

DATE: December 31, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0409

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esq., Department Counsel

FOR APPLICANT

Pro se

STATEMENT OF THE CASE

On June 9, 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. Applicant filed his Answer to the SOR on July 23, 1997.

The case was received by the undersigned on July 28, 1997. A notice of hearing was issued on August 12, 1997, and the case was heard on September 4, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on September 15, 1997.

RULINGS ON PROCEDURE

At the hearing, subparagraph 1j of the SOR was amended by changing January 1996 to January 1997. Subparagraph 1j shall now read "You received treatment from December 19, 1996 to January 9, 1997, at [hospital], [city, state], for a condition diagnosed as...."

Applicant does not believe his job should be taken away from him because he has paid all the fines for each of the alcohol-related offenses. Directive 5220.6 applies only to security clearances, not jobs. The Directive lists several reasons why a person's security clearance may be denied or revoked. Two of those reasons are excessive alcohol consumption and personal conduct.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the testimony.

Applicant submitted denials to subparagraphs 1a, 1e, 1f, 1h and 2a. He admitted all the other allegations.

Applicant is 49 years old and employed as an electronics mechanic for a defense contractor. He seeks a secret level clearance.

Applicant's excessive alcohol consumption over the years can best be characterized as habitual drinking. The frequency was approximately one 12 pack to a case of beer a week until 1994. Between 1994 and December 19, 1996, when he was hospitalized for alcohol dependence, Applicant consumed alcohol daily approximately two cases of beer and two fifths of whiskey a week.

In 1981, Applicant was arrested for driving under the influence of alcohol (DUI) and was fined. On February 24, 1984, Applicant was arrested for being drunk in public. He was fined approximately \$25.00. Applicant was treated for alcoholism between September 1992 and December 1994. On November 24, 1993, Applicant was arrested for DUI on November 24, 1993 and fined approximately \$167.50. On July 11, 1996, Applicant was arrested for DUI and pled guilty to the amended charge of public intoxication because there was insufficient alcohol in his blood when the blood alcohol test was administered.

Applicant was arrested in November 1993 for DUI and fined \$167.50 in March 1994.⁽¹⁾ On occasion between 1982 and August 1996, Applicant carried the smell of alcohol to work.⁽²⁾ On November 23, 1996, Applicant was arrested for speeding, driving side to side, reckless driving, DUI, resisting arrest, criminal mischief, wanton endangerment, and attempting to elude. For some unknown reason, Applicant decided not to let the police officer arrest him until he arrived home. (GE #4) By way of a plea bargain, Applicant pled guilty to the DUI and the other charges were dismissed. His driver's license was suspended for 90 days although he was allowed to drive for occupational purposes only.

Applicant received treatment from December 19, 1996 to January 1997 for a condition diagnosed as alcohol dependence, continuous, severe, alcohol withdrawal, alcohol intoxication, alcohol induced mood disorder, probable alcohol liver disease and chronic alcoholism. Applicant was discharged in January 1997 with an alcohol dependence diagnosis.⁽³⁾ The medical professionals recommended he attend Alcoholics Anonymous (AA). He participated in a few AA meetings shortly after his discharge from treatment in January 1997 but does not participate currently because he does not believe the organization works for him. (Tr. 30)⁽⁴⁾ He also stopped drinking for several weeks after his discharge in January 1997. He still consumes about 12 to 18 beers on the weekend. He does not drink at all during the week. (Tr. 20; 25)

On March 5, 1997, Applicant had just finished cleaning the kitchen area of his house when his daughter appeared in the kitchen, and began preparing herself something to eat. Applicant thought she was trying to create a bigger mess than was necessary. He picked her up and carried her out the house and placed her on the ground without hitting her. The police were called and he was arrested for domestic violence. Recently, Applicant returned to court and was informed by the judge the domestic violence case will be dismissed on condition he has no contact with his daughter for a year. (Tr. 27)

In August 1997, Applicant was charged with public intoxication and was fined. (Tr. 28) He had been drinking a large amount of alcohol prior to the arrest.

On September 12, 1996, Applicant concealed information from a Questionnaire for National Security Positions. However, I find he did not intentionally conceal the information. The basis for my finding is the advanced stage of Applicant's alcohol problem when he was drinking about two cases of beer and two fifths of whiskey a week. Furthermore, he was also suffering from memory lapses and serious marital disharmony.

Applicant's supervisor of four years believes Applicant is an above average worker whose work product is good quality.

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,...;
2. alcohol-related incidents at work;
3. diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
4. habit or binge consumption of alcohol to the point of impairment;
5. consumption of alcohol, subsequent to 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...of relevant and material facts from any personnel security questionnaire...to...determine security clearance eligibility or untrustworthiness....;

Factors for Clearance:

2. the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

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), Criterion E (personal conduct), 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

A case of alcohol abuse has been established because Applicant has been involved in eight alcohol-related offenses between 1964 and August 1997. Of the eight offenses, Applicant placed the general public's safety in jeopardy on five occasions by drinking alcohol and then trying to drive an automobile. While Applicant had never consumed alcohol on the job, sometimes between 1982 and August 1996, he reported to work with the stale smell of alcohol on his body. Between September 1992, and December 1994, Applicant was treated in the employee assistance program for alcoholism. Applicant received treatment a second time from December 19, 1996 to January 9, 1997, for alcohol dependence, alcohol withdrawal, alcohol intoxication, alcohol induced mood disorder, and probable alcoholic liver disease and chronic alcoholism. Applicant was habitually drinking alcohol until December 19, 1996, with his consumption reaching approximately 2 cases and two fifths a week. Surprisingly, after a relatively short period of abstinence of several weeks, Applicant resumed drinking between 12 and 18 beers on the weekends.

The Government has failed to establish a case under Criterion E. Although Applicant used poor judgment by not carefully reading the question, his poor judgment cannot replace the intentional element required to establish a case of deliberately falsifying an official government document. Applicant's alcohol abuse, marital discord and memory lapses, are other major reasons he cannot be found to have intentionally lied to the Government.

Applicant's 33 year history of excessive alcohol consumption, his continuing alcohol abuse, and the absence of any current participation in therapy or AA, establish the strong probability Applicant will encounter abusive problems with alcohol in the future.

FORMAL FINDINGS

Having reviewed the specific policy factors with the general policy factors (whole-person concept), Formal /findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (**Alcohol**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. For the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.

- i. Against the Applicant.
- j. For the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.

Paragraph 2 (**Personal conduct**): FOR THE APPLICANT.

- 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 or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. According to Applicant, subparagraph 1f is the date he was fined for committing the DUI in November 1993 (1e). Because subparagraph 1f indicates when Applicant was fined for the DUI in 1e, subparagraph 1f shall be found for Applicant.
2. Applicant's denial is based on his interpretation of the allegation as implying he smelled like alcohol everyday for the entire period. Although he never drank alcohol at work, he admitted carrying the smell of stale alcohol into work. (Tr. 23)
3. Applicant does not believe a person with some kind of serious medical condition other than alcohol abuse, would have his security clearance questioned. Applicant's comparison of alcohol abuse treatment to treatment for other serious medical conditions, is irrelevant because the purpose of the inquiry is not the treatment itself but an applicant's degree of participation in treatment and what the applicant learns in treatment, i.e., what educational tools did the applicant apply to reach and sustain a life of sobriety. If the evidence shows an applicant really committed to treatment, and sustained progress in maintaining abstinence with a strong external network of support, then the entire recovery process can constitute substantial evidence in demonstrating rehabilitation from a serious alcohol problem.
4. The officials told him the only way he could maintain sobriety was through AA. (Tr. 26-27)