

DATE: April 15, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0725

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Michael Leonard, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

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, as amended by Change 3, issued a Statement of Reasons (SOR) dated October 27, 1997, to the 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 conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

On November 10, 1997, the Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned to me on January 30, 1998. A notice of hearing was issued on February 4, 1998, and the case was heard on March 4, 1998. At the hearing, held as scheduled, eight Government exhibits (Gov. Ex.) and three Applicant exhibits (App. Ex.) were admitted into evidence. Testimony was taken from the Applicant. A transcript of the hearing was received by this office on March 23, 1998.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following findings of fact:

The Applicant is 33 years old and has worked for a defense contractor for five years. The Applicant is a team player who is a key member<sup>(1)</sup> of the transition team for his program. He has been recognized for his dedication, technical excellence, and professional conduct. *See, App. Ex. B and C.* He no longer intends to use alcohol. (Tr. 35) He no longer associates with individuals who use alcohol. He has modified his behavior whereas he previously went to parties and when out with friends drinking, he now stays home with his wife. He is supported in his sobriety by his wife, mother, AA sponsor and AA.

The Applicant started drinking beer at age 16. His peak period of drinking was prior to his first DUI, which occurred in April 1989. During the 1980's he would drink beer on weekends to get drunk. He would get intoxicated every weekend. (Tr. 32) He graduated college in 1987. In 1990, he moved to his present location. Since his move his drinking habits included drinking on the weekends and on holidays, having five to seven beers during the course of an evening. During 1995, he got drunk eleven to twenty times. During 1996, he was drunk six to ten times. (Tr. 33) This pattern of beer drinking on every weekend and holidays continued until his last DUI which occurred in November 1996. As of March 1997, the Applicant's longest period of sobriety was seven months.<sup>(2)</sup>

On April 1, 1989, the Applicant was arrested<sup>(3)</sup> for operating a motor vehicle while under the influence (OMVUI). His blood alcohol content (BAC) at the time of his arrest was .193%. He was 24 years old at the time. On January 26, 1991, the Applicant was arrested<sup>(4)</sup> for driving under the influence (DUI). His BAC at the time was .20%. He was 25 years old. On February 18, 1993, the Applicant was arrested<sup>(5)</sup> for driving while intoxicated (DWI). His BAC at the time was .13. He was 28 years old.

From March 17, 1993 to May 13, 1993, the Applicant received treatment for a condition diagnosed as "Alcoholism." At the time of his treatment he was in denial (Tr. 37) and fighting the whole idea of being an alcoholic. He now believes he is an alcoholic. (Tr. 26) His prognosis at discharge was poor.<sup>(6)</sup> His after care prognoses was listed as "FAIR at best."<sup>(7)</sup> Two months after completing treatment he returned to drinking. On November 8, 1996, the Applicant was arrested<sup>(8)</sup> for DUI, his BAC at the time was .19%. He was 31 years old. He entered a court ordered alcohol treatment program receiving twelve weeks of outpatient treatment followed by twelve weeks of aftercare treatment for "alcohol dependence." He entered treatment on December 16, 1996 and was discharged on March 10, 1997. His outpatient treatment lasted from March 17, 1997 to June 4, 1997. His prognosis at discharge was "Fair to good if all discharge recommendations are followed." It was further recommended the Applicant attend AA weekly. It was during this course of treatment the Applicant learned he was an alcoholic. (Tr. 40)

The Applicant maintained sobriety for a month after leaving aftercare. On July 4, 1997, he got drunk with an old friend that had come to visit him. The July 1997 incident was last time he was intoxicated. From July 1997 to October 1997 his drinking was random. This attendance at AA was random. His last drinking occurred during the final week of October 1997 (Tr.29) at which time he had two or three beers. In October 1997, the Applicant had to leave his duty location because he did not have a clearance. This was a very traumatic event for him. At that time, he made a decision not to drink again. From the first week of November 1997 until December 31, 1997 the Applicant had "been attending nearly every weekly meeting of the Thursday evening AA" group.<sup>(9)</sup>

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **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.
- (4) habitual or binge consumption of alcohol to the point of impaired judgment.

**Conditions that could mitigate security concerns include:**

- (3) None. [\(10\)](#)

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In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, then the applicant must remove that doubt with substantial evidence in explanation, mitigation, or extenuation, or refutation, sufficient to demonstrate that despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that an applicant may demonstrate the same attitude toward security rules and regulations.

