

DATE: September 5, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-10294

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

William S. Fields, Esquire, Department Counsel

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

In 1989, the Applicant was diagnosed as suffering from Alcohol Abuse Continuous. Despite this diagnoses, he continued to consumed the intoxicant, and pled guilty to Public Intoxication in 1998. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 15, 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 October 10, 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 aterial (FORM) on May 28, 2002. 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 June 5, 2002. The case was received by the undersigned for resolution on July 12, 2002, but due to an administrative error not the fault of the Applicant, the Applicant's reply was not received until July 16, 2002. Furthermore, to comport with the evidence, the ISCR Case Number is amended to read 01-~~10~~294, and not 01-~~01~~294 as it originally appears on the first page of the SOR. The issue raised here is whether the Applicant's alcohol abuse 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 File of Relevant Material and Applicant's Response. The Applicant is 36 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.h. The Applicant consumed alcohol with varying frequency, at times to excess and to the point of intoxication, from about 1984 to at least March of 1999 (Government Exhibits (GXs) 4 and 10). He describes his alcohol abuse from 1984 to 1988 in the following terms: " I feel that I abused alcohol from Summer 1984 to November 1988 intermittently, I consider drinking four or five beers at any one time to be abusive for myself. I would do that one or two times weekly, usually on Friday or Saturday night" (GX 10 at page 3).

In 1985, as a result of this abusive alcohol consumption, the Applicant was arrested for and found guilty of Public Intoxication (GX 10 at page 1). In 1987, he was also arrested and subsequently found guilty of Reckless Conduct (GX 7 at page 6). He had consumed alcohol prior to this arrest (GX 10 at page 1). Finally, in 1988, the Applicant was arrested, in part, for and subsequently found guilty of Making Alcohol Available to a Minor and of Drinking Alcohol in Public (GX 9 at page 1, and GX 10 at page 2). As a result of this third conviction, the Applicant was ordered to participate in an alcohol treatment clinic (*id*). He received treatment from May to September of 1989, and was diagnosed as suffering from Alcohol Abuse Continuous (GX 11).

In 1996, the Applicant was cited for and subsequently pled guilty to Driving with an Open Container of Alcohol (GX 7 at page 6, and GX 8). In 1998, he was also arrested, and subsequently pled guilty to an amended charge of Public Intoxication (GX 4 at pages 1~2, GX 5, and GX 9 at page 2). In March of 1999, the Applicant described his alcohol consumption as follows: "My current use of alcohol is only social with extent(*sic*) of 2~3 beers . . ." (GX 4 at page 2).

### Mitigation

In his answer to the Government's FORM, the Applicant avers "I have completed outpatient rehab(*sic*) treatment counseling and continue to participate in AA meetings and have received a favorable prognosis by a credentialed medical professional." He offers nothing in support of this averment.

## **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 the evaluation of this case are:

### Alcohol Consumption

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

1. Alcohol-related incidents away from work, such as driving while under the influence . . . , or other criminal incidents related to alcohol use;
3. Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence;
6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

#### 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 a long history of alcohol abuse, as evidenced by five alcohol related convictions. In 1989, he was diagnosed as suffering from Alcohol Abuse Continuous. Despite this diagnosis, he continued to consume alcohol. In 1996 he was pled guilty to Driving with an Open Container, and in 1998 he pled guilty to Public Intoxication. As recent as March of 1999, the Applicant also admitted that he was still consuming alcohol. Without a showing that he "has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program," as required by the last mitigating condition under Alcohol Consumption, the Applicant's alcohol abuse is clearly a security concern. Guideline G is therefore found against the Applicant.

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.
- f. Against the Applicant.
- g. Against the Applicant.
- h. 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