3, Tr. 54). He was reluctant to accept established rules or the suggestions of others on how to maintain sobriety. Now, he is open to listening and learning from the experiences of other recovering alcoholics. He is not "doing things (his) way anymore" (Tr. 56). He has learned to involve other people in his life. He is not just going to meetings anymore. He is now there to "work the program" (Tr. 56). He attends at least six or seven AA meetings each week (Tr. 48); he has a sponsor with whom he talks regularly; he reaches out to other suffering alcoholics; he has a spiritual contact whom he chooses to call God; and he has learned to accept life on life's terms realizing that it is sometimes unfair (p. 6, Gov. Exh. 3). He expressed joy in reconnecting with his family; seeing his "little sister" graduate from college, get married, and have her first child (Tr. 55).

Applicant has proffered petitions with dozens of signatures from co-workers and friends who support his application for a security clearance (Applicant's Exh. B and C). He has also submitted a personal letter of reference from his landlord who describes Applicant as the "best tenant (she) ever had" (Applicant Exhibit A).

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

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, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
- (2) Alcohol-related incidents at work, such as reported for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (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;

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

DRUG INVOLVEMENT

(Criterion H)

Improper or illegal involvement with drugs, raised questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Any drug abuse
- (2) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Conditions that could mitigate security concerns include:

- (1) The drug involvement was not recent;
- (3) A demonstrated intent not to abuse any drugs in the future.
- (4) Satisfactory completion of a drug treatment program prescribed by a credentialed medical professional.

PERSONAL CONDUCT

(Criterion E)

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

- (2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness...;
- (3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personal security or trustworthiness determination.

Conditions that could mitigate security concerns include:

None Applicable

CRIMINAL CONDUCT

(Criterion J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(1) Any criminal conduct regardless of whether the person was formally charged.

Conditions that could mitigate security concerns include:

(2) The crime was an isolated incident.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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 that Court's rationale, doubts are to be resolved against an applicant.

CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criteria G, H, E, and J.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has established its case with respect to Criterion G. Applicant's testimony at his administrative hearing--together with his prior admissions and the medical records from his most recent inpatient treatment--have provided a detailed account of more than twenty years of chronic alcohol abuse. The severity of his problem is evident in his employment history prior to August 1, 1995, and in the fact that he has sought treatment for alcohol abuse five different times. Abuse of alcohol had been a factor or the principal cause of his five arrests. Earlier, abuse of alcohol had caused him to be discharged from military service prior to the expiration of his term of service. From 1971 to August 1, 1995, alcohol was the dominant and the only consistent presence in Applicant's life.

In the past two years, Applicant has been diligent in his efforts to move beyond the debilitating effects of alcohol dependence. He completed an inpatient treatment program on August 28, 1995. Since then, he has been attending six or seven AA meetings every week and has developed a support network in addition to his sponsor with whom he speaks regularly. He has learned to reach out to other suffering alcoholics. He has a job which he enjoys and a job at which he has the full support of his co-workers.

Applicant came across as someone who is finally facing the truth about his relationship with alcohol. He realizes the gravity of his past mistakes and is thankful every day for being given the opportunity to live his life as a sober person. Applicant's sincerity and his demonstrated efforts to work the AA program during the past 24 months have persuaded this Administrative Judge that the security concerns raised by his twenty years of alcohol abuse and dependence have

been mitigated. Criterion G is concluded for Applicant.

The Government has established its case with respect to Criterion H. Again, Applicant's testimony together with prior admissions have provided a detailed account of more than twenty years of regular marijuana abuse. His regular use of marijuana had caused him to purchase the substance in 1 and ½ ounce quantities on numerous occasions between 1970 and July 31, 1995. In addition to his recent regular marijuana abuse, Applicant had earlier used hashish, heroin, LSD and cocaine in the 1979 to 1980 time frame.

Mitigation for Applicant's years of marijuana abuse is found in the efforts he has made to deal honestly with his addiction problem in the past two years. By his own account, he used marijuana --in the time preceding July 31, 1995-- primarily as an alternative to alcohol, and as a means of curbing his craving for alcohol. Applicant does not believe he was addicted to marijuana. And while there is evidence in his medical records to contradict that belief, the evidence of record overwhelmingly supports his contention that his principal addiction was to alcohol. Because Applicant has succeeded in controlling his addiction to alcohol for the past 24 months, it is unlikely that he will use marijuana in the future. Criterion H is concluded for Applicant.

Criterion E applies to "the deliberate omission...of relevant and material facts from any personnel security questionnaire..." Facts are considered relevant and material when they are capable of influencing a federal agency's decision, e.g., a decision to grant or deny a security clearance. In this instance, Applicant's regular abuse of marijuana prior to August 1, 1995 falls well within the definition of materiality. Because he believed that disclosing this information would jeopardize his employment, he chose to withhold this information on the SF 86 which he completed on June 10, 1996. Later when he was first interviewed by the DIS, he did not mention his years of marijuana abuse. He passed up an opportunity to make a good faith effort to "correct the falsification before being confronted with the facts." When he was asked about the "no" answer to question 24a on the SF 86 during a second DIS interview, he provided an explanation that was not truthful; he stated that he had "skipped" over the part of the question which asked about marijuana. Not until the administrative hearing did Applicant admit that he had consciously answered "no" to the question because he was afraid of losing his job.

Applicant is credited with subsequently providing honest and accurate information about his marijuana abuse. However, it does not appear--from the record--that he made this disclosure **before** he was "confronted with the facts." Rather the evidence suggests that he admitted using marijuana only after being confronted with information from his medical records. And even when confronted with the facts, he was not ready to admit that he had willfully provided inaccurate information to the DoD by answering "no" to question 24a. Instead of providing the real reason--that he was afraid of losing his job--for not being truthful, he told the DIS that he had read over the question too quickly to realize that it pertained to marijuana as well as to hard drugs. Subparagraph 3.a. of Criterion E is concluded against Applicant.

The Government has established its case under Criterion J. Applicant's years of marijuana abuse was clearly relevant and material to his security clearance eligibility. His failure to disclose this information to the DoD on the SF 86 which he completed on June 10, 1996 violated 18 U.S.C. §1001 and had the potential to influence the course of his background investigation in an area of legitimate concern to the DoD.

While Applicant has been involved in other incidents of criminal misconduct, all of his prior misconduct was directly related to his abuse of alcohol. The falsification of his SF 86 appears to have been the result of an understandable--though misguided--concern with concealing a part of his past that was embarrassing to him. Because it was an isolated incident, it is found to be mitigated. Criterion J. is concluded for Applicant.

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) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Paragraph 2 (Criterion H) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. For the Applicant

Subparagraph 2.g. For the Applicant

Subparagraph 2.h. For the Applicant

Subparagraph 2.i. For the Applicant

Paragraph 3 (Criterion E) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. For the Applicant

Paragraph 4 (Criterion J) FOR THE APPLICANT

Subparagraph a. For 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant had not included a response to this paragraph in his original answer, but did admit that it was true during his administrative hearing (Tr. 16).
2. Applicant does not remember the year and there is no record of this arrest in the file.
3. Applicant does not indicate when he moved out of his parents home; only that it was sometime between his first and second DWI's

4. It is not clear from the record whether Applicant lost his job because of the DWI arrest, or because he could not get to work because he did not have a driver's license.

5. Although Applicant was not questioned directly about whether DIS had confronted him--during the second interview--about marijuana use, the circumstances suggest that he was questioned about marijuana use because of information--diagnosis of marijuana dependence--in the treatment records from Facility B (See Gov. Exh. 4).