### CONCLUSIONS

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 a security clearance may be involved in repeated instances of excessive alcohol consumption, for such excessive alcohol consumption may lead to the exercise of questionable judgement, unreliability, or failure to control impulses, and it may increase the risk of unauthorized disclosure of classified information due to carelessness.

In this case the Government met its initial burden of proving the Applicant has a relevant history of consuming alcohol to excess. He drank excessively and to the point of intoxication, resulting in three arrests for driving a motor vehicle while under the influence of alcohol between April 1989 and February 1993. From March 17, 1993 to May 13, 1993 he

was treated for "alcoholism." At the time of treatment the Applicant was in denial and did not think he was an alcoholic. His prognosis at the end of treatment was poor and only slightly improved at the conclusion of aftercare. Subsequent to treatment he resumed excessive alcohol consumption. During 1995 and 1996 he was intoxicated seventeen to thirty times. In November 1996, the Applicant had his fourth arrest for driving while under the influence of alcohol. He attended twelve weeks of outpatient treatment followed by twelve weeks of after care treatment for "alcohol dependence." His aftercare treatment ended on June 4, 1997 and a month later, July 4, 1997, he was again intoxicated. The Applicant's excessive alcohol consumption and his alcohol dependence are incompatible with his security responsibilities, due to the obvious potential for unauthorized disclosure of defense secrets resulting from neglect or misadventure or impaired judgement.

The Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation sufficient to overcome the Government's case against him. Clearly, he now recognizes the serious consequences of excessive alcohol consumption, and is making a strong effort to reform his behavior and live an alcohol-free lifestyle. The Applicant has much to be encouraged about with his current rehabilitation efforts and positive changes in behavior supportive of sobriety. <sup>(11)</sup> In time he may demonstrate he possesses the resolve necessary to achieve this goal. However, at the time of the hearing he had been sober less than eight months and abstinent less than four months. Considering the frequency and amount of his excessive alcohol consumption during the past eight years, considering he resumed his frequent and excessive alcohol consumption subsequent to the regimen of treatment and aftercare treatment in 1993, and considering he was intoxicated in July 1997 one month after completing his most current aftercare treatment, it is simply too early to safely conclude his excessive drinking now is a thing of the past.

On balance, it is concluded that Applicant has not carried his mitigation burden in surmounting the Government's prima facie case of excessive alcohol consumption. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1, Criterion G, (Alcohol Consumption), of the Government's Statement of Reasons. For the reasons stated, I conclude that the Applicant is not suitable for access to classified information.

## **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: 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.

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**Claude R. Heiny**

**Administrative Judge**

1. *See, App. Ex. B.*
2. The Applicant maintained his sobriety while in treatment from November 1996 through June 1997. (Tr. 52)
3. The Applicant was placed on Accelerated Rehabilitative Disposition Program for 12 months, ordered to pay \$587.50 for court costs and \$500.00 for county costs, his driver's license was suspended for 45 days, and he was placed on probation for twelve months.
4. The Applicant plead guilty to "Blood Alcohol Content over .10%," was sentenced to pay a \$300.00 fine plus a \$30.00 surcharge.
5. The Applicant plead guilty to having "Blood Alcohol Level over .10%," and was required to paid a fine of \$500.00 (with \$250.00 stayed for two years), to perform 120 hours of community service in lieu of 130 days in jail and to serve 10 days in the county workhouse.
6. The Applicant stated in group that he had plans to drink in the future. *See, Gov. Ex. 6.*
7. *See, Gov. Ex. 6.*
8. The Applicant plead guilty to having a "Blood Alcohol Level over .10%," sentenced to pay a fine of \$200.00, to serve 365 days in jail with 335 days stayed for three years, to attend Alcoholics Anonymous meetings weekly for three years and to complete an alcohol program and aftercare.
9. *See App. Ex. A.*
10. The Applicant has demonstrated some positive changes in behavior supportive of sobriety but these are insufficient to mitigate the security concerns raised by his past conduct.
11. It is commendable the Applicant is active in AA, now believes he is an alcoholic, has stated a desire to not drink again, and has individuals who support him in his desire to maintain sobriety.