

DATE: December 18, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-08475

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has five convictions, stretching from 1988 to 1997, four of which are alcohol related. In April of 2001, he was diagnosed, in part, as suffering from "Alcohol Dependence in full remission." Despite this diagnosis, the Applicant still consumes alcohol, and is currently pending trial for a sixth time. Among the four present charges is one for DUI. Clearance is denied.

**STATEMENT OF THE CASE**

On November 26, 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 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 or about December 19, 2001.

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 Material (FORM) on June 27, 2002. As part of the Government's FORM, there was a motion to amend the SOR. 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 July 16, 2002, and Applicant's reply was received on September 4, 2002. There was no objection noted as to the Government's motion to amend the SOR; and as such, it is amended as requested. The case was received by the undersigned for resolution on December 17, 2002. The issues raised here are whether the Applicant's pattern of criminal conduct and alcohol consumption 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 File of Relevant Material and Applicant's Response. **The Applicant is 35 years of age**, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

1.a.~1.d., 1.f., and 2.a.~2.c. The Applicant consumed alcohol with varying frequency, at times to excess and to the point of intoxication from about 1984 to the present (Item 6 at pages 2~3). He began to consume alcohol **at the age of 17** (Item 6 at page 2). Typically, he would consume beer, "a six pack on average," "about two weekends a month, on Saturday" (*id*). In June of 1988, **at the age of 21**, the Applicant was convicted of Driving Under the Influence of Alcohol (DUI) (Item 5 at page 6). As a result of this conviction, he received court ordered counseling (*id*).

In September of 1991, **at the age of 24**, the Applicant was again arrested for DUI (Item 5 at page 6, Item 7 at page 2, and Item 11). He was subsequently found guilty, and as part of his sentence he was adjudged one year of supervised probation (*id*). He violated that probation; and as a result, in February of 1993 was convicted of a probation violation (*ibid*).

In October of 1995, **at the age of 28**, the Applicant was arrested for the third time for DUI (Item 5 at page 6, Item 7 at page 3, and Item 10). He subsequently pled no contest to and was found guilty of an amended charge of Reckless Driving (*id*).

In November of 1997, **at the age of 30**, the Applicant was arrested for a fourth time, in part, for DUI (Item 5 at page 6, Item 7 at page 3, and Item 9). He was subsequently pled no contest to and was found guilty of an amended charge of Reckless Driving (*id*). As part of his sentence, the Applicant was ordered to receive counseling and/or treatment (Item 12). During this counseling/treatment, in January of 2000, the Applicant tested positive for cocaine abuse (Item 13). Possession of cocaine is a violation of his state's criminal code (Items 15 and 16). As a result of this counseling/treatment, in April of 2001, the Applicant was also diagnosed by a substance abuse counselor as suffering from "Alcohol Dependence in full remission, and Cocaine Abuse (in apparent remission )" (Item 12).

**Most recently**, in December of 2001, after the original SOR was issued, the Applicant was arrested for a fifth time for DUI (Item 8 at page 11). He has pled not guilty to the allegation, and is pending trial on the DUI charge (*id*). The Applicant still consumes alcohol, "an average of two to three beers after work" (Item 6 at page 3).

### **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.

#### Criminal Conduct

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

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 a case under Guideline G (Alcohol Consumption) and under Guideline J (Criminal 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**

The Applicant has a long history of alcohol abuse, as evidenced by four alcohol related convictions over a span of nine years, 1988~1997. In April of 2001, he was diagnosed, albeit by a counselor who only had an M.S. degree, as suffering from "Alcohol Dependence in full remission." Despite this diagnosis, he continues to consume alcohol, and is currently pending charges as a result of his fifth alcohol related arrest. This, coupled with his probation violation conviction in 1993 and his illegal cocaine possession in 2000, not only shows a clear pattern of criminal conduct but also of alcohol abuse. Guidelines G and J are therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption

and Criminal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines G and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines G 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.

#### Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. 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