

DATE: March 10, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10192

## DECISION OF ADMINISTRATIVE JUDGE

**ROGER C. WESLEY**

### APPEARANCES

**FOR GOVERNMENT**

Erin C. Hogan, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

### SYNOPSIS

Applicant has a history of eight alcohol-related arrests over a period of time that stretches from 1962 to October 2000, six of which resulted in convictions. Three of his alcohol-related incidents occurred during a three-year time frame in the early 80s, a period in which Applicant was experiencing marital problems and regularly abused alcohol. His last two incidents occurred after his 1992 divorce and were separated by a considerable 10-year interval of non-abusive drinking and excellent work performance. While his 2000 DuI marks a significant slip, Applicant shows much better understanding of the dangers of alcohol abuse today, especially since his earlier by-pass surgery, and confines his drinking to light, irregular consumption. With over three years without any further alcohol-related incidents or other indications of abusive drinking, coupled with an excellent work record covering 27 years with the same employer, Applicant mitigates the government's security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 8, 2003, 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 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 5, 2003, and requested a hearing. The case was assigned to me on September 25, 2003. Pursuant to notice of November 25, 2003, a hearing was scheduled for December 15, 2003, later rescheduled to December 16, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. A hearing was convened as scheduled on December 16, 2003. At hearing, the Government's case consisted of 10 exhibits; Applicant relied on one witness (himself) and four exhibits. DOHA received the transcript (R.T.) on December 29, 2003.

## **PROCEDURAL ISSUES**

Before the close of the hearing, Applicant moved to keep the record open to enable him to provide supplemental character exhibits. There being no objection from Department Counsel, and good cause being shown, Applicant was afforded an additional seven days to supplement the record. The government was granted two days to respond. Applicant timely submitted two letters: one from his supervisor and another from a colleague who has interfaced with him many times since 1995. The two letters are accepted as Applicant's exhibit E.

## **SUMMARY OF PLEADINGS**

Under Guideline G, Applicant is alleged to have (a) been involved in five driving under the influence (DuI) incidents between August 1982 and October 2000 in which he was both arrested and convicted, (b) been arrested for illegal consumption of liquor in June 1965 (patronizing a place that served alcohol beverages without a license), for which the charges were later dropped and (c) arrested for being drunk in November 1962, for which he was fined \$28.50.

For his response to the SOR, Applicant admitted all of the allegations. In explanation, he claimed he was introduced to alcohol by his father and has consumed alcohol all of his life. After providing explanations for each of his listed alcohol-related arrests, he claimed he currently drinks no more than two glasses of wine in an evening on the advice of his doctor who closely monitors his heart following his bypass surgery earlier in 2003. He claimed remorse for his previous judgment lapses associated with his alcohol-related incidents and stressed his dependable work habits.

## **FINDINGS OF FACT**

Applicant is a 67-year-old electronics technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant's encountered alcohol-related problems with law enforcement trace to the 1960s when he was arrested several times for alcohol-related incidents. His first such arrest occurred in November 1962 when he was charged with being drunk following a confrontation with police in a hotel. He pleaded no contest to the charge and was fined \$28.50 for being drunk in public. He was arrested in October 1963 for DuI after stopping at a local bar to use the bathroom (no drinks of record), and in June 1965 in another state after attending a local party where alcohol was served. In both instances, the charges were dropped. From Applicant's answer and the evidence produced, the evidence is too thin to draw any inferences of abusive drinking on the part of Applicant in connection with his 1963 and 1965 arrests.

Throughout the 60s, Applicant consumed alcohol regularly, but never to the point of being a habitual or uncontrollable drinker (*see ex. 9*). He continued to consume alcohol in the 70s as well, but never regularly. Mostly he consumed beer; although, he did drink scotch occasionally. He increased his drinking considerably, though, in the early 80s in the face of increasing marital problems at home. Applicant's troubles began in 1981 when his spouse (W) returned to Panama, pregnant with another man's child. He found difficulty in coping with his wife's pregnancy and came to experience considerable marital discord. With his marital problems pressing on him, he turned to drinking outside of the home. Over the course of a five-year period spanning 1981 and 1985, Applicant drank virtually every day, consuming as much as 10 to 12 beers a day when bingeing (R.T., at 45-46).

In August 1982, following a heated discussion with his sister over institutionalizing her son, Applicant over indulged in alcohol at a company picnic and was arrested for DuI on his way home from the picnic. At his court appearance on his DuI charges, he was found guilty of operating a motor vehicle while in a public place while intoxicated and fined \$250.00 sentenced to 90 days confinement (suspended) and assigned 24 months of probation.

Less than two years later (in April 1984) and just after completing his probation in connection with his earlier offense, Applicant was stopped again by police for operating a motor vehicle while in a public place while intoxicated. He was found guilty as charged when he appeared in court in October 1984 and was sentenced to three days in jail and was fined \$700.00. Several months later (in June 1985), he was arrested again for an alcohol-related incident, this time for DuI after registering a .01 per cent or higher BAC. At his court hearing, he pleaded no contest and was fined \$1,000.00 (of which \$500.00 was probated), sentenced to 60 days in jail and placed on two years of probation in lieu of

confinement. He was also ordered to attend AA meetings, which he pursued for a month or two before quitting (R.T., at 39-40). Applicant's 1985 alcohol-related arrest made him rethink his drinking practices and prompted him to quit excessive drinking and make amends with his youngest daughter (who he believed was conceived through another man).

Applicant and W divorced around June 1992. Following his divorce, he continued drinking and was involved in two more alcohol-related incidents. He was arrested in December 1992 for public intoxication after being observed by the arresting officer drinking out of a can of beer while he was driving. The beer was one of two remaining from a 6-pack he had brought with him earlier in the evening to share with friends over dinner and drinks. He was later found guilty and fined \$75.00. He continued to drink, however, usually every three to four weeks, mostly after returning from work-related travel, and eschewed counseling in the belief he no longer had an alcohol problem that he couldn't control. In each sitting he customarily consumed three to four drinks.

After spending an evening with friends in October 2002 watching Monday night football, eating pizzas and drinking beer (6 to 7 by Applicant's estimate), Applicant departed alone in his mother's vehicle. While driving home he was stopped by a highway patrol officer. The officer observed Applicant stumble a bit as he emerged from his vehicle and asked to take a field sobriety test. He immediately encountered trouble blowing into the Breathalyzer, reported feeling sick and asked the officer to take him to the hospital. Before taking him to the hospital, the officer enlisted Applicant to sign a form confirming his refusal to take any more sobriety tests. Once admitted to the hospital, he was evaluated and treated by hospital personnel. About an hour after his admission, the highway patrol officer who had stopped him came to advise him she was arresting him for DuI. Two hours later, Applicant was released to go home.

Appearing for the scheduled hearing on his October 2002 DuI charges, Applicant pleaded no contest and was sentenced to three days in jail (suspended), fined \$750.00 and ordered to pay court costs of \$227.25 (*see* Applicant's answer and ex. 3). While Applicant acknowledges drinking prior to each of these last two alcohol-related incidents, he denies any excessive drinking. Because he failed to complete his sobriety test at the scene, his driving privileges were revoked for 90 days: an apparent automatic requirement under state law (R.T., at 33-34).

Applicant continues to drink, but only in moderation (*i.e.*, a glass or two of wine with dinner every three to four days and sometimes after going several months without drinking at all) since he underwent by-pass surgery in January 2003. He assures that alcohol has never caused him any problems at work (R.T., at 49-51), which both his supervisor and colleagues at work corroborate. True, none of his references indicate any familiarity with Applicant's covered alcohol-related incidents. His supervisor (A) characterizes Applicant as a very reliable and skilled technician who has never exhibited any problems with excessive drinking except for a time in the early 80s when he was going through a prolonged separation and divorce (*see* ex. E). A further observed that Applicant had never missed a day of work during the 27 years he has worked for him except for illness (*see* ex. E). A considers Applicant to be one of his most reliable technicians, who until his bypass surgery early last year consistently maintained the maximum allowable for vacation and sickness on the company's books. A makes no mention, though, of any of Applicant's alcohol-related incidents over the previous 40 years.

Besides his supervisor, Applicant colleagues and customers who have interfaced with him on various projects similarly describe him as a highly reliable and knowledgeable troubleshooter and team technician who consistently conducts himself in a professional manner without the slightest hint of an alcohol problem. None of the coworkers and customers writing in Applicant's behalf identified any Applicant problem with alcohol during the times of their mutual acquaintances (*see* exs. A through E). Nor did any cite any familiarity with any of Applicant's alcohol-related incidents.

Applicant himself assures he has not drank excessively since his October 2000 DuI conviction (except for an isolated instance a couple of years ago when he consumed six or seven beers over the course of five to six hours during a barbeque he hosted in his home) and has never experienced any further alcohol-related incidents (R.T., at 54). He assures that since his by-pass surgery in early 2003 his health requires that he confine his drinking to a glass or two of wine at dinner. However, he provides no medical documentation to corroborate any of his claims about the state of his medical health and imposed drinking limitations. And while he made his supervisor aware of his heart surgery, the character references he provided include little information about Applicant's alcohol history outside of the work place (*see* exs. A through E).

On the whole, though, Applicant's references express considerable confidence in his ability to control his alcohol consumption (corroborating his claims of limiting his alcohol consumption to a glass of wine with his evening meals) and contain strong expressions of support for his judgment, integrity, and reliability in his role as his company's lead operations repair technician. Some personal history is known, too, about Applicant's relationships with his children. For instance, he remains close to his four children, who range in age from 44 (his oldest) to 21 (his youngest), and he currently provides financial support (\$500.00 a month) for his youngest daughter who has a two-year old child and attends college. So, despite the absence of detailed professional evaluations of his past and current drinking status there is enough in the record to warrant meaningful inferences about Applicant's alcohol status.

Based on Applicant's corroborated ability to avoid abusive drinking since his last alcohol-related conviction in 2000 and his accepted further self-imposed drinking limits since his heart surgery, his assurances that he currently does not have any problems with alcohol are accepted as sincere perceptions of his status. Whether any material risks remain of Applicant's returning to abusive drinking in the future based on his prior history of alcohol-related incidents is subject to further analysis.

## **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Alcohol Consumption**

*The Concern:* 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.

#### **Disqualifying Conditions:**

DC 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.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

#### **Mitigating Conditions:**

MC 2 The problem occurred a number of years ago and there is no indication of a recent problem.

MC 3 Positive changes in behavior supportive of sobriety.

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### CONCLUSION

Applicant is a senior electronics technician for a defense contractor with over 27 years of meritorious employment with the same contractor, under whom he has held a continuous security clearance. His six characterized alcohol-related incidents over 40 years reflect alcohol abuse by Applicant (to include binge drinking in the early 80s) and documented proof of his having a recurring problem with alcohol through October 2000 (when he was involved in his last-reported DuI incident). Never diagnosed as an abusive drinker or alcohol dependent, Applicant, nonetheless, occasionally drank excessively while in social situations, but never (save for one marginal situation some two years ago) since his last alcohol-related incident (in 2000).

Following his last alcohol-related incident (*viz.*, his October 2000 DuI conviction), Applicant received a suspended three-day jail sentence in addition to being fined \$750.00 and assessed \$227.25 in court costs. Besides his financial assessments, he was directed to surrender his driving privileges. Still not believing he had any kind of a drinking problem he avoided counseling or treatment. He has continued to drink, albeit in moderation, and never more than a periodic drink or two at dinner since his by-pass surgery in January 2003. On the strength of the evidence presented, one disqualifying condition (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work) and DC 5 (habitual or binge drinking).

To his credit, Applicant has cut back even more on his consumption of alcohol since his last alcohol-related incident (in October 2000). While it would have helped Applicant's case to have medical documentation containing a positive evaluation from a licensed medical provider or certified substance abuse counselor, Applicant does provide credible assurances of his risk-averse use of alcohol over the past three plus years, which he corroborates with some very positive assessments from his supervisor, colleagues and customers. True, none of his references indicate any familiarity with Applicant's covered alcohol-related incidents. Nonetheless, they express their very high regard for Applicant's work contributions and the absence of any signs of alcohol abuse in or outside the work place. These represent important assessments of Applicant's overall reliability and trustworthiness.

Applicant's manifest avoidance of any further incidents of alcohol abuse over the past three plus years represents important restorative action on his part and is encouraging. Despite his continued drinking following his latest two alcohol-related incidents in 1992 and 2000, respectively, Applicant manifests much better understanding of the potential risks associated with abusive drinking and never drinks to intoxicating levels anymore. If he needed any more specific motivation to avoid abusive drinking, he provides it through his detailed accounts of his recent heart surgery. Assured by his treatment provider that any more than an occasional glass or two of wine could expose him to serious heart complications, he has reduced his drinking even further since his heart surgery.

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified six characterized alcohol-related offenses. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, his lack of any recurrent alcohol-related problems in or outside the work place over the past three plus years, and the adequacy of the time elapsed since his last DuI in the face of his corroborated commitment to very reduced drinking in the wake of his recent heart surgery.

By his actions to date, Applicant provides good, sound and credible evidence of his learning from his judgment lapses

associated with his alcohol-related incidents and acquiring the needed motivational tools to avert abusive drinking in the future. Applicant's situation is one where he might have initiated earlier efforts to gain a firmer understanding of alcohol abuse and driving in the 80s when his drinking was most abusive, but chose to rely on his own impressions. To his credit, though, he has shown considerable maturity and understanding of alcohol and its abuse potential over the past three plus years. Applicant's corroborated efforts to avert his past judgment lapses associated with the abuse of alcohol enable him to take advantage of two of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption to mitigate security concerns associated with his prior alcohol-related incidents: MC 2 (problem occurred a number of years ago) and MC 3 (positive changes in behavior supportive of sobriety).

All in all, Applicant's mitigation efforts to date reflect both increased understanding about alcohol abuse, sustained efforts to control his drinking and strong motivational reasons to avert abusive drinking in the future in order to prevent potential damage to his still fragile heart. His avoidance of any additional alcohol-related incidents over the past 39 plus months, when accompanied by noticeable cutbacks in his alcohol consumption (as here), reflects considerable judgment restoration.

Considering the record as a whole, Applicant makes the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Favorable conclusions warrant with respect to the alcohol-related allegations covered by sub-paragraphs 1.a through 1.h of Guideline G.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

#### **GUIDELINE G (ALCOHOL): FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR 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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge