

DATE: September 26, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-03112

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Michael H. Leonard, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On 13 February 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)(Item 1) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 27 February 2001, Applicant answered the SOR (Item 4) and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 9 May 2001; the record in this case closed 14 June 2001, the day the response was due at DOHA. The case was originally assigned to a different Administrative Judge, but was reassigned to me on 26 July 2001 because of caseload considerations; I received the case the next day, to determine whether clearance should be granted, continued, denied or revoked.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR except for subparagraph 1.d.--that he had been arrested on 13 March 1999 for public intoxication.<sup>(2)</sup> Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 28-year old employee of a defense contractor--seeks access to classified information.

Applicant has an extensive history of alcohol abuse which has resulted in five alcohol- related arrests. He also has a history of financial irresponsibility.

Applicant was first arrested for DUI in December 1993 (BAC .180); he pleaded guilty, was fined, ordered to attend alcohol class, and had his base driving privileges suspended for a year. In December 1997, he was again arrested for DUI; he was found guilty, fined, given a suspended jail sentence, and placed on one-year's probation. On 13 March 1999, he was arrested for public intoxication. Applicant has provided no explanation of the circumstances of this arrest or its disposition. Applicant reported these three arrests on his 13 April 1999 SCA (Item 6). Subsequent to his application for a clearance, Applicant was again arrested for DUI on 17 April 1999; he was found guilty, fined, given a

12-month suspended jail sentence, and placed on probation for 18 months. Finally, on 9 July 1999, Applicant was arrested for DUI; he was fined, sentenced to 360 days in jail (60 served, 300 suspended), and placed on probation for two years. (3) It does not appear from the record Applicant has been evaluated for alcohol abuse or dependence.

Applicant attributed his alcohol arrests to "mistakes" he made regarding alcohol consumption (Item 4, 7). He asserts he has had no alcohol incidents since his July 1999 arrest. He also claims to have been attending church and Alcoholics Anonymous since July 1999. However, he has provided no corroboration of these latter claims, nor any information on what his involvement with AA has been or its impact on his life.

On 21 March 1995, Applicant was arrested on four counts of issuing worthless checks, he was found guilty, fined, given a suspended jail sentence, and ordered to make restitution. Applicant attributed this offense to the fact one of his creditors failed to cash a check for 6 months (Item 4). This explanation overlooks the fact Applicant failed to ensure he had sufficient funds to cover all outstanding checks; the explanation also overlooks the fact Applicant failed to resolve the worthless checks until after he had been formally charged with writing worthless checks.

A July 1999 Credit Bureau Report (CBR)(Item 11) revealed Applicant had four past due or charged-off accounts totaling approximately \$7,000.00, three of which had been past due since 1994, the last of which was past due since 1997. In his September 1999 sworn statement, Applicant acknowledged these debts, which he attributed to financial difficulties while he was in college. Nevertheless, a Personal Financial Statement executed by Applicant the same day as his sworn statement showed a net monthly income of \$737, but no payments to any of the past due accounts. Applicant's answer to the SOR asserts he paid the debt at subparagraph 3.d. in October 1999, paid the debt at subparagraph 3.a. by December 1999, paid the debt at subparagraph 3.b. by October 2000, and has begun making payments on the debt at subparagraph 3.c. He has provided no corroboration of any of the claimed payments.

### **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.A6.1.3. 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.

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

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

None.

### **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 the 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 Guideline G. Applicant's history of alcohol abuse is well established by his five alcohol-related arrests. Applicant's claimed period of abstinence from alcohol abuse coincides precisely with the required period of probation from his last DUI conviction, rendering this accomplishment less material than if it had been accomplished without legal compunction. Further, Applicant has not met his burden of corroborating his claimed religious and AA experiences, or otherwise demonstrated that his alcohol abuse is behind him. On this record, I am unable to conclude Applicant's alcohol abuse over. I find Guideline G. against Applicant.

The Government has established its case under Guideline J. Applicant's four DUI convictions and one bad check conviction raise substantial doubts about Applicant's willingness or ability to obey the law. Applicant has not met his burden of establishing clear evidence of rehabilitation. I find Guideline J. against the Applicant.

The Government has established its case under Guideline F. The record clearly establishes Applicant's mishandling of his finances while in college. None of Applicant's explanations indicate the bad debts were due to circumstances beyond his control. Further, at least as late as September 1999, the debts remained unresolved despite Applicant's having

sufficient net income to begin addressing the debts. Applicant has not corroborated his claims of subsequent payment. I find Guideline F. 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

#### Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

#### Paragraph 3. Guideline F: 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

### **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, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 and Change 4 dated 20 April 1999 (Directive).

2. Applicant denied the allegation without explanation. However, while the FORM acknowledged that Department Counsel was unable to obtain any arrest records to support the allegation, the allegation is based on a 13 April 1999 Security Clearance Application (SCA)(SF 86)(Item 6) prepared by Applicant in which he reported the arrest for public intoxication under question 23. Your Police Record-Pending Charges. Although Applicant did not sign this particular SCA [Applicant's signed SCA (Item 5) omits questions 17-42], I consider Item 6 some evidence of an arrest for public

intoxication.

3. At the time the record closed in this case, Applicant still had some period of time to serve on his probation. Although the FORM contains no court records from this arrest, the earliest the probation could have ended was 9 July 2001.