

DATE: February 9, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0388

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 22, 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 June 20, 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 August 7, 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 August 13, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on February 9, 1998. The issue raised here is whether the Applicant's 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 52 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Criterion G - Alcohol Consumption

1.a.~1.e. The Applicant consumed alcohol, at times to excess and to the point of intoxication from about 1984 until he

last consumed the intoxicant on December 12, 1996 (Government Exhibit (GX) 5 at page 2, and GX 6 at page 4). By his own admission, his "drinking went out of control at age 39 in 1984" (GX 6 at page 4). From 1984 until his first alcohol related arrest in 1991, the Applicant describes his drinking in the following terms: "I had one drink a night & 3 or 4 on the weekends" (GX 6 at page 4).

On December 25, 1991, the Applicant was arrested for, and subsequently convicted of Driving With a 0.08% or More Blood Alcohol Level (BAL) (GX 5 at page 1). In point of fact, his BAL was approximately .21% (GX 5 at page 1). He consumed "a bottle of Scotch" prior to his arrest (GX 5 at page 1). As part of his sentence, he was ordered to enroll in and complete a Driving Under the Influence (DUI) program.

On December 2, 1996, the Applicant executed a Questionnaire for National Security Positions (Standard Form 86) (GX 4). On the last page of this questionnaire he averred that, since his December 1991 arrest, "I . . . Do Not drink or drive anymore." Ten days later, on December 12, 1996, the Applicant was arrested for; and subsequently pled guilty to Driving Under the Influence (DUI) of Alcohol, and to Driving With a 0.08% or More Blood Alcohol Level with a prior conviction (GX 5 at pages 1~2). Prior to this arrest, the Applicant "drank approx[imately] 40 ounces of beer in a short time," in thirty minutes (GX 6 at page 2, *see also* GX 5 at page 2). As part of his sentence, the Applicant was placed on three years of informal probation.

From January 8, 1997, to March 13, 1997, the Applicant received outpatient treatment for alcohol abuse (GX 7).

Mitigation

The Applicant has abstained from the use of alcohol since his most recent arrest, attends "Alcoholics Anonymous meetings three to five times per week" (GX 3 at page 2), and is well thought of at his place of employment (GX 3 at pages 5, and 8~19).

Considering all of the evidence, and in light of the fact that the Applicant has two fairly 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, from 1984~1996. It is also evidenced by two fairly recent alcohol related convictions in the 1990's. His last serious problem with the intoxicant occurred less than a year ago, in December of 1996 (the date of the Government's FORM ends the time line used for adjudication purposes in this case). This, his second alcohol related arrest, occurred only ten days after he averred that he did not drink and drive. The Applicant is to be commended for his current sobriety, but in light of the fact that he last consumed alcohol less than eight months ago, 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.
- e. 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 the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge