

DATE: May 4, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0636

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN M. BRAEMAN

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 1, 1997. The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(U\)](#) The SOR alleges Criterion G (alcohol issues) in paragraph 1.

Applicant responded to these SOR allegations on December 5, 1997, and admitted all seven allegations and requested a decision be made without a hearing. Subsequently, the Department Counsel assigned to the case filed a File of Relevant Material (FORM) on January 20, 1998. The FORM was mailed to him on February 6, 1998, and he was given thirty days after receipt to review the government's evidence and file his response; he received the letter on February 25, 1998. Subsequently, Applicant responded on March 19, 1998, and attached a letter of recommendation from his substance abuse counselor. On March 30, 1998, Department Counsel, indicated they did not object to the admission into evidence of his response and attachment, so I have admitted all the government's exhibits as well as Applicant's exhibits into evidence. The case was assigned to me on March 31, 1998.

FINDINGS OF FACT

Applicant admitted subparagraphs 1.a. through 1.f. in the SOR: I incorporate these admissions as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 55 year-old employee who works as a senior material handler for a government contractor where he began work in January 1996 in State #1. Previously he worked for another contractor in State #1 from July 1995 to January 1996. From 1994-95 he worked for another organization as a manager in State #1. He served in the military service from July 1962 to August 1987; he was an E-8.

Alcohol Abuse

Applicant completed his Questionnaire for National Security Position (QNSP) in January 1997, and disclosed his police record of "DUI 1986 - 1996." (Gov't Item 4) His FBI record revealed a 1972 arrest for DWI where he was found guilty and got six months probation in State #1. (Gov't Items 6 & 7)

In his home state (State #2) Applicant began consuming alcohol in the ninth grade; during his senior year in high school he consumed a six pack of beer on weekends. He continued that pattern as an adult except for one year when he was overseas in 1993-94. In July 1997 he was drinking one to three beers on two to three occasions per month and reported he did not feel that he "presently" had a problem with alcohol. Five months later in his Answer he conceded that he had shown a lack of responsibility for twenty-five years with respect to drinking and driving. Three months later in March 1998 he reported he does not drink any more but does not indicate when he stopped drinking. (Applicant's Exhibit A)

When interviewed, Applicant reported three recent arrests in 1987, 1996, and 1997 to the Defense Security Service (DSS) investigator. In June 1987 he got into an argument and left the house after having consumed two shots of whiskey; he turned into the wrong lane and was stopped by a city police officer and charged with driving under the influence of alcohol (DUI), taken to jail and given a breathalyser test. He pled guilty in January 1988 to DUI and paid a \$258 fine as well as did 24-hours of community service.

Applicant was again arrested by a highway patrol officer in November 1996 as he was speeding and charged with DUI after he had consumed twelve beers over a four to five hour period; he pled guilty to DUI in January 1997 and paid a fine of \$365, obtained an alcohol assessment and attended an alcohol awareness school as well as did 48 hours of community service; he was issued a limited license. In February 1997 he had left a bar and went through a red light and hit another vehicle but did not stop after the accident; he was arrested and given a breathalyser test with a blood alcohol content (BAC) of 12% and charged with DUI hit and run, and driving while his license was revoked. He was released on bond and in July 1997, plead guilty to DUI and fined \$570; two years in jail was suspended and he was placed on two years supervised probation; he had fourteen days jail time and surrendered his license and was issued a limited driver's license. (Gov't Item 5)

In July 1997 Applicant's substance abuse counselor reported Applicant had a positive attitude in the group process and set a positive example. She assessed him as a "highly motivated" individual who completes all his assigned tasks on time. She recommend he get a "second chance" as he has seen his error and taken necessary steps to correct it. (Applicant's Exhibit B)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Criterion G: Alcohol Consumption

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;
- (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

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion G - Alcohol Consumption

The government established its case with regard to Criterion G - Alcohol Consumption: Applicant by his own admission has shown poor judgment for twenty-five years with respect to drinking and driving. Applicant reported one dated Driving While Intoxicated (DWI) in 1972 and three recent DUI arrests in 1987, 1996, and 1997. In the last incident Applicant made a left turn on a red light, hit another car, and left the scene when his BAC was .12. He plead guilty to DUI and was fined \$570; given a sentence of two years in jail, suspended and placed on two years supervised probation, given fourteen days jail time, and required to surrender his license and was issued a limited driver's license. Thus, he falls within factors 1 and 4, listed above, that raise a security concern because of his pattern of alcohol abuse.

To his credit, Applicant now states he has stopped drinking in March 1998, but does not give the date he stopped. Nevertheless, I rule favorably for him under subparagraph 1.f as he no longer continues to consume alcohol and, under mitigating factor (3), shows positive changes in behavior supportive of sobriety. He has also seen an alcohol abuse counselor; though the record is unclear whether that treatment was court-ordered or help he sought voluntarily. Also, the letter from his substance abuse counselor does not make clear whether or not he successfully completed this program, nor does she outline the extent of the program. Although Applicant has been in a program, the limited details make it unclear whether it was a program of alcohol education or treatment for his long-term abuse of alcohol.

While Applicant has taken some positive steps, he has not demonstrated for a long enough period of time that he can maintain his commitment to sobriety and change his pattern of driving while intoxicated. Also, Applicant submitted no evidence beyond the letter from his counselor of positive changes in his behavior supportive of sobriety. These DUI arrests do show a pattern of alcohol abuse that raises a security concern, especially as the two DUIs in 1996 and 1997 are recent. My concern is also raised by his stated position in July 1997 when he denied he had a problem with alcohol. While he later conceded he does have a problem, it was not until March 1998, one month ago, that he stated that he had stopped drinking.

Accordingly the record in mitigation is insufficient to recommend that he be allowed to retain his security clearance.⁽²⁾ His behavior of recent alcohol abuse is inconsistent with the trustworthiness, reliability and good judgment expected of those with access to classified information. Consequently, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. through 1.e. under Paragraph 1.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Criterion G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 13, 1996.
2. Mitigation factors include: (1) the alcohol related incidents do not indicate a pattern; (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; (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.