

DATE: May 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-02845

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's extensive history of alcohol abuse is not mitigated where it was punctuated by seven alcohol-related incidents between May 1991 and February 2002, and where Applicant continues to drink to the point of intoxication. Falsification of his clearance application in April 2000 suggests he cannot be relied upon to disclose the truth if it conflicts with his personal interests. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 5 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) [\(1\)](#) recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 24 November 2003. He did not respond to the Government's File of Relevant Material (FORM), issued 31 March 2004; the record in this case closed 7 February 2004, the day the response was due at DOHA. The case was assigned to me on 19 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

**FINDINGS OF FACT**

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

Applicant--a 29-year-old munitions handler at a defense contractor--seeks access to classified information. He has not previously held a clearance

Applicant has an extensive history of alcohol abuse punctuated by seven alcohol-related incidents. He continues to consume alcohol to the point of intoxication.

Applicant began abusing alcohol in 1989, when he was 15 years old. In May 1991, his parents took him to a mental health clinic for an alcohol evaluation because of their concerns over his alcohol abuse. Between 1989 and May 1999,

he regularly drank to the point of intoxication. He claims to have stopped drinking altogether between May 1999 and July 2001 after witnessing the automobile death of a close friend who had been drinking with Applicant at a picnic in May 1999. He asserts that since July 2001 he drinks a six-pack of beer once or twice a month, and does not drive until he feels he is not under the influence of alcohol. He does not believe he needs any alcohol counseling or treatment.

Applicant has five alcohol-related arrests: October 1993 for battery and minor consuming alcohol, July 1993 for minor consuming alcohol, August 1995 and August 1996 for disorderly conduct, and September 1998 for DUI. The police records from these five arrests reveal that Applicant was intoxicated on each of these occasions. He did not attend either the victim impact panel or alcohol training as ordered by the court for his 1998 DUI. In addition, in February 2002, Applicant was under the influence of alcohol when he hit a car in a bar parking lot and kept going, as he was too intoxicated to notice that he had hit the other car.

On 25 April 2000, Applicant falsified his clearance application when he disclosed his September 1998 DUI, but did not disclose his other four alcohol-related arrests. In his March 2002 sworn statement, he acknowledged that he did not list the other four arrests because he thought it would look bad and keep him from getting his clearance.

Applicant's supervisor and program director consider him an excellent worker who should have his clearance. Neither indicates any knowledge of Applicant's alcohol history.

### **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 (GUIDELINE G)**

E2.A7.1.1. 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.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. 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.

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

#### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **CRIMINAL CONDUCT (GUIDELINE J)**

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish 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 Guideline G. Applicant's history of alcohol abuse is well documented by his multiple alcohol-related incidents and his acknowledgment of regular intoxication from 1989 to 1999. However, despite a brief (as related to the total period of alcohol abuse) period of abstinence, Applicant resumed drinking in July 2001, and had another alcohol-related incident in February 2002. Nothing in this record suggests that Applicant has stopped abusing alcohol or is unlikely to abuse it in the future. I conclude Guideline G against Applicant.

The Government has established its case under Guideline E. Applicant clearly omitted four alcohol-related arrests from his clearance application with the intent to increase his chances of getting his clearance. I conclude Guideline E against the Applicant.

The Government has established its case under Guideline J. Applicant's falsifications violate the provisions of 18 U.S.C. §1001, and he has provided insufficient mitigation of his conduct. His five alcohol-related arrests in five years cast further doubt on his fitness for access to classified information. I conclude Guideline J against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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 Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).