

DATE: April 21, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0836

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On 12 December 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 30 January 1998, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on 18 February 1998; I received the case on 25 February 1998. On 25 February 1998, I set the case and issued a notice of hearing for 3 March 1998.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented two exhibits--admitted without objection--and the testimony of three witnesses, including himself. I received the transcript on 30 March 1998.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 56-year old employee of a defense contractor (CEO of his family business)--seeks a secret security clearance.

The allegations of the SOR revolve around Applicant's alleged history of alcohol abuse. Applicant has abused alcohol--to the point of intoxication and blackouts--from the early 1980s to February 1997. On 20 December 1994, Applicant was stopped for speeding, and charged with Driving While Intoxicated (DWI) when he was found to have a blood alcohol level of .12%. On 25 February 1997, Applicant had an alcoholic blackout, was involved in an accident, and was charged with DWI when his blood alcohol level tested at .18%.

The February 1997 DWI served as a wake-up call for Applicant. The blackout scared Applicant and he realized he could

not control his drinking.⁽²⁾ Within days, he entered 28-day inpatient treatment program. The "Chemical Use and Prior Treatment History" section of his discharge summary (G.E. 3) recorded his alcohol abuse history:

Through the completion of a self-administered Alcohol/Drug Using Assessment, the patient clearly indicated that he is both physically and psychologically dependent on alcohol. He has tried to control his drinking several times, but has been unsuccessful at abstinence. He was willing to stop using alcohol but doesn't understand what addiction is and doesn't know what he needs to do to build a recovery program that will keep him sober. Patient reports that his alcohol use has been a problem for the past 20 years. He states he was drinking heavy in the early 1980's stating it was to the point of intoxication, but he does not believe it was an exorbitant amount of liquor. However, he made a specific point in the fall of 1990 to decrease his drinking. For the last six years or so, after initial consultation with his therapist, he has decreased his drinking to one to two times every other week and he also has switched his pattern to drinking privately. He has had blackouts previously, as recent as a week ago. He denies any history of withdrawal symptoms. His drinking has caused some marital problems and a pending court case for DWI. He reports he has been able to abstain for as much as six months in the past five years. However, he has false beliefs that he could control his drinking.

While in treatment (1-28 March 1997), Applicant did not have any withdrawal symptoms, and actively participated in the program, completing steps one, two, and three of the AA twelve-step program. During the aftercare phase of his program (the thirteen weeks following his inpatient treatment), he attended six AA meetings a week; since then he has attended AA or related activities an average of more than three times a week. Applicant obtained a sponsor, who has monitored Applicant's progress in AA over the last year. The sponsor sees Applicant two or three times a week at meetings, plus AA dinners that foster sobriety. The sponsor is aware that Applicant attends other AA meetings that the sponsor does not attend (A.E. A). Applicant began attending church regularly with his wife and daughter, and recently became a formal member of his church (Tr. 33). He last drank alcohol the day of his DWI. He has received his one-year sobriety coin from AA; he last attended an AA meeting the day before the hearing.

Both Applicant's sister (and coworker in the family business) and friend (and Chief Operating Officer of the family business) have noticed Applicant's commitment to a sober lifestyle. Neither has seen Applicant consume alcohol since his DWI.

As part of his aftercare program, Applicant has been in family therapy with his wife since June 1997 (A.E. B). The therapist notes Applicant's consistent willingness to maintain his sobriety while working with difficult issues in therapy. She also notes Applicant's continued involvement AA, and gives him an "excellent prognosis for a successful, sustained sobriety.

Applicant testified credibly about the mess that alcohol made of his life and the transforming effect his treatment program and his involvement in AA have had on his ability to remain sober. Applicant continues to work his AA recovery, and is presently working on step four with his sponsor.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (CRITERION G)

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. . .
- (3) diagnosis by a credentialed medical professional of alcohol abuse. . .;(3)
- (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;
- (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.(4)

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

The Government has established its case under criterion G; however, the alcohol abuse is mitigated. The record reflects that Applicant abused alcohol extensively for nearly twenty years, and although he made concerted efforts to reduce his consumption since 1990, he was unsuccessful in abstaining from alcohol abuse, resulting in two DWIs in less than three years. However, the circumstances of the last DWI scared Applicant. He entered treatment, and in his own words "got the program." He has not had a drink in over a year, and is consistently working his recovery program through AA. More important, he has grasped--and is using the tools and support networks to maintain his sobriety. He remains actively involved in family therapy. Although the credentials of the treating professionals do not appear on the record, I consider Applicant to have been appropriately diagnosed as alcohol dependent; however, I also find that his involvement in family therapy and active pursuit of AA support the favorable diagnosis for continued sobriety. I conclude that Applicant is unlikely to abuse alcohol in the future. I find criterion G. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Before this accident, Applicant had made a deliberate effort to cut back on his drinking; however, his efforts to cut back seemed to increase the physical effect that drinking had on him--in this instance inducing a blackout (Tr. 27).
3. Although G.E. 3 does not clearly establish the credentials of the treating professional, I consider this factor as fairly raised by the evidence.
4. Similarly, both G.E. 3 and A.E. B establish the favorable prognosis and sufficient indicia of the qualifications of the treating professional.