

DATE: December 23, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-11646

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jonathan A. Beyer, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant with a 15-year history of criminal conduct, resulting from his alcohol consumption and drug involvement, failed to establish that it is clearly consistent with the national interest to grant him a security clearance. Absent a waiver from the Secretary of Defense, Applicant's sentence to prison for five years for possession of cocaine bars him from receiving a clearance under 10 U.S.C. § 986. I do not recommend further consideration of this case for a waiver of 10 U.S.C. § 986.

### **STATEMENT OF THE CASE**

On January 17, 2002, pursuant to Executive Order No. 10,865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended referral to an administrative judge to determine whether clearance should be denied or revoked. The SOR was based on Applicant's criminal conduct (Guideline J), alcohol consumption (Guideline G), and illegal drug involvement (Guideline H).

Applicant responded to the SOR on March 5 and April 21, 2002, by admitting to most of the allegations contained in the SOR and electing to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 2, 2002. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR. Applicant received the FORM on October 15, 2002, but failed to respond within the 30 days allotted. Directive, ¶ E.3.1.7. The case was originally assigned to Administrative Judge Claude R. Heiny on October 25, 2002. Due to Judge Heiny's caseload, the case was reassigned to me on December 13, 2002.

### **FINDINGS OF FACT**

Applicant is a 53-year-old native-born U.S. citizen who is employed as a pipe fitter by a defense contractor. Applicant has a history of engaging in criminal activity, excessive alcohol consumption, and illegal use of drugs.

### **Criminal Conduct**

Applicant admitted each of the allegations of criminal conduct alleged in the SOR. *See* Item 3. Pursuant to Applicant's admissions and the other evidence of record, I find as follows:

Applicant was arrested on June 30, 1985, for driving under the influence of alcohol (DUI). Item 3.

On September 25, 1992, he was arrested and charged with indecent exposure and possession of cocaine. The indecent exposure charge was *nolle prosequi*. Contrary to his plea, the judge found the evidence sufficient to convict Applicant of possession of cocaine. The judge deferred entering the finding of guilty and ordered Applicant to attend the Abuse and Lose Offender Program. Item 17. The cocaine charge was subsequently dismissed after Applicant successfully completed the program. Item 19.

Applicant was arrested on July 6, 1994, and charged with possession of cocaine. Item 14. Despite his earlier arrest for a similar offense, Applicant was treated as a first offender and ordered to attend the Abuse and Lose Offender Program and to remain drug free. The charge was eventually dismissed after Applicant completed the program.

On December 6, 1996, Applicant was arrested and charged with being drunk in public. He was convicted of this offense and fined. Item 12.

Applicant was arrested and charged with possession of marijuana and cocaine on March 21, 1997. The marijuana charge was *nolle prosequi*. Applicant pled guilty to possession of cocaine and was sentenced to incarceration for 5 years. The court suspended the sentence to imprisonment conditioned upon Applicant remaining drug free and on good behavior for 5 years. The court placed Applicant on one year of supervised probation. Item 11.

### **Alcohol Consumption**

In addition to the two alcohol related incidents noted above, Applicant's admissions and the evidence of record establish that Applicant has consumed alcohol to excess and the point of intoxication. He was arrested on two or three occasions for being drunk in public. Item 7 at 3. Applicant has had some alcoholic blackouts, but he believes his use of cocaine may have contributed to them. On March 10, 1986, Applicant was admitted to a regional medical center as a result of his 1985 DUI arrest. Applicant was diagnosed as suffering from alcoholism. Item 21 at 2. Applicant has admitted himself three times for in-patient substance abuse treatment. Item 7 at 6.

