

DATE: April 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-24262

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esquire, Department Counsel

Nichole Noel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of alcohol abuse--documented by his three alcohol-related arrests within a one-year period in 1994-1995--was mitigated by the passage of nearly nine years without recurrence of alcohol-related incidents. Clearance granted.

**STATEMENT OF THE CASE**

On 30 September 2003, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) proposing to revoke his clearance for conduct cognizable under Guideline G: Alcohol Consumption. [\(1\)](#) On 10 November 2003, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on 22 January 2004. I conducted the hearing on 17 March 2004..

At the hearing, the government presented three exhibits--admitted without objection--and no witnesses; Applicant presented five exhibits--four admitted without objection; one excluded--and the testimony of five witnesses, including himself. DOHA received the transcript on 29 March 2004.

**FINDINGS OF FACT**

Applicant admitted the factual allegations of the SOR except subparagraphs 1. e; accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 36-year-old employee of a defense contractor--seeks to retain access to classified information. He previously served in the Marine Corps Reserve; he is currently an Army Reservist.

Applicant has a history of alcohol abuse, punctuated by three DUIs: 30 June 1994 (B.A.C. .17), 17 February 1995 (B.A.C .10), and 9 June 1995 (B.A.C .10). He suffered the usual consequences for these offenses: he received non-judicial punishment for his June 1995 offense and was ordered to attend an alcohol education class. His driver's license

was later suspended for 45 days. He was ordered to attend a six-month alcohol education class and six Alcoholics Anonymous meetings as a result of his February 1995 offense. He completed all the requirements of his sentences.

In March 1997, the Marine Corps notified Applicant that he was ineligible for re-enlistment. He was honorably discharged at the end of his enlistment--the type of discharge warranted by his service record.

In a December 2002 subject interview, Applicant described his current alcohol consumption as none on weekdays and seldom on weekends, 4-6 beers at most on a weekend and maybe 15 beers over a month. However, he acknowledged that he consumed alcohol to the point of intoxication approximately 6 times in the last year, the last time in September 2002. (2) He has had no further alcohol-related incidents since his June 1995 arrest.

At the hearing, Applicant described the emotional turmoil that contributed to his three DUIs in 1994-1995, as well as the steps he took to ensure that he did not have any more alcohol-related incidents. He had just gone through a divorce, his ex-wife had recently moved with their two children to another state, and he found himself a single Marine doing what many single Marines do in their free time; drinking. His three arrests occurred when he, as the least intoxicated of his companions, became the designated driver to get them home. He confirmed that he had no further incidents and was last intoxicated in September 2002. He remarried in September 1998 and he and his wife have a 2½ -year old son.

Applicant's co-workers, supervisors, and associates consider him an excellent and trustworthy worker, who shows no signs of having any problems with alcohol consumption. The contracting agency is extremely pleased with his performance. He has never been diagnosed as an alcohol abuser or alcohol dependent.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **ALCOHOL CONSUMPTION (GUIDELINE G)**

E2.A7.1.1. 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.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. 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 abuse.

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A7.1.3. Conditions that could mitigate security concerns:

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline G. However, the alcohol abuse is mitigated. Applicant had three alcohol-related arrests within a one-year period nearly nine years ago when he was newly divorced and away from his children. He was appropriately disciplined and completed the counseling requirements of his respective offenses. Although he has continued to drink, and has drunk to intoxication as frequently as six times in the year before September 2002, he has had no further incidents and has not drunk to intoxication since September 2002. He has never been formally diagnosed as alcohol dependent or an alcohol abuser. Thus, he has had no alcohol-related incident since June 1995. I conclude that Applicant is unlikely to return to abusive levels of drinking. Accordingly, I resolve Guideline G for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the 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 a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. However, the statement does not support the SOR allegation (i.e.) that Applicant denied: that he drank to the point of intoxication six times a year, every year.