

DATE: February 24, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0490

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 18, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued the attached 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 5, 1997, and requested a hearing. The case was received by the undersigned on November 18, 1997, and Notices of Hearing were issued on November 19 and December 2, 1997.

A hearing was held on December 18, 1997, at which the Government presented two documentary exhibits, and called one witness. Testimony was taken from the Applicant, who called two additional witnesses. The transcript was received on December 31, 1997.

FINDINGS OF FACT

The Applicant is 23, single and has a high school diploma with one year of college. He is employed by a defense contractor as a Field Engineer, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Criterion G). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he consumes alcohol to excess and has been involved in several alcohol-related incidents.

The Applicant has been drinking alcohol to excess on a periodic basis from approximately 1988 to November 1997. During the last year, the Applicant has drunk six beers or more at a time on a weekly to semi-weekly basis. The last time he did this was three weeks before the hearing. (Transcript at 44-45.) In the six months preceding the hearing the Applicant drank eight to ten beers over the course of an evening two or three times. (Transcript at 47.)

His first alcohol-related incident occurred in July 1994 (SOR subparagraph 1.b.). He was arrested for (1) Public Affray and (2) Aggravated Battery. The Applicant pleaded guilty and was sentenced to a fine and informal probation. Even though he had drunk two or three beers at the time of the incident, the Applicant did not think alcohol contributed to his actions. (Transcript at 58-59.)

The next alcohol-related incident occurred on September 28, 1995 (SOR subparagraph 1.c.). The Applicant was arrested for (1) Driving While Intoxicated, (2) Speeding and (3) Failure to Maintain Lane. The charges were subsequently dismissed for failure to prosecute. The Applicant admitted that he had been drinking at the time of the arrest. (*See*, Government Exhibit 2 and Transcript at 25-26.)

Two days after the above incident, the Applicant was arrested for (1) Domestic Violence, (2) Battery on a Household Member and (3) Criminal Damage (SOR subparagraph 1.d.). This arrest concerned an argument the Applicant engaged in with his fiancé, during which her car was damaged by the Applicant. Though he had been drinking at the time, the Applicant did not feel alcohol had any influence on his behavior on this occasion. His fiancé, who believed the Applicant to be intoxicated during this incident, refused to testify and the charges were dismissed. (Transcript at 20-27, 57-58.) After this incident, the Applicant stopped drinking for approximately nine months. At that point the Applicant began drinking again on a "social" basis. (Transcript at 62.)

The Applicant continues to drink and, in September 1997, was involved in his most recent alcohol-related incident. On this particular day, the Applicant drank an unknown amount of alcohol while playing pool with some friends. He was subsequently picked up for Driving Under the Influence of Alcohol. The Applicant entered upon a six month diversion program in January 1998. (Transcript at 49-55.)

The Applicant often thinks that he should no longer drink. He has yet to make a firm commitment not to drink in the future, but believes he can control his drinking. In addition, the Applicant does not believe he is an alcoholic or has an alcohol-related problem. The Applicant also states that he will no longer associate with people who, he believes, improperly influence him with regards to alcohol consumption.

The Applicant's co-worker/friend and fiancé testified at the hearing. Both witnesses stated that the Applicant is a good person who tries hard at work and in his personal life. However, the witnesses also had to admit that they have known the Applicant to drink to excess. In particular, the Applicant's fiancé testified that she has talked to the Applicant about his drinking and how she wants him to stop. (Transcript at 26, 70-76.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 and Section F.3. of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Criterion G (Alcohol consumption)

Conditions that could raise a security concern:

(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 abuse;

(4) habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors (General Factors):

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in the excessive use of alcohol that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a *prima facie* case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's *prima facie* case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has consumed alcohol to excess and been involved in four alcohol-related incidents (Criterion G).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's *prima facie* case against him. The Applicant has had a serious alcohol problem for many years that he cannot or will not begin to face. This alcohol problem has affected the Applicant's judgment, as shown by his four alcohol-related incidents, including two arrests for driving under the influence. The September 1997 arrest, while not separately alleged in the SOR, is evidence that the Applicant continues to drink to excess. In addition, that arrest shows that there are no positive changes in the Applicant's behavior supportive of sobriety. Given the Applicant's four alcohol-related incidents, his long-term drinking pattern, and the lack of any evidence of abstinence, it is impossible for me to say at the present time that he is eligible for a clearance.

The Applicant has made some statements that he is beginning to understand the adverse impact drinking has had on his life. With continued effort, the Applicant may be eligible for a clearance in the future.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraphs 1.a. through 1.e.: Against 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 the Applicant.

Wilford H. Ross

Administrative Judge