

DATE: March 27, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0732

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Timothy D. Ducar, Esquire, Applicant's Counsel

STATEMENT OF THE CASE

On October 30, 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 December 5, 1997.

The case was received by the undersigned on February 17, 1998. A notice of hearing was issued on February 26, 1998, and the case was heard on March 11, 1998. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant, who also called two witnesses to testify on his behalf. The transcript was received on March 24, 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 36 years of age, has two years of college, and is employed by a defense contractor as a quality assurance project specialist. He currently has no security clearance, but his employer seeks a secret security clearance on behalf of the Applicant.

Criterion G - Alcohol Consumption

1.a.~1.h. The Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1977, until he

last consumed the intoxicant in March of 1997 (Transcript (TR) at page 23 line 2 to page 27 line 20). Except for 1981, his consumption of alcohol averaged two drinks a couple of times a week (TR at page 24 lines 5~8 and 17~18, at page 25 line 4 to page 27 line 8).

In January of 1990, the Applicant was arrested, and subsequently pled guilty to Driving Under the Influence with a Blood Alcohol Content .08% or Higher (TR at page 28 line 7 to page 30 line 20, *see also* at page 42 line 23 to page 43 line 23). In May of 1991, the Applicant was also terminated by his employer for reporting to work under the influence of alcohol (TR at page 30 line 21 to page 33 line 4). He described the circumstances that led to this termination in the following terms:

I had consumed a couple of beers. I was working the graveyard [shift] and had a couple of beers in the afternoon in the evening type of thing. And reported to work at I think 9:00 or 10:00 [p.m.]. And so, I had a urinalysis with that and it came up that I did have alcohol in my system. It was a slight amount, but it was detected that I did have alcohol in my system (TR at page 31 lines 4~10).

In June of 1994, the Applicant was arrested a second time, and subsequently pled guilty to Driving Under the Influence of Alcohol (DUI) (TR at page 33 line 5 to page 39 line 11, and Government Exhibit (GX) 5). As part of his sentence, he was required to attend an alcohol education program. He successfully completed this program on February 12, 1998 (TR at page 42 lines 8~22, at page 91 line 11 to page 93 line 9, and Applicant Exhibit (AppX) B).

In February of 1997, the Applicant's supervisor mistakenly thought that he smelled alcohol on the Applicant's breath at his place of employment (TR at page 44 line 12 to page 47 line 7, and GX 4 at page 2). There, in fact, was no trace of alcohol in the Applicant's system (TR at page 94 line 21 to page 95 line 18, and AppX C). As a result, however, he voluntarily attended selected portions of a treatment program from March to May in 1997 (TR at page 48 line 3 to page 51 line 4, and at page 103 line 19 to page 104 line 23).

Mitigation

Since March of 1997, the Applicant has abstained from the consumption of alcohol, and has no intention of consuming the intoxicant in the future (TR at page 106 lines 13~17). He has also moved from the city where he associated with those who consumed alcohol, and he attends Alcoholics Anonymous (AA) on a regular basis (TR at page 27 line 21 to page 28 line 6, at page 54 line 5 to page 55 line 18, and at page 111 at line 23 to page 112 line 2).

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 . .
- (2) alcohol related incidents at work, such as reporting for work or duty in . . . an impaired condition . . .

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 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 is an admitted alcoholic, and has abused the intoxicant for a period of about 20 years, as evidenced by two alcohol related arrests. His last DUI was in June of 1994, more than three years ago. This rather lengthy period of alcohol consumption ended about a year ago, when he recognized that his use of the intoxicant had caused significant problems in his past; i.e., his two arrests. It is noteworthy that he is actively participating in AA in support of his sobriety. Furthermore, those who know and work with the Applicant have only laudable comments in support of his sobriety (TR at page 73 line 12 to page 86 line 1, and AppX A). It is also noteworthy that the Applicant has moved away from the environment where he did much of his drinking. I thus conclude that the Applicant is on the road of sustained sobriety, and that his past consumption of alcohol is no longer of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's prima facie case regarding his alcohol consumption. The Applicant has thus met the mitigating conditions of Criterion G, and of Section F.3. of the Directive. Accordingly, he has 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: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge