

DATE: September 25, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0744

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has a history of criminal conduct, culminating with his wilful falsification in April of 1999. He also has over \$4,700.00 in past due indebtedness, including two outstanding judgements, and has done little, if anything, to address his continuing financial difficulties. Clearance is denied.

**STATEMENT OF THE CASE**

On March 18 2002, 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 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 determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on about April 17, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant aterial (FORM) on July 25, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on August 12, 2002, and submitted nothing in reply. The case was received by the undersigned for resolution on September 17, 2002. The issues raised here are whether the Applicant's alleged alcoholism, admitted financial difficulties, criminal conduct, and related personal conduct militate against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 36 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline J - Criminal Conduct, Guideline E - Personal Conduct & Guideline G - Alcohol Consumption

1.a.~1.f., and 2.a. and 2.b. In **May of 1985**, the Applicant was arrested and subsequently found guilty of Laying Drag (Government Exhibit (GX) 5 at pages 1~2, and GX 12). He admits his "blood alcohol level was .10%" (GX 5 at page 1). In **March of 1989**, the Applicant was arrested and subsequently pled guilty to Domestic Violence - Assault and Domestic Violence - Criminal Damage (GX 5 at pages 1~2, GX 7 at page 3, and GX 10). He admits he had consumed "a couple of drinks" (GX 5 at page 2). As a result of this conviction, he was also arrested in **September of 1989** for failure to pay on the Criminal Damage charge, and was again arrested in **February of 1990** for failure to appear on the Assault charge (GX 5 at page 3, GX 7 at page 3, and GX 10).

The Applicant was also arrested in **February of 1990** for Driving Under the Influence of Alcohol (GX 5 at pages 3~4). He admits that he "had been drinking," and "failed the field sobriety test" (GX 5 at page 4).

In **November of 1990**, the Applicant was arrested and subsequently charged with Driving with a Suspended License (two counts) (GX 5 at page 4). This arrest was not alcohol related, and its disposition is not known (*id*).

In **March of 1991**, the Applicant was arrested and subsequently charged with Driving Under the Influence of Alcohol, Driving with a Blood Alcohol Level over .10%, and Driving with a Suspended/Revoked/Canceled Operator's License (GX 5 at page 5, and GX 11). His Blood Alcohol content reading was .156%, but its disposition is not known (*id*).

In **July of 1997**, the Applicant was arrested, charged, and subsequently pled guilty to Driving Under the Influence of Alcohol, Driving with a Blood Alcohol Level over .10%, and Driving with a Suspended/Revoked/Canceled Operator's License (GX 5 at page 5, and GX 7 at page 3). As a result of this conviction, he was also arrested in **September of 1998** as he was found in violation of his probation (*id*).

The Applicant has never been diagnosed as suffering from alcohol abuse or dependence. None the less, since his last alcohol related arrest in July of 1997, he has cut back on his consumption of alcohol. He drinks alcohol, at most, twice a month, and not to the point of intoxication (GX 4 at pages 3~5).

1.g. and 4.a. In answering question 24 on his **April 1999** Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose his alcohol related charges in 1985, in 1990, and again in 1991, as set forth in subparagraphs 1.a., 1.c. and 1.e., of the SOR, above (GX 8 at page 8). This lack of candor is also a violation of 18 U.S.C. Section 1001.

### Guideline F - Financial Considerations

3.a.~3.g. The Applicant has in excess of \$4,700.00 in past due indebtedness (GX 6 at page 3, and GX 9 at pages 4~6). This indebtedness includes two outstanding judgements: one for \$1,200.00 dating back to 1995, and the other for \$2,500.00 dating back to 1998 (GX 9 at page 6). The Applicant has done little, if anything, to address his financial difficulties.

### Mitigation

The Applicant has changed his lifestyle with regards to the consumption of alcohol (GX 4 at pages 3~5).

## **POLICIES**

Enclosure 2 and Section E.2.2. 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:

### Criminal Conduct

#### Conditions that could raise a security concern:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
- (2) A single serious or multiple lesser offenses.

#### Conditions that could mitigate security concerns:

None.

### Alcohol Consumption

#### Condition that could raise a security concern:

- (1) Alcohol-related incidents away from work, such as driving while under the influence . . . or spouse abuse . . .;

#### Condition that could mitigate security concerns:

- (2) The problem occurred a number of years ago and there is no indication of a recent problem;

### Financial Considerations

#### Conditions that could raise a security concern:

- (1) A history of not meeting financial obligations;
- (3) Inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns:

None.

### Personal Conduct

#### Condition that could raise a security concern:

- (2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;

#### Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[each 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, extent and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity 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 its case under Guideline G (alcohol consumption), Guideline J (criminal conduct), Guideline E (personal conduct) and Guideline F (financial considerations); 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.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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, there then exists

the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### CONCLUSIONS

Considering first the Applicant's alleged alcohol abuse. He has five alcohol related arrests, covering the years 1985~1997. Apart from his criminal record, he has never been diagnosed as suffering from alcohol abuse. Although the Applicant still consumes alcohol, at most twice a month, his consumption is now in moderation. He has not had any problems related to his consumption of alcohol in more than five years. As his drinking "problem occurred a number of years ago and there is no indication of a recent problem," as required by the second mitigating condition under Alcohol Consumption, Guideline G is found "For the Applicant."

The same can not be said of the Applicant's criminal conduct and related personal conduct. He has been arrested on nine separate occasions, as evidenced by at least three convictions. More recently, he was also less than candid in answering question 24 on his April 1999 SCA. This wilful falsification is additional criminal conduct, a violation of 18 U.S.C. Section 1001. The Applicant's lack of candor, coupled with his nine other arrests, is clearly of security significance; and as such, Guidelines E and J are found against the Applicant.

Finally, the Applicant has a history of not meeting his financial obligations. He has over \$4,700.00 in past due indebtedness, including two outstanding judgements. He has done little, if anything, to address his financial predicament, which is clearly of present security significance; and as such, Guideline F is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial situation, his criminal conduct, and his related personal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, F and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E, F and J.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 3: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Paragraph 4: AGAINST THE APPLICANT

- a. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge