

DATE: November 21, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-03254

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

Rod S. Fiori, Esquire, Applicant's Counsel

**STATEMENT OF THE CASE**

On July 5, 2001, 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 the 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 August 17, 2001.

The case was received by the undersigned on September 25, 2001. A notice of hearing was issued on October 5, 2001, and the case was heard on October 30, 2001. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on November 7, 2001. The issues raised here are whether the Applicant's admitted past alcohol consumption and alleged 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, the documents and the live testimony. The Applicant is 53 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. He is a naturalized citizen, and has lived in State A for the last 30 years (Government Exhibit (GX) 1 at page 1).

**Guideline G - Alcohol Consumption**

1.a.~1.d. The Applicant consumed alcohol, at times to excess and to the point of intoxication from about 1968 until he last consumed alcohol in July of 1999 (Transcript (TR) at page at page 20 lines 14~23, and GX 2 at page 2). His alcohol consumption was infrequent, as he would "usually have no more that(*sic*) two glasses of champagne two times yearly on

special occasions" (GX 2 at page 2). In **September of 1993**, however, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence of Alcohol with at least .08% Blood Alcohol Content or Higher (GX 2 at page 1). This arrest occurred in State A, and he had consumed "three beers and a Pina Colada" prior to the arrest (TR at page 24 line 3 to page 25 line 25).

While on a business trip in State B in **March of 1994**, the Applicant was again arrested for, and subsequently found guilty of, Driving Under the Influence of Alcohol (TR at page 27 line 13 to page 28 line 11, and GX 3 at page 3). He had consumed three or four beers prior to this arrest (TR at page 28 lines 6~11). For the next five years, the Applicant did not consume alcohol until his next arrest in 1999 in State A (TR at page 29 lines 16~23, and at page 30 line 18 to page 31 line 4). In **July of 1999**, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence of Alcohol with at least .08% Blood Alcohol Content or Higher (GX 2 at page 2). He was at a night club, dancing with friends, and had consumed about four beers (TR at page 22 lines 1~12, and GX 2 at page 2).

As a result of his 1999 conviction, the Applicant was ordered to complete a Multiple Offender Program, and to attend 18 months of Alcoholics Anonymous (AA) meetings (GX 2 at page 2). He completed the Multiple Offender Program in July of 2001, and attended more than 18 months of AA meetings (TR at page 33 line 13 to page 34 line 18, and Applicant's Exhibit (AppX) B). The Applicant has not consumed any alcohol since his July 1999 arrest, has no alcohol in his home, and does not intend to consume alcohol in the future (TR at page 37 line 21 to page 39 line 2).

#### Guideline E - Personal Conduct

2.a.~2.c. As stated previously, the Applicant was arrested in State A in 1993, the state where he has lived and worked for the last 30 years, and was also arrested while on a business trip in State B in 1994. On **November 3, 1994**, the Applicant was interviewed by a Defense Security Service (DSS) Agent. During that **interview**, the DSS Agent helped the Applicant fill out his 1994 National Agency Questionnaire (NAQ) (TR at page 59 line 18 to page 60 line 23, and AppX A). He divulged both State A's 1993 and State B's 1994 arrest to the Agent, but the DSS Agent only entered the 1993 arrest on the hand written NAQ (TR at page 60 line 24 to page 61 line 11, and at page 68 line 16 to page 71 line 13). Eight days later on November 11, 1994, the DSS Agent returned with the typed NAQ (GX 4). Only State A's 1993 arrest was entered, in answer to Question 18 regarding alcohol related arrests (GX 4 at page 4). By the absence of State B's 1994 arrest, the Applicant assumed that the Government was only concerned with arrests occurring in the state where he lived and worked; and as such, he executed the **November 11, 1994, NAQ** without further comment (TR at page 74 line 16 to page 76 line 11). On **February 13, 1995**, the Applicant was interviewed by another DSS Agent (GX 3). He disclosed the State B's arrest to the Agent during this interview, and executed a **sworn statement**, accordingly (GX 3 at page 3).

Three years later, in **September of 1998**, the Applicant updated his security clearance by executing a Security Clearance Application (SCA). He again did not include his State B 1994 arrest, as he was not sure the Government wanted this, already divulged, information on the SCA (TR at page 49 line 2 to page 50 at line 20). Most recently, on **January 25, 2000**, the Applicant executed a **sworn statement** (GX 2). He did not discuss his State B 1994 arrest, as he was not asked about it (TR at page 50 line 21 to page 52 line 16, and at page 77 line 23 to page 78 line 7). However, he did disclose his most recent alcohol related arrest, that occurring in State A in July of 1999 (*id*).

#### Mitigation

The Applicant's immediate supervisor has known the Applicant for about four years, and characterizes the Applicant as being an extremely honest person (TR at page 85 line 19 to page 99 line 15). The Applicant has never lied to the witness, not even "white lies . . . lies that don't hurt anybody" (TR at page 98 line 21 to page 99 line 3). Also admitted into evidence is the Applicant's entire personnel file, AppX D, which clearly demonstrates that the Applicant is a valued employee.

### **POLICIES**

Enclosure 2 and Section E2.2. 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:

### Alcohol Consumption

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

1. Alcohol-related incidents away from work, such as driving while under the influence . . .;

#### Conditions that could mitigate security concerns:

2. The problem occurred a number of years ago and there is no indication of a recent problem;
3. Positive changes in behavior supportive of sobriety;

### Personal Conduct

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

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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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 a case under Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) 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.

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 consumption of alcohol, he has a past history of excessive alcohol consumption as evidenced by three alcohol related convictions: one in 1993, one in 1994, and the last one in 1999. However, since his last arrest, which occurred more than two years ago, there clearly have been positive changes in the Applicant's behavior supportive of sobriety. He successfully completed a court ordered program, and attended AA meetings for more than 18 months. He has not consumed alcohol for more than 27 months, has no alcohol in his home, and intends no future consumption of the intoxicant. I therefore conclude that the Applicant's past excessive consumption is no longer of present security significance. This guideline is found in favor of the Applicant.

The more difficult question concerns the Applicant's alleged lack of candor with the Government. The Applicant is either telling the truth as to his confusion in filling out the various questionnaires, or he is lying. I found the Applicant to be truthful during the course of his hearing, and this view is bolstered by the testimony of his immediate supervisor who has know the Applicant for several years. The Applicant divulged the existence of his 1994 State B arrest to the DSS Agent prior to signing his 1994 NAQ. The Government was clearly aware of this arrest when he executed his February 1995 sworn statement. The fact that the arrest was not later included on his 1998 SCA was not an act of deception, as the Applicant was still confused as to what the Government was requiring, and he had already divulged the arrest three years earlier. The more critical question is did the Applicant divulge his most recent 1999 arrest. It's existence is clearly more relevant and material to the Government's concerns. The answer is "yes," the Applicant divulged it in his most recent sworn statement. As I can find no lack of candor or dishonesty here, Guidelines E is also found in favor of the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Alcohol Consumption, and alleged Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E and G, and of Section E2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines E and G.

## FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For 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 clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola  
Administrative Judge