

DATE: October 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25652

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert J. Tuidor, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was arrested for driving under the influence of alcohol three times, with

the most recent event occurring in March 1997. After the 1997 offense, he successfully completed a court-ordered alcohol safety awareness program. He was diagnosed as alcohol dependent by a credentialed medical professional in July 1998. In the past five years, he has had no further incidents of alcohol abuse and has demonstrated conduct that mitigates and exculpates his previous alcohol-related behavior. He has married, purchased a home, completed two graduate degrees, and is active as a leader in his community. Applicant drinks alcohol in moderation and exhibits no tendencies toward alcohol dependence. In August 2002, Applicant's physician and a licensed social worker rendered professional opinions that he was not alcohol dependent. Clearance is granted.

**STATEMENT OF THE CASE**

On December 9, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified*

*Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR the Government alleged that Applicant was disqualified from obtaining a security clearance because of alcohol consumption (Guideline G). In a sworn statement dated December 18, 2002, Applicant responded to the SOR and requested a hearing. The case was initially assigned to Judge Roger Willmeth, but due to caseload considerations, was subsequently assigned to me on April 21, 2003. A Notice of Hearing was issued on May 1, 2003, and I held a hearing in this matter on June 18, 2003. During the course of the hearing, the Government presented 7 exhibits (Ex.),

and Applicant presented 30 exhibits. Neither party presented witnesses. The transcript (Tr. ) was received June 26, 2003.

## FINDINGS OF FACT

The SOR contains five allegations of disqualifying conduct. All five allegations relate to conduct charged under Guideline G, Alcohol Consumption. Applicant admitted the factual allegations as set forth in subparagraphs 1.a., 1.b., 1.c., and 1.e. of the SOR, and he admitted the facts of allegation 1.d. of the SOR, with the qualifications that the determination about his alcohol dependence may have been made by a psychiatrist who was not board certified and two subsequent evaluations dispute the psychiatrist's determination. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 40 years old and employed by a Defense contractor as a senior program analyst. From 1985 to 1997 he served on active duty as an officer in the U.S. Navy, and, from 1997 to 2002, he served in the U.S. Naval Reserve. He held security clearances from 1991 through 2001. (Ex. A-3.) Applicant submits numerous letters of endorsement from his former fellow officers, military commanders, and supervisors who attest to his personal qualities and professional achievements. (Ex. T-Z; A-1, A-2.).

Applicant has been arrested three times for driving under the influence of alcohol. The first arrest occurred in 1989, when he was 26 years old. The charge was reduced to reckless driving and he paid a fine. In 1991, Applicant was again arrested for driving under the influence; that charge was also reduced to reckless driving, and he paid a fine. Six years later, in 1997, Applicant was arrested and convicted for driving under the influence of alcohol. His driver's license was suspended and he was directed by the court to attend alcohol awareness training. He completed the court-ordered alcohol awareness training in February 1998. (Ex. O.)

In July 1998, Applicant reported that he drank alcohol two to three times a week, with three or four drinks at a time. He further stated that approximately once a month he drank six to eight drinks at a sitting. He complied with a request from his military adjudication facility for a psychiatric evaluation.

The examining physician, a board certified psychiatrist, applied the multiaxial system to make his diagnosis. <sup>(1)</sup> Under Axis I, which identifies clinical disorders, the psychiatrist wrote "Alcohol Dependence." The psychiatrist wrote "none" under Axis II, which required that he list any personality disorders that Applicant suffered from. He also found, under Axis III, that Applicant had no general medical conditions relevant to an understanding or management of Applicant's mental disorder. Under Axis IV, the psychiatrist found that Applicant suffered from no psychological or environmental problems that would affect his diagnosis, treatment, or prognosis and was not subject to extraordinary stressors. Under Axis V, the psychiatrist provided a Global Assessment of Functioning (GAF) rating for Applicant. On a scale of 0 to 100, with 0 reflecting severe mental illness and 100 representing asymptomatic mental health, Applicant was given a score of 71-80, which was defined as "[i]f symptoms are present, they are transient and expectable reactions to psychological stressors; no more than slight impairment in social, occupational, or school functioning." DSM-IV-TR, at 34.

In his written remarks, the psychiatrist observed that Applicant had a history of alcohol dependence, continued to use alcohol, and was likely to continue to use alcohol in the future. The physician further speculated that Applicant's use of alcohol might result in future arrests for driving while intoxicated and could result in vulnerability for blackmail, pressure, or coercion. While he found no evidence that the Applicant's physical or mental health had deteriorated as a result of his use of alcohol, the physician diagnosed the Applicant as alcohol dependent and recommended that he abstain completely from alcohol and attend Alcoholics Anonymous meetings at least five times per week. (Ex. 6, at 2-3.) <sup>(2)</sup>

The Applicant made a personal appearance before a DOHA administrative judge in January 1999 to appeal a determination by his military central adjudicating facility that it was not clearly in the interest of national security to grant or continue a security clearance for him. Upon review of all the record evidence available to him, the judge issued a recommended decision that it was clearly consistent with the interests of national security to restore Applicant's security clearance and to employ him in sensitive duties. (Ex. A) The recommendation was not accepted, and Applicant's security clearance was not restored. In September 2001 Applicant was honorably discharged from the Naval Reserve. (Ex. P.)