Applicant's mother and girlfriend have complained to him about his drinking. Because he was concerned his decision to continue to drink could lead to additional DUIs, Applicant decided not to renew his driver's license after the suspension expired. Applicant continues to consume alcohol and does not intend to quit. *Id.*

### **Drug Involvement**

Applicant admits using marijuana on many occasions from the early 1970s until 1997. *Id.* at 4-5. Applicant also admits using cocaine approximately twice a week from the late 1980s until at least October 1997. *Id.* Applicant was admitted to treatment centers because of his abuse of drugs and alcohol. *Id.* at 5. As a result of his hospitalization on May 2, 1991, Applicant was diagnosed with cocaine and alcohol dependency. Item 22. On March 6, 1995, Applicant was admitted to another treatment center because of his arrest for cocaine possession in July 1994. Item 23. Applicant admits that he can not say for sure that he will not use illegal drugs in the future. Item 7 at 5.

### **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person

access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*6-8 (App. Bd. May 9, 2001). The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Order No. 12,968 § 3.1(b).

A security risk may exist under Guideline J when an individual has a history or pattern of criminal activity because it "creates doubt about a person's judgment, reliability and trustworthiness." Directive, ¶ E2.A10.1.1. Relevant conditions that could raise a security concern under Guideline J and may be disqualifying include the following:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged. Directive, ¶ E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. Directive, ¶ E2.A10.1.2.2.

Applicable conditions that could mitigate the security concerns include the fact that the criminal behavior was not recent. Directive, ¶ E2.A10.1.3.1.

In addition, absent a waiver from the Secretary of Defense or the secretary of the military department concerned, the Department of Defense may not grant or renew a security clearance for an employee of a defense contractor who has been convicted of a crime in any court of the United States and sentenced to imprisonment for a term exceeding one year. 10 U.S.C. § 986.

A security risk may exist under Guideline G when an individual consumes excessive amounts of alcohol because it "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." Directive, ¶ E2.A7.1.1. Applicable conditions that could raise a security concern under Guideline G and may be disqualifying include the following:

- (1) Alcohol-related incidents away from work, such as driving while under the influence or other criminal incidents related to alcohol use. Directive, ¶ E2.A7.1.2.1.
- (2) Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence. Directive, ¶ E2.A7.1.2.3.
- (3) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a

recognized alcohol treatment program. Directive, ¶ E2.A7.1.2.4.

(4) Habitual or binge consumption of alcohol to the point of impaired judgment. Directive, ¶ E2.A7.1.2.5.

Applicable conditions that could mitigate the security concerns include positive changes in behavior supportive of sobriety. Directive, ¶ E2.A7.1.3.3.

An applicant's improper or illegal involvement with drugs raises questions regarding his willingness or ability to protect classified information. Directive, ¶ E2.A8.1.1.1. Applicable conditions that could raise a security concern include the following:

(1) Any use of illegal drugs. *See* Directive, ¶¶ E2.A8.1.2.1. and E2.A8.1.2.3.

(2) Illegal drug possession. Directive, ¶ E2.A8.1.2.2

(3) Diagnosis by a credentialed medical professional of drug dependence. Directive, ¶ E2.A8.1.2.3.

There do not appear to be any mitigating factors under Directive, ¶ E2.A8.1.3., that apply to Applicant's case.

### CONCLUSIONS

The Government established conditions that may disqualify Applicant from being eligible to have access to classified information. As a result of Applicant's arch 21, 1997, sentence to imprisonment for five years for possession of cocaine, the Department of Defense is barred from granting or renewing a security clearance for Applicant, absent secretarial waiver. Furthermore, Applicant has a history of criminal activity, alcohol consumption, and drug involvement that creates doubts about his judgment, reliability, and trustworthiness. Despite his numerous problems with alcohol and drugs, his entry into several alcohol and drug abuse treatment programs, Applicant continues to drink and is not sure he will not use illegal drugs again.

In his April 21, 2002, response to the SOR, Applicant asks for forgiveness and says he is not a security threat. Under the circumstances, including Applicant's inability or unwillingness to give up drinking alcohol and to provide any assurances that he would not use illegal drugs, Applicant has not established that it is in the national interest to grant him a security clearance.

### FORMAL FINDINGS

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See* Directive, ¶ E3.1.25), are as follows:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline H: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: Against Applicant

### **DECISION**

In light of all 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 Applicant. I do not recommend further consideration of this case for a waiver of 10 U.S.C. § 986.

**James A. Young**

**Administrative Judge**