

DATE: January 27, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0525

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

J. C. Martin, III, Esquire, Applicant's Counsel

STATEMENT OF THE CASE

On September 12, 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 the 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 October 9, 1997.

The case was received by the undersigned on November 19, 1997. A notice of hearing was issued that same date, and the case was heard on December 18, 1997. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on January 5, 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, the documents and the live testimony. The Applicant is 41 years of age, has a Bachelor of Science Degree in Business, and is employed by a defense contractor as an engineer. She currently has a secret security clearance, and her employer seeks retention of this level clearance on behalf of the Applicant.

Criterion G - Alcohol Consumption

1.a.~1.t. The Applicant is an admitted alcoholic, who consumed the intoxicant, at times to excess and to the point of intoxication, from about 1972 (the age of 16), until she last consumed alcohol on January 22, 1997 (Transcript (TR) at

page 29 lines 7~12, at page 32 lines 2~4, and Government Exhibit (GX) 2 at page 2). Her first problem with alcohol arose in 1982, when she was arrested for Public Intoxication (GX 7 at page 11, and GX 14 at page 2). In 1989, the Applicant was arrested a second time, and subsequently was found guilty of Driving While Intoxicated (GX 7 at page 11). As a result of this conviction, the Applicant received a substance abuse assessment, and attended an Alcohol Education Program from March 1 to June 5, 1990 (GX 7 at page 11).

In July of 1994, the Applicant was cited for neglect of her four minor children (GX 14 at pages 2~3). This citation was, in part, related to her alcohol abuse (GX 7 at page 1~2). Indeed, she was investigated on various occasions thereafter, until May of 1995, for neglect of her children, which, in part, was also related to her alcohol abuse (GX 1). As a result, the Applicant was **ordered to abstain from the use of alcohol until November of 1996** (GX 1 at pages 11 and 40, and GX 4 at page 2).

In **August of 1994**, the Applicant received **court-ordered treatment** as she was diagnosed, in part, as being an Episodic Alcohol Abuser (GX 1 at page 20). From **September of 1994 through January of 1995**, she participated in an **out-patient treatment** program which included the use of Antabuse. Despite being prescribed Antabuse, the Applicant continued to consume alcohol (GX 3, GX 4 at page 3, and GX 5 at page 3). In December of 1994, she was also cited for failing to abstain from the use of alcohol, as she was required to do as a result of the child neglect investigation (GX 7 at page 5). As a result of this citation, the Applicant appeared in court on **March 15, 1995**, and **again was ordered to abstain from the use of alcohol** (GX 8). From **February 12~28, 1995**, she had also received **inpatient treatment** for a condition diagnosed, in part, as Alcohol Dependence (GX 2 at page 5~7, and GX 10), and received alcohol counseling on a weekly basis from March to

June of 1995 (GX 9 at page 1). Despite the treatment and counseling, the Applicant continued to consume alcohol, from April to September of 1995, in violation of her court order (GX 9 at page 2).

From **September 8 to October 6, 1995**, the Applicant again received **inpatient treatment**, a fourth time, for a condition diagnosed, in part, as Alcohol Dependence (GX 10). Despite this treatment, she again consumed alcohol in November of 1995; and as a result, she was placed in an alcohol detoxification center for an overnight stay (TR at page 33 lines 6~11). Thereafter, the Applicant received **out-patient treatment** from **January 8 to October 30, 1996**, for her Alcohol Dependency (TR at page 33 lines 11~18). Despite this treatment, The Applicant continued to consume alcohol until January 22, 1997, her sobriety date (TR at page 33 line 20 to page 34 line 18).

The Applicant also was issued a Letter of Counseling from her employer in December of 1994. This letter, in part, related to her alcohol abuse (GX 6 at pages 3 and 5). She was later terminated by this employer in September of 1995, but it does not appear that this termination was directly related to her alcohol abuse (GX 11, and Applicant's Exhibit A).

Mitigation

The Applicant has abstained from the consumption of alcohol for nearly 11 months, from January 22, 1997, until the date of her hearing, December 18, 1997. She is also an active participant in Alcoholics Anonymous (TR at page 30 lines 2~4, and at page 37 line 8 to page 38 line 4), and is doing well at her present employment (TR at page 45 line 15 to page 46 line 3).

Considering all of the evidence, and in light of the fact that the Applicant has been in treatment numerous times for her alcohol abuse; the Applicant bears the heavy burden of persuasion in demonstrating her 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

Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving while under the influence . . . child . . . abuse . . .;
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns:

- (2) the problem occurred a number of years ago and there is no indication of a recent problem;
- (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 her 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 is an admitted alcoholic, and has abused the intoxicant for at least 15 years, beginning with her first arrest in 1982. She has been in some form of treatment for her extensive abuse on at least five separate occasions; and despite

this medical intervention, to include the use of Antabuse, she always returned to drink. Indeed, she violated numerous court orders in pursuit of the intoxicant. Although her last serious problem with alcohol appears to be in November of 1995, when she was placed in detox, she continued to consume alcohol until January 22, 1997. The Applicant is to be commended for her current sobriety, but in light of her clear Alcohol Dependence, a diagnosis reiterated in 1995 and in 1996, it is too soon to conclude that the Applicant's 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 her alcohol consumption. The Applicant has thus not met the mitigating conditions of Criterion G, and of Section F.3. of the Directive. Accordingly, she has not met her 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.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. For the Applicant.
- q. Against the Applicant.
- r. Against the Applicant.
- s. Against the Applicant.
- t. 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