

DATE: November 29, 2007

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In re: )  
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 ----- ) ISCR Case No. 07-00558  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

Henry L. Young, Lay Representative

**SYNOPSIS**

Applicant drinks beer regularly. He pled guilty to a driving under the influence charge in 2004, his first alcohol-related offense. As a condition for receiving a restricted license, he attended an alcohol and substance abuse program, which he successfully completed. The record does not contain a credible medical report from a qualified medical professional or licensed clinical social worker which diagnosed alcohol abuse or alcohol dependence. Applicant mitigated the government's security concerns about his alcohol consumption. Clearance is granted.

**STATEMENT OF THE CASE**

On August 2, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On August 23, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to another administrative judge on September 19, 2007. DOHA issued a notice of hearing on September 21, 2007. Due to a personal emergency, DOHA reassigned this case to me on October 10, 2007. I held a hearing on October 17, 2007. The government submitted seven exhibits (GE), which were marked and admitted into evidence as GE 1-7. Applicant submitted nine documents, which were marked and admitted into evidence as Applicant exhibits (AE) A-I.<sup>1</sup> I held the record open until November 16, 2007 for the submission of additional evidence. The hearing transcript (Tr.) was received on October 31, 2007. Applicant submitted three additional documents, which were marked and admitted into evidence as AE J-L without objection.

### **FINDINGS OF FACT**

Applicant admitted the allegation under Guideline G, subparagraph 1.d and admitted in part and denied in part the allegation in subparagraph 1.b of the SOR.<sup>2</sup> Those admissions are incorporated as findings of fact. He denied the remaining allegations.<sup>3</sup> After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is 57 years old. He began working for his current employer, a Department of Defense contractor, in August 1971. He currently works as a shipfitter foreman. He has 36 years of continuous service with his employer. He has held a security clearance since 1984 or 1985, without any violations for failure to follow security procedures. He completed his renewal security clearance application (SF-86) on March 28, 2006.<sup>4</sup>

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<sup>1</sup>Upon review of the hearing transcript, it appears that one government exhibit and two Applicant exhibits were received and marked, but not formally admitted into evidence. Since there were no objections to the admission of these exhibits at the hearing, the exhibits are admitted into the record.

<sup>2</sup>Applicant's response to the SOR, dated August 23, 2007, at 1-2.

<sup>3</sup>*Id.*

<sup>4</sup>GE 1 (Security clearance application) at 1, 4-5; Tr. at 32-34.

Applicant married in 1969. He graduated high school in 1970. He and his first wife divorced in 1984. He married his current wife in 1984. He has three children, a daughter now 37 years old and two sons, ages 33 and 32.<sup>5</sup>

Since beginning his employment, his employer has required him to get a physical at its health clinic as part of its program for monitoring for lead poisoning. From 1971 until 1985, these physical examinations occurred every 90 days, and included a blood pressure check, a review of fingers and gums (if the gums were turning purple, it was a sign of lead poisoning), a hand strength, and blood and urine testing. After 1985, the physical examinations and testing took place twice a year, and a complete physical examination is conducted once a year. His test results have always been negative for any serious problems. In March 2007, his urine test showed blood in his urine, but in August 2007, his urine test results were normal. The clinic at his work site refused to provide him with a copy of his medical records.<sup>6</sup>

Applicant began drinking beer around age 22 or 23. In June 2004, Applicant attended a family picnic, where he drank beer from early afternoon until about an hour before his departure. On his way home, the police arrested and charged him with driving under the influence (DUI) after his breathalyzer results showed a 13% level of alcohol. Applicant had never received a ticket for DUI prior to this date. He pled guilty. The court sentenced him as a first time offender to 30 days in jail, suspended, fined him \$300, \$100 suspended, and restricted his driving privileges for one year, contingent upon his participation in an alcohol and substance abuse program.<sup>7</sup>

As directed, Applicant enrolled in an alcohol and substance abuse program. He started attending the program in October 2004 after his initial one-on-one 45 minute interview with the program director. He completed six months of weekly group counseling in April 2005 and attended 52 sessions of Alcoholics Anonymous (AA) before he completed the program in September 2005. During his time in this program, he did not drink alcohol. At no time did any counselor advise him not to drink alcohol in the future. The record contains no clinical reports from this program.<sup>8</sup>

Since 2005, Applicant has continued to drink beer on the weekends. He usually consumes three to four beers at one time, sometimes when watching a game. He does not drink wine and will occasionally drink a mixed drink when out. In the summer, he may drink one or two beers in the evening. He may not drink anything for a week or more. Since completing the alcohol program, he will not drive if he drinks two beers at home. He has not experienced any blackouts as a result of his drinking. He does not drink in the morning. His work attendance record for the last seven years indicates that he regularly arrives at work on time and does not miss work on a regular basis because of unexcused absences or health reasons. This record supports his statement that he has not missed

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<sup>5</sup>GE 1, *supra* note 4, at 6-9, 11-12; Tr. at 32, 34.

<sup>6</sup>AE J (Letter, dated November 11, 2007); Tr. at 58-64.

<sup>7</sup>GE 3 (Department of Justice, Federal Bureau of Investigation, criminal records report, dated June 7, 2004); GE 4 (Court docket sheet); Tr. at 39-42, 44, 47, 68-69.

<sup>8</sup>Tr. at 38, 42, 44, 67.

work because of alcohol usage. He denies an alcohol problem. His supervisor has never sent him to the clinic because of alcohol use.<sup>9</sup>

After completing his SF-86, he returned to the same alcohol and substance abuse program for an evaluation at the request of his security office. He met with the same director in May 2007 for approximately 45 minutes and provided her with a urine sample. At the hearing, he admitted that he had not be truthful with her about when he last consumed alcohol. He told he had not consumed alcohol in one month, when it had been two days.<sup>10</sup>

The Director, who is a Licensed Professional Counselor (LPC), Licensed Marital and Family Therapist (LNFT) and Licensed Substance Abuse Treatment Practioner (LSATP), prepared a written report on this interview and the one urine test result. Based on the positive ethylglucuronide reading,<sup>11</sup> his statement that there was blood in his urine test at work in March 2007,<sup>12</sup> treatment history (without any further information), and his lack of honesty in self-reporting his alcohol use, the Director recommended an intensive treatment program of at least six months after a complete medical evaluation and liver enzyme testing program. In a supplemental report, the Director stated that Applicant's diagnosis after the May 2007 interview was Alcohol Dependence 303.90 (with tolerance). The supplemental report reflects that the diagnosis is based on his urine test results. Applicant has not followed up with the recommended treatment. He, however, consulted with a professional counselor about an evaluation. The counselor advised that it would take four or five sessions at least to provide an evaluation.<sup>13</sup>

In August 2007, Applicant underwent his six-month lead poisoning physical examination, with normal testing results. In June 2005 and in November 2007, his private physician examined him, and directed routine blood and urinalysis tests. The June 2005 report does not indicate any abnormal test results.<sup>14</sup>

The government entered into evidence pages 175-181 and 195-196 from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), which reviews the criteria for diagnosing substance-related disorders. The DSM-IV, page 176-179, defines substance dependence as a cluster of three or more of the symptoms listed below occurring at any time in the same 12-month period. The symptoms include tolerance; withdrawal; drinking beyond the limit set for consuming alcohol; unsuccessful efforts at decreasing or discontinuing use of alcohol after persistent expression to do so; spending a great deal of time obtaining alcohol, using alcohol or recovering from the effects of the alcohol; daily activities resolve around alcohol use; and continued use of

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<sup>9</sup>*Id.* at 39, 47-48, 51-52, 69-75; AE A ( Attendance record).

<sup>10</sup>Tr. at 48-49.

<sup>11</sup>GE 5 (Counseling report, dated May 12, 2007). In this report the Director stated that this test shows alcohol use within 80 hours of the test.

<sup>12</sup>*Id.* According to the Director, blood in the urine maybe indicative of liver damage.

<sup>13</sup>AE H (Copy of counselor's business card); AE I (Information sheet on counseling).

<sup>14</sup>AE K (Medical report, dated June 13, 2005); AE L (Medical report, dated November 6, 2007); Tr. at 90-91.

alcohol after recognizing the contributing role of the substance to a psychological or physical problem. The key issue in evaluating this criterion is not the existence of a problem, but rather the failure to abstain from using alcohol despite having evidence of the difficulties it is causing. The DSM-IV, page 179, states that “with physiological dependence” should be used when substance dependence is accompanied by evidence of tolerance and withdrawal. A similar statement is made concerning alcohol dependence on page 195.<sup>15</sup>

Applicant’s most recent performance evaluation by his current supervisor rated him at 4, the highest rating available. His supervisor from late 2004 until early 2007 describes Applicant as an a dependable and excellent employee with excellent attendance. Applicant’s recent credit report reflects that his bills are paid in a timely manner and his finances are well managed.<sup>16</sup>

The labor agreement between Applicant’s employer and the union representing employees outlines the policy for alcohol use during work hours and the criteria under which the employer may test for alcohol use. His employer’s disciplinary guidelines provide for immediate discharge if alcohol is used on the job or an employee reports to work under the influence of alcohol, subject to the terms of the union contract which does allow for one period of rehabilitation before discharge.<sup>17</sup>

## POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.<sup>18</sup>

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<sup>15</sup>GE 7.

<sup>16</sup>AE B (Letter, dated October 8, 2007; AE C (2007 Performance Feedback, dated October 1, 2007); AE G (Credit report, dated October 3, 2007).

<sup>17</sup>AE D (Disciplinary guidelines); AE E (Copy of relevant labor agreement provisions).

<sup>18</sup>Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>19</sup> The government has the burden of proving controverted facts.<sup>20</sup> The burden of proof is something less than a preponderance of the evidence.<sup>21</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>22</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup>

No one has a right to a security clearance,<sup>24</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>25</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>26</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>27</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

### **Alcohol Consumption**

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. (AG ¶ 21) In 2004, the police arrested and charged Applicant with DUI, which resulted in a guilty plea. Disqualifying Condition (DC) ¶ 22(a) *alcohol-related incidents away from*

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<sup>19</sup>ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

<sup>20</sup>ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>21</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>22</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup>*Egan*, 484 U.S. at 531.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*; Directive, revised AG ¶ 2(b).

<sup>27</sup>Executive Order No. 10865 § 7.

*work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent applies.*

Applicant began drinking beer in his early twenties, over 30 years ago. He has received one DUI during this period of time. He has not had any other alcohol related incidents at work or outside of work. Given his DUI in 2004 was his only alcohol-related incident, it does not cast doubt on his reliability, trustworthiness, or good judgment.

Although the government argues for the application of DC ¶ 22(d) *diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence* and DC ¶ 22(e) *evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*, I find that neither apply. In September 2007, the Director of the alcohol and substance abuse program he attended for one year, beginning in October 2004, diagnosed Applicant as alcohol dependent, citing to code 303.90 of the DSM-IV even though she is not a qualified medical professional or a licensed social worker. She based her diagnosis on one urine test result, a 45-minute interview, and a statement from Applicant he had blood in his urine on one occasion. She did not make this diagnosis using the recommended standards and criteria set forth in the DSM-IV for such a diagnosis. She provided no information in her report as to her understanding of Applicant's current alcohol use, alcohol tolerance, withdrawal symptoms, or history of alcohol use. Her report does not reference his earlier treatment in her program, any prior diagnosis, any prior recommendations to abstain from drinking alcohol, or any previous prognosis. Her report fails to provide a proper analytical basis for her ultimate conclusion that Applicant is alcohol dependent. Thus, I find her diagnosis and report lacking in credibility because it is not supported by underlying documentation and a proper analysis.

### **Whole Person Analysis**

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant began drinking beer as a young man and continues to drink beer on a regular basis. He denies drinking to excess and impairment, a denial which is support by the record evidence as a whole. His work attendance is excellent. His most recent work evaluation is at the highest level and his bills are paid in a timely manner. If he had a serious alcohol problem, it is most likely that problems would occur in the workplace and his finances would be more problematic. As a condition to obtain a restricted driver's license, the court required him to attend an alcohol and substance abuse safety program, which he did. When he completed the program, no further recommendations for additional treatment or to abstain from drinking alcohol were made to him or to the court. It has been more than three years since he received his only DUI. Because of his alcohol education, he has decided he will not drive if he has consumed two beers at home. This decision does not indicate that

he is impaired after drinking two beers, but reflects sound, rational and mature decision making related to the use of alcohol and driving.

The record contains no evidence that Applicant consumes alcohol to excess and to impairment since receiving his DUI ticket in 2004. He continues to drink in moderation. His overall history indicates that he has consumed alcohol, primarily beer, in moderation for many years. The diagnosis of alcohol dependence does not reflect an understanding of Applicant's alcohol use, his lifestyle, work history, or medical history. Because he works with lead on a daily basis, his employer requires him to submit to a regular physical examination for lead poisoning. These examinations include blood and urine tests. The record contains no evidence which indicates that these tests results showed a problem with alcohol consumption. Because his employer has strict rules concerning the consumption of alcohol at work and arriving at work intoxicated, I infer that these tests over the last 36 years showed no alcohol problems. Had a problem been demonstrated, Applicant's employer would have proceeded with disciplinary action against him under its rules and in accordance with the terms of the union contract. I have weighed all the evidence of record and concluded that the Applicant has mitigated any concerns about his alcohol consumption under Guideline G, Mitigating Condition (MC) §23 (a) and the whole person.<sup>28</sup>

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline G :  
Subparagraphs a-e:

FOR APPLICANT  
For Applicant

### **DECISION**

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

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<sup>28</sup>MC ¶ 23(d) does not apply because the record does not contain any evidence from a qualified professional or licensed social worker discussing a diagnosis or favorable prognosis.



Mary E. Henry  
Administrative Judge