

DATE: October 17, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-17066

## DECISION OF ADMINISTRATIVE JUDGE

**JAMES A. YOUNG**

### APPEARANCES

#### FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Fifty-four-year-old retired service member failed to demonstrate he had taken sufficient action to mitigate the financial security concerns raised by his delinquent debts and was unable to demonstrate he had fully resolved the security concerns raised by his excessive alcohol consumption. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 12 May 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 17 June 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 August 2003. On 25 September 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 3 October 2003.

### FINDINGS OF FACT

Applicant is 53 years old. Ex. 1 at 1. In 1988, he retired from the U.S. Navy as an E-9 (the highest enlisted grade) after 21 years of service. *Id.* at 3. He has worked for his current employer since his retirement.

The following chart summarizes the status of the financial security concerns alleged in ¶ 1 of the SOR:

¶	Nature and Amount	Status	Record
1.a.	Debt on 1998 foreclosure	Claims it paid, but no evidence to support	Tr. 9, 15-17

1.b.	Delinq electricity acct \$85	Will pay by Oct 1	Tr. 18-19
1.c.	Delinq hardware acct \$693	Ex-wife still has credit card; he is not financially able to pay this acct	Tr. 21
1.d.	Delinq store acct \$1,246	In Apr 2001, said he would make monthly payments; does not remember if he made any	Tr. 22-23
1.e.	Delinq acct with city \$59	Judgment, but Applicant is unaware of basis and has not paid it off	Tr. 23

Applicant's father was an alcoholic. While Applicant was in the U.S. Navy, he reported for work intoxicated on approximately three occasions, but no one noticed. From 1972 to 1990, Applicant drank six to eight beers at a time, three or four times weekly. Ex. 2 at 4. In 1974 or 1975, he admitted himself to a six-week in-patient Navy alcohol treatment program. *Id.* at 5; Tr. 34. Applicant was arrested for driving while under the influence (DUI) in 1984/85. The court ordered him to attend an Alcohol Safety Action Program (ASAP). Ex. 2 at 5. From 1990 to 1994, Applicant consumed in excess of 12 beers a day. On Saturdays, he often drank 24 beers. *Id.* at 4. In 1993 and 1994, Applicant was again arrested for DUI. After each incident, a court ordered him to attend ASAP. *Id.* at 5; Answer; Tr. 26-33. After his 1994 DUI, Applicant did not consume alcoholic beverages for five years.

Since 1999, he has resumed consumption of alcoholic beverages. *Id.* at 4. His excessive consumption of alcohol contributed to his financial problems. Ex. 2 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. Or. 12968, *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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

### CONCLUSIONS

## **Guideline F-Financial Considerations**

In the SOR, DOHA alleged Applicant had delinquent debts (§§ 1.a. - 1.e.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant has a history of not meeting his financial obligations. DC 1. He was unable or unwilling to satisfy his debts. DC 2. Some of his financial problems were linked to his excessive consumption of alcohol. *See* DC 5. Applicant seems rather cavalier about his debts. In April 2001, Applicant was notified of the delinquent debts appearing on his credit report. *See* Ex. 2. He claims that he is unaware of the nature of some of his debts, yet he has not made a concerted effort to investigate. He admits that he is financially unable to pay some of his debts. Tr. 21. None of the mitigating conditions apply. Finding is against Applicant.

## **Guideline G-Alcohol Consumption**

In the SOR, DOHA alleged Applicant was arrested for DWI on three occasions (¶ 2.a. - 2.c.) and continues to drink up to four alcoholic drinks a day (¶2.d.). Excessive alcohol consumption is a security concern 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.

The Government established by substantial evidence each of the allegations contained in ¶ 2 of the SOR. Applicant's DUIs were alcohol-related incidents away from work. DC 1. Applicant has had a severe drinking problem. It is a mitigating condition if the alcohol problem occurred a number of years ago and there is no indication of a recent problem. MC 2. Although Applicant has not had an alcohol-related incident since 1994, I am unable to conclude there is "no indication of a recent problem." After five years of abstinence, Applicant returned to consuming alcoholic beverages in 1999. He insists he no longer craves alcohol and does not drive after drinking. Nevertheless, it is not clear that his alcohol problems are over. Applicant's recitation of his current drinking habits is inconsistent. In April 2001, Applicant made a signed, sworn statement in which he claimed he now consumes four or five beers on two or three occasions a week. Ex. 2 at 4. In interrogatories he answered under oath on 5 June 2002, he stated he now consumes three or four beers daily when he gets home from work. Ex. 4 at 5. At his 25 September 2003 hearing, he testified that, "Since [1994] I only drink socially with acquaintances at the Moose Lodge ...." After carefully weighing all the evidence, I am not convinced Applicant has demonstrated that he has conquered his drinking problem or sufficiently mitigated the security concerns associated with his excessive consumption of alcoholic beverages. Finding is against Applicant.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: 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

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

**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. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.