

DATE: October 23, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-03638

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On July 12, 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 1, 2001.

The case was received by the undersigned on September 18, 2001. A notice of hearing was issued that same date, and the case was heard on October 10, 2001. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant, who called a witness to testify on his behalf. The transcript was received on October 19, 2001. The issue raised here are whether the Applicant's admitted alcohol consumption militates 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 34 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

**Guideline G - Alcohol Consumption**

1.a.~1.e. The Applicant consumed alcohol with varying frequency, at times to excess and to the point of intoxication, from about 1992 until his last alcohol related arrest in August of 1998 (Government Exhibit (GX) 2 at pages 2~3). The Applicant began to consume alcohol with regularity in 1988, soon after reaching the age of 21 (Transcript (TR) at page 33 line 8 to page 34 line 9). He "started hanging out with friends and drinking . . . [at] an English pub" (TR at page 34

lines 22~24). His drink of choice was beer, and at most he would drink "four or five" beers, two or three times a week, during the course of his stay at the pub (TR at page 34 line 25 to page 36 line 18).

In December of 1992, the Applicant was arrested for Driving Under the Influence with a Blood Alcohol Content (BAC) .08% or Above (GX 3 at page 1). He had consumed a number of beers prior to this arrest; but as his BAC was close to the legal limit, the charge was subsequently dismissed (TR at page 38 line 22 to page 41 line 14). The Applicant was next arrested for Driving Under the Influence with a BAC .08% or Above in September of 1994 (GX 3 at pages 2~3). He had "a shot of Yager Meister , . . . [and drank] some beers throughout the evening" (TR at page 43 lines 1~6). Pursuant to his plea, he was found guilty of this charge (*id*). As part of his sentence, he participated in a Drinking Driver Program (TR at page 44 line 13 to page 45 line 3).

The last time the Applicant was arrested for an alcohol related offense was in August of 1998 (GX 3 at pages 4~5). Prior to his arrest, he consumed "four or five" rum and Cokes (TR at page 47 line 17 to page 48 line 7). He pled *nolo contendere* to Driving Under the Influence with a BAC .08% or Above (GX 4). As part of his sentence, the Applicant was placed on probation for five years (*id*). His formal probation included the provision that he "not drink or possess any alcoholic beverage" (Applicant's Exhibit (AppX) E at page 3 and GX 4 at page 5, *see also* TR at page 57 line 24 to page 58 line 12). Despite this prohibition, the Applicant continued to consume alcohol (TR at page 55 line 20 to page 57 line 17). He knowingly violated his probation on countless occasions, a probationary period which the Applicant thought ended only "a couple weeks" prior to his hearing before the undersigned (TR at page 64 line 19 to page 65 line 12, and at page 79 line 5 to page 80 line 10). He continues to consume alcohol (TR at page 57 lines 1~17).

### Mitigation

The Applicant's manager thinks highly of him (TR at page 25 line 1 to page 30 line 18), as does his father with whom he works (AppX G). He has done well in his employment (AppX A), and his court imposed formal probation, in fact, ended on August 31, 2000 (AppX B).

## **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:

### 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:

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) 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**

The Applicant has three alcohol related arrests: one in 1992, one in 1994, and most recently one in 1998. The last two arrests resulted in convictions, and he was placed on formal probation as a result his last conviction. That probation included a clear prohibition against the consumption of alcohol. The Applicant knowingly violated this provision on countless occasions. This is most troubling to the undersigned. I must ultimately determine if the Applicant is trustworthy. Under Section E2.2 of Enclosure 2, my decision must be a common sense determination. Common sense dictates that there is no rehabilitation here, as the Applicant, knowing the clear parameters of his probation, repeatedly violated them. In light of this clear disregard of the state court's dictates, coupled with his repeated rule violation as evidenced by three alcohol related arrests, I can not find the Applicant to be trustworthy.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus not met the mitigating conditions of Guideline G, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline G.

### **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.

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