Applicant has had no additional alcohol-related incidents in the six years since his third and last arrest. In October 1999 and again in August 2002,

Applicant's personal physician, at Applicant's request, provided statements that Applicant exhibited no evidence of physical or psychological dependence upon alcohol (Ex. B; Ex. C) In August 2002, Applicant's physician wrote: "It is my professional opinion that this patient has not had significant alcohol dependency and has shown no sign of it while he has been under our care and in letters of previous documentation we have confirmed this. Again, we re-affirm that information." (Ex. C, at 1.) The physician's assessment was supplemented by a formal diagnosis and prognosis, which concluded that Applicant was not dependent on alcohol and was not likely to develop a dependence on it. The physician reported that Applicant never attended meetings of Alcoholics Anonymous because he was not alcohol dependent and that his intake of alcohol was limited to social events twice a week. (Ex. C, at 2.) A second diagnosis and prognosis of the Applicant, signed and dated August 31, 2002, by a psychotherapist and licensed social worker, also concluded that Applicant presented no symptoms, history, or behavior that would support a diagnosis of alcohol dependence. (Ex. E)

Applicant states that his consumption of alcohol has tapered off as he has grown older and assumed greater responsibilities in his personal and professional lives. In 1997, he purchased a home. (Ex. I.) In 2001 he was awarded a Master of Science degree in management, and he is nearing completion of a Ph.D. degree. (Ex. J; Ex. K) In 2002, he was married and became the step-father of a nine-year-old girl. (Ex. G.; Ex. H.) Applicant's volunteer activities in his community include serving as Treasurer and President of his neighborhood civic league. (Ex. M; Ex. N)

## 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 the 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. Order No. 12,968, *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. *See* Directive, Enclosure 2.

An evaluation of whether the applicant meets the security guidelines includes consideration of the whole person criterion, comprised of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 the participation; (6) the presence or absence of rehabilitation and other 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. Directive, E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Adjudicative Guideline G, Alcohol Consumption, is most pertinent to this case. The security concern raised by Guideline G conduct 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. E2.A7.1.1.

The following conditions and conduct could raise a security concern in this matter and could be disqualifying:

E2.A7.1.2.1.: Alcohol-related incidents away from work, such as driving under the

influence . . . , and

E2.A7.1.2.3.: Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

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

Guideline G identifies conditions that could mitigate security concerns deriving from excessive alcohol consumption. Mitigating conditions relevant in the instant case are:

E2.A7.1.3.1.: The alcohol-related incidents do not indicate a pattern.

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.

E2.A7.1.3.4.: Following diagnosis of alcohol abuse or 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 alcohol 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.

Under the Directive, a decision to grant or to continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall commonsense determination required, the administrative judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact alleged in the SOR. The standard of proof is less than a preponderance of the evidence. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Enclosure 2, Section E2.2.2.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government or admitted by the Applicant raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he is nevertheless security worthy. In *Department of the Navy v. Egan*, *supra*, at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, I interpret the Court's guidance to mean that doubts against an Applicant's security worthiness are to be resolved against the Applicant.

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant admits all of the allegations of disqualifying conduct under Guideline G. A security concern under E2.A7.1.2.1 and E2.A7.1.2.5 is raised by Applicant's admissions that he has consumed alcohol in excess and, on occasion, to the point of intoxication and by alcohol-related incidents away from his workplace in May 1989, May 1991, and March 1997. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness.

In July 1998, a board certified psychiatrist diagnosed Applicant as alcohol dependent within the meaning of Disqualifying Condition E2.A7.1.2.3 and recommended that he abstain completely from alcohol and attend Alcoholics Anonymous meetings "at least five times per week." Applicant acknowledges that in the five years since his diagnosis as alcohol dependent, he has neither abstained from alcohol nor attended meetings of Alcoholics Anonymous.

Applicant's personal physician, a medical doctor, has twice provided his medical judgment that the Applicant is not physically or psychologically dependent on alcohol. His two statements, one in 1999 and one in 2002, antedate the 1998 diagnosis of alcohol dependency made by the military psychiatrist. In 2002, the physician provided a diagnostic assessment which reads as follows: "My professional opinion is that [Applicant] has not shown signs of physical dependence on alcohol." Additionally, a psychotherapist and licensed social worker met with Applicant in 2002 and evaluated his current psychological status and alcohol use. He prepared a formal diagnostic impression of the Applicant which concluded: "[T]he patient does not exhibit or present with alcohol related problem behavior or choice making." Thus, two credentialed medical professionals evaluated Applicant four years after the initial diagnosis of alcohol dependency and found that, in their professional judgment, he was not alcohol dependent.

It is presumed that diagnoses of alcohol dependence by credentialed medical professionals are competent and accurate when they are rendered. When evaluating an applicant's alcohol dependency status, it seems reasonable to assume that the more recent diagnosis by a licensed medical professional is more likely to reflect the applicant's current status. Once a diagnosis of alcohol dependency is rendered, however, it is not likely to change, and one who argues changed circumstances bears a heavy burden of persuasion. Nevertheless, medical research reports instances of spontaneous remission of drinking problems without treatment or counseling. These spontaneous remissