

DATE: April 29, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21528

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On December 18, 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 the attached 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 9, 2002, (sworn before a notary on January 10, 2002), in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on February 22, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on March 4, 2002, and he submitted no reply.

The case was assigned to the undersigned for resolution on April 9, 2002.

**FINDINGS OF FACT**

The Applicant is 32 years old. He is employed by a defense contractor and he seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant has admitted to a pattern of abusive drinking, at times to the point of intoxication, from 1989 to at least February 1999. (*See* Government Exhibit 3). His regular drinking habits include one to two beers at night during the week, and either six beers or two to three Jim Beam and cokes while socializing with friends on the weekends. Alcohol relaxes him, and puts him in a good mood.

The Applicant states that during his first marriage, from 1990-1997, his use of alcohol steadily increased. During the last two years of his marriage, the Applicant had numerous verbal arguments with his wife. At times, his anger was fueled by excessive alcohol consumption that caused him to become physically violent during these fights. On one occasion, he smashed his computer with a baseball bat. During the last two months of his marriage he was consuming a six pack of beer each night during the week, and eighteen beers a day on the weekend, or a fifth of Jim Beam mixed with coke. The Applicant believes that at this time he was using alcohol to numb the pain and stress of a bad marital situation. (*See* Government Exhibit 5).

Although the Applicant has never been arrested, his alcohol abuse has caused numerous other alcohol related incidents that have led to some law enforcement involvement.

In 1997, the Applicant was drinking alcohol and got into a fight in a bar. He claims that he intervened in a pushing fight between his friend and another patron. The bouncer defused the altercation. No one was injured.

In February 1997, on two separate occasions, the Applicant received emergency medical treatment for a bleeding stomach that was aggravated by his excessive use of alcohol. The Applicant indicates that he had a tear in his esophagus which, due to his excessive alcohol consumption and poor diet, caused bleeding and vomiting. (*See* Government Exhibits 3 and 5).

In 1989, he was drinking alcohol with his friends at a bar. The Applicant explained that his friends were marines that were drinking him under the table. The Applicant admits that at the time he was highly intoxicated. He felt ill and went to the restroom. He decided to crawl out of the window to avoid any further embarrassment. In doing so, he broke the window and the bar owner called the police. The Applicant was questioned by the police and admitted to the damage. The Applicant made restitution to the bar owner for the damage.

In August 1991, the Applicant had been drinking alcohol and got into a disagreement with a friend. The Applicant was punched in the face and received a broken jaw. The Applicant was also hit over the head with a beer bottle and kicked unconscious. The Applicant explained that he had paid for a hotel room and agreed to allow a friend of his to share his hotel room for the night, essentially to use the additional bed in the room. The Applicant had agreed to leave the hotel room key at the front desk and forgot. The Applicant went out shopping and consumed about four to six beers. When he returned, he got into an argument with his friend. The Applicant was treated for his injuries on the ship, and was required to have additional surgeries to fix his jaw properly. (*See* Government Exhibits 5 and 6).

In March 1998, the Applicant was charged with (1) Assault, a violation of Article 128 of the Uniform Code of Military Justice, (UCMJ) and (2) Communicating a Threat, a violation of Article 134 (UCMJ) and (3) Disorderly Conduct, a violation of 134 (UCMJ). The Applicant stated that he was on liberty, had been shopping, had dinner, and had stopped at a bar where he had consumed about six beers. He returned to work and noticed that the watch duty commander was in civilian clothes. He commented on it, and was rebuffed. A Chief then entered the work space and noticed the watch duty commander's civilian clothing, and told the Applicant to handle the situation. The Applicant took this as an order, and instructed the watch duty commander to go change his clothes. The Applicant then kicked the watch duty commander's chair to get his attention. This started a verbal argument, then taunting by the watch duty commander, and eventually a physical fight ensued. At some point, the Applicant became physical, tore the watch commander's shirt, and was subdued. The Applicant admits that he was out of control and was wrong by trying to handle the problem with violence. (*See* Government Exhibit 5).

On August 31, 1998, the Applicant underwent a Captains Mast, where the Commander found the Applicant guilty of Simple Assault, Communicating a Threat, and Disorderly conduct under the UCMJ. The Applicant was sentenced to forfeit \$500.00. He was suspended in rank, given extra duty of 30 days and restricted for 30 days.

The Applicant has never received any treatment or counseling for his alcohol abuse. He has never been arrested. He believes that his priorities have now changed, as he has divorced his first wife and remarried. He now has a stable marriage, a good family life, and a good job. He continues to drink alcohol.

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Alcohol Consumption

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

1. alcohol-related incidents away from work, such as driving under the influence . . . .
4. habitual or binge consumption of alcohol to the point of impaired judgement.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- I. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of alcohol abuse which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has abused alcohol (Criterion G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and a failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. 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 he or she may demonstrate the same attitude towards security rules and regulations.

Upon careful review of the record, it is clear that from 1989 until at least February 1999, over a period of ten years, the Applicant consumed alcohol, at times to excess and to the point of intoxication. The Applicant, although he has never received treatment or counseling for alcohol abuse, has been involved in numerous alcohol related incidents brought on by his excessive drinking and poor judgment. Despite these incidents of poor judgment, the Applicant continues to drink. There is no evidence in the record as to whether the Applicant has ever even tried to remain completely sober for any significant period of time. As he stated, he enjoys alcohol and the effects it has on him. The Applicant continues to drink alcohol on a regular basis.

The Applicant is obviously a person with a very serious alcohol problem, who has unfortunately not been diagnosed, nor has received any treatment or counseling for his problem. It is evident, though, given his history of excessive alcohol abuse and the problems his drinking has caused him in the past. Given the recency and extent of this alcohol abuse, he is not sufficiently trustworthy to handle classified information at this time. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. Accordingly, Criterion G (Alcohol Consumption) is found against the Applicant.

Furthermore, the Applicant has failed to submit a reply to the FORM, and has not provided this Administrative Judge with any evidence in mitigation that would negate the negative impact his alcohol abuse has on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

## FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3

of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

**DECISION**

In light of all 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.

DARLENE LOKEY ANDERSON

Administrative Judge