

DATE: May 24, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22169

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of reported smelling of alcohol on his person while working with subordinates at his prior employer. The reported claims were not made known to Applicant at the time, and are not corroborated by any abuse of alcohol in the workplace. Neither Applicant's substance abuse evaluator at the time nor his current supervisor, coworkers and family members attribute any kind of alcohol abuse to Applicant. With over four years without any evidence of alcohol abuse in or outside the workplace, or other indications of abusive drinking, and with an excellent work record covering several years with the same employer, Applicant refutes and mitigates the government's security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

On August 23, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on September 10, 2002, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on December 31, 2003, and received it on January 21, 2004. Applicant filed a timely response to the FORM within the 30 days provided. The case was assigned to me March 22, 2004.

**SUMMARY OF PLEADINGS**

Under Guidelines E and G, Applicant is alleged to have been observed in March 2000 during a facility inspection to be under the influence of alcohol where he was working, after which he resigned his employment rather than submit to alcohol counseling.

For his answer to the SOR, Applicant denied the allegation covered by Guidelines E and G. In explanation, he claimed that during a facility inspection no employee or inspector asked him if he had been drinking or otherwise indicated they suspected him of drinking or being under the influence of alcohol at any time during the inspection. Applicant claimed that he was asked to leave the area by military persons inspecting his facility and later visited by employer representatives at his home who told him of the reports they received from the inspectors about his smelling of alcohol in the work area. Applicant claimed he refused offered return-to-work conditions from the military inspectors (*viz.*, that he enter formal school counseling) but agreed to get a written evaluation from a certified substance abuse counselor. He claimed the evaluation he submitted to confirmed his having no alcohol problem. Applicant claimed the military inspectors refused to accept this evaluation and demanded he accept counseling as a condition to his returning to work. He claimed he refused the offered condition and resigned his position with the company; still of the belief he never abused alcohol around the workplace, he was never afforded an opportunity to defend his denials.

### **STATEMENT OF FACTS**

Applicant is a 46-year-old program coordinator and facility security officer (FSO) for a defense contractor who seeks a security clearance.

During a military customer inspection of Applicant's facility in March 2000, two of Applicant's subordinates told the inspectors they had observed him in the area of their review to be under the influence of alcohol. One (W1) claimed to have suspected Applicant (his supervisor) coming to work under the influence of alcohol (ex. 8). He based his suspicions on his observing Applicant coming to work 3 to 4 times a week smelling of some heavy type of cologne and a very strong odor of alcohol. W1 reported he had spoken with another colleague (W2) who claimed to have observed Applicant on one occasion purchasing alcohol at a base store. W1 never confronted Applicant about smelling alcohol on his person, uncomfortable about bringing up the subject.

Like W1, W2 was also supervised by Applicant in March 2000, and filed a similar report with AFOSI about his observing Applicant coming to work 2 to 3 times a week smelling of alcohol. Admitting to personality conflicts with Applicant, W2 was reluctant to provide derogatory information about Applicant's drinking, but did so anyway. W2 told the military inspectors Applicant came to work smelling of alcohol, despite obvious attempts to cover the smell with mouthwash and cologne. W2 told the inspectors about another incident in which Applicant appeared to be under the influence of alcohol when he responded to a base alarm.

Neither W1 not W2 confronted Applicant about any of their suspicions of his abusing alcohol on the work site. They provide no other corroboration for their accounts. Acknowledging that he does drink alcohol on a light to moderate basis (never to abuse), Applicant conceded the possibility that W1 and W2 could have picked up some kind of scent that suggested alcohol to them. Considering Applicant's denials of any alcohol abuse, his overall record for solid work contributions to his employers past and since, and the lack of any corroboration of Applicant's abusing alcohol in the workplace, W1/W2s' accounts by themselves are insufficient to attribute any alcohol abuse to Applicant.

Based on the accounts of W1 and W2, the military inspectors insisted Applicant enter formal alcohol counseling and conditioned his returning to the work area on his accepting such counseling. After disputing the inspectors' accounts, Applicant offered to get an evaluation from a Veterans Hospital substance abuse counselor. Thereafter, Applicant did obtain an evaluation. In the April 2000 evaluation attached to Applicant's answer, his Veterans Hospital substance abuse counselor cleared Applicant of any alcohol problems and concluded he did not need treatment in their substance abuse program. When Applicant showed the evaluation to the military inspectors, they refused to accept it and insisted on his enrolling in alcohol abuse counseling as a condition to his returning to the work area. Applicant declined and resigned his position to pursue employment opportunities elsewhere.

Applicant has not been questioned about his use of alcohol by anyone in the employ of his current defense contractor. He assures he drinks in a responsible way, no more than 4 to 7 drinks a week and has never experienced any alcohol-related incident before or since his confrontation with the military inspectors in arch 2000.

Applicant is highly regarded by his current supervisor who credits him with excellent work as both the company's FSO and its human relations director. His performance evaluations reflect excellent performance. And he is highly valued by

his military customer for his security skills. Further, Applicant has received considerable praise from DSS for his professionalism in facilitating DSS's facility inspections. His family and coworkers characterize him as one who consistently displays high moral and ethical behavior, consistent with high standards of trust. None of his coworkers who have interfaced with him in and out of the current workplace have ever seen him abuse alcohol.

## **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list guidelines to be considered by judges in the decision making process covering DOHA cases. Judges must consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Personal Conduct**

*The Concern:* conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

#### **Disqualifying Conditions:**

DC 1 Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.

#### **Mitigating Conditions:**

MC 1 The information was unsubstantiated or not pertinent to a determination of judgment, reliability or untrustworthiness.

MC 5 The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

### **Alcohol Consumption**

*The Concern:* 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.

#### **Disqualifying Conditions:**

DC 2 Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.

#### **Mitigating Conditions:**

MC 2 The problem occurred a number of years ago and there is no indication of a recent problem.

MC 3 Positive changes in behavior supportive of sobriety.

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest.

Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### CONCLUSION

Applicant presents as an FSO and human resources coordinator for a defense contractor with some reported history of alcohol abuse in the workplace.

Based on the reports of two of Applicant's subordinates with his former employer (W1 and W2) that they observed Applicant's being under the influence of alcohol during a facility inspection at Applicant's former facility in March 2000, and reports of smelling of alcohol in the workplace on other occasions by the same two subordinates, Applicant was required to seek alcohol counseling as a condition to his returning to work. Applicant has consistently denied the claims and produced an evaluation by a Veterans' Hospital substance abuse counselor as documented proof he has no alcohol problem requiring treatment. Applicant, though, does not deny light to moderate drinking. Very possibly, he could have had traces of alcohol scent on his clothes or person on the days W1 and W2 claimed to have smelt alcohol on his person. But Applicant firmly denies any use of alcohol during or before his appearance at work. And he was never afforded an opportunity to confront or challenge the reports of W1 and W2 with evidence of his own.

While the uncorroborated reports are insufficient to draw any inferences of alcohol abuse by Applicant, they are sufficient to raise some initial concerns about his appearing at work smelling of alcohol on his person. The concerns are not enough, however, to apply any of the potentially applicable disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption or personal conduct.

Applicant's manifest avoidance of any further incidents of appearing at work with perceived traces of alcohol on his person, or any drinking on or off the job that could raise suspicions about use of alcohol is encouraging. Despite his continued drinking at light to moderate levels, he demonstrates a firm grasp of security needs; so that he can be counted on to be vigilant about actions that could be perceived as security-significant judgment lapses. Assured by his treatment evaluator, his supervisor and his coworkers that he has not and does not use alcohol irresponsibly, he has carefully avoided any drinking that could be perceived as excessive or abusive.

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his reported appearing at his workplace smelling of alcohol. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded the limited corroboration of Applicant's having an alcohol problem with his former employer (not just smelling of alcohol), his most recent drinking history (which is light, controlled), his lack of any recurrent alcohol-related problems in or outside the work place over the past three plus years, and the adequacy of the time elapsed since his last reported observed smelling of alcohol in the workplace.

By his actions to date, Applicant not only refutes some of the inferences of alcohol abuse drawn by W1 and W2 in the their reports to the military inspectors, but provides good, sound and credible evidence of his learning from his judgment lapses associated with his suspected alcohol abuse in the workplace. None of his current colleagues at work

who have worked closely with him and had the opportunity to observe his use of alcohol suggests he has ever abused alcohol in their presence. His performance evaluations and credits for facilitating DSS inspections have been very positive as well. Applicant's refuting of some of the inferences drawn by W1 and W2 from his perceived smelling of alcohol enable him to invoke Mitigating Condition (MC) 1 (information unsubstantiated) of the Adjudicative Guidelines for personal conduct. His corroborated efforts to avert any perceptions of alcohol abuse in the workplace also enable him to take advantage of MC 5 (positive steps to significantly reduce or eliminate vulnerability to coercion) of the Guidelines for personal conduct. [\(1\)](#)

Considering the record as a whole, Applicant makes the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is not a risk to judgment impairment associated with such conduct. Favorable conclusions warrant with respect to the alcohol-related allegations covered by Guidelines E and G.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

**GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

**GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT**

Sub-para. 2.a: FOR APPLICANT

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge

1. To the extent that there is any sound basis for accepting the reported observations of W1 and W2 about Applicant's appearing for work smelling of alcohol, the information is sufficiently dated as to warrant the application of two of the mitigating conditions of the Guidelines for alcohol consumption: MC 2 (problem occurred a number of years ago) and MC 3 (positive changes in behavior supportive of sobriety).