

DATE: August 20, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-19220

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 35-year-old employee of a defense contractor, has failed to mitigate alcohol-related incidents away from work, including two offenses for Driving While Intoxicated (DWI) and another for Destruction of Property. Despite his treatment for alcohol abuse in 1988-1989 and again in 2000-2001, at which time he was evaluated as an episodic problem drinker and it was recommended that he abstain from alcohol, Applicant refuses to acknowledge that he has a drinking problem and admits that he continues to consume alcohol. Clearance is denied.

**STATEMENT OF THE CASE**

On September 12, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to any classified information and recommends that his case be submitted to an Administrative Judge. On October 5, 2002, Applicant submitted a response to the SOR and requested a hearing. This case was assigned to me on January 6, 2003. A notice of hearing was issued on January 14, 2003, and the hearing was held on February 20, 2003. During the hearing, nine Government (Govt) exhibits and the testimony of Applicant were received. The transcript (Tr.) was received on February 28, 2003.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, including Applicant's admissions to the allegations in SOR ¶ 1.b-SOR ¶ 1.f, I make the following findings of fact:

Applicant is a 35-year-old employee of a defense contractor and is seeking a security clearance.

Applicant began drinking alcohol and first became intoxicated in 1983, when he was 15 years old. His alcohol

consumption on a single occasion reached as much as 12-18 cans of beer at age 20. (1)

In January or February 1988, Applicant, age 19, was arrested for Driving While Intoxicated (DWI). He was returning home from a day trip with three friends with whom he had been drinking. In July 1988, he was convicted of DWI, placed on probation for 18 months, and ordered to attend alcohol education classes. (2)

On May 15, 1988, Applicant was arrested for Destruction of Property, after he kicked a door of a police vehicle. He had consumed alcohol and was trying to get himself arrested, after learning that his best friend had sex with his girlfriend. Applicant was given probation before judgment and fined \$35.00, a portion of which was suspended. (3)

From December 20, 1988 until October 30, 1989, Applicant received treatment for alcohol abuse from a county agency. (4)

Applicant was arrested for DWI and Exceeding the Speed Limit on October 28, 2000. He was on his way home early in the morning. Applicant refused to take the Breathalyzer. That night he had consumed alcohol with his friends and again later, alone. Applicant's arrest record states that he "was too intoxicated and uncooperative to photo and fingerprint at the time of his arrest." On May 2, 2001, Applicant received probation before judgment, was placed on probation for six months, was fined \$355.00, and had his driver's license suspended for 120 days. (5)

Applicant entered an alcohol rehabilitation program from November 4, 2000 until April 7, 2001. He was diagnosed as an episodic problem drinker. His prognosis was good if he remains totally abstinent of alcohol and attends Alcoholics Anonymous (AA). (6)

Applicant continues to use alcohol. (7) He does not attend AA meetings. (8)

## **POLICIES**

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

### **Guideline G: Alcohol Consumption**

The concern under Guideline G is that excessive alcohol consumption 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.

Conditions that could raise a security concern and may be disqualifying include:

Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (Disqualifying Condition 1).

Conditions that could mitigate security concerns include:

The alcohol related incidents do not indicate a pattern (Mitigating Condition 1);

The problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2);

Positive changes in behavior supportive of sobriety (Mitigating Condition 3);

Following diagnosis of alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from 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 (Mitigating Condition 4).

### CONCLUSIONS

Applicant's alcohol-related incidents away from work, including his two DWI offenses (SOR ¶ 1.b and SOR ¶ 1.e) and destruction of property offense (SOR ¶ 1.c), establish Disqualifying Condition 1. The diagnosis of his alcohol abuse (SOR ¶ 1.f) does not satisfy the requirements of Disqualifying Conditions 3 or 4 because it does not appear to have been made by a person with the requisite credentials. However, that diagnosis and Applicant's treatment for alcohol abuse constitutes further evidence of his alcohol problem.

The record establishes that Applicant began consuming alcohol in 1983 and first became intoxicated that year. It further evidences that he has continued to consume alcohol to the present time and his latest episode of intoxication is his DWI October 28, 2000. This is sufficient to support a finding against Applicant under SOR ¶ 1.a, even though the record does not reveal any episode of intoxication in 2001 or that Applicant has experienced blackouts.<sup>(9)</sup> The record also establishes that Applicant was initially treated for alcohol abuse from December 1988 until October 1989 (SOR ¶ 1.d).

Despite Applicant's contention that there has not been a showing of a pattern in his alcohol abuse, the record is sufficient to demonstrate such a pattern. His most recent DWI offense occurred several months after he submitted his security clearance application that is the subject of this case. Therefore, neither mitigating Condition 1 or 2 are applicable.

Even if the counselor, who gave a prognosis for Applicant, met the standards for credentials required by Mitigating Condition 4, it would not apply because Applicant has not abstained from the use of alcohol for 12 months. In fact, Applicant establishes SOR ¶ 1.g when he acknowledges that he has not stopped consuming alcohol: "I drink a few beers."<sup>(10)</sup>

In the face of an arrest record that states that Applicant was "too intoxicated and uncooperative to photo and fingerprint at the time of his arrest," Applicant even refuses to acknowledge that his drinking on that occasion was excessive: "I'm not denying the fact I had a couple beers but I wouldn't say I was driving while intoxicated."<sup>(11)</sup>

Despite two DWI offenses, another alcohol related offense, and two treatments for alcohol abuse, he refuses to admit that he has a problem with alcohol: "I think that there would be a lot more in there in those records if I had an alcohol problem."<sup>(12)</sup> Applicant disagrees with the assessment by the counselor who evaluated him: "I don't think I'm a problem drinker."<sup>(13)</sup>

Applicant also acknowledged that he only attended alcohol treatment because the court would have sent him there and that he does not believe it was necessary: "You know after I'm done through - you know when I was finished through the course of 26 weeks do I feel like gee I really needed that? No, I don't."

Based on Applicant's own admissions, there is no basis for applying Mitigating Condition 3 because he does not appear to have made any positive changes in behavior supportive of sobriety.

Given the record in this case, there also is no other basis for concluding that he has mitigated the Government's case against him. I must find accordingly.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline G: 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

Subparagraph 1.g: Against Applicant

### **DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Govt Ex 8 at 9.
2. Govt Ex 2 at 5.
3. Govt Ex 3; Govt Ex 4.
4. Govt Ex 9.
5. Govt Ex 2 at 6; Govt Ex 5; Govt Ex 6.
6. Govt Ex 7.
7. Tr 44.
8. Tr 46-47.
9. I note, however, that I am not able to decipher all of the handwritten documentation in Government Exhibit 8.
10. Tr 47.

11. Tr 31.

12. Tr 48.

13. Tr 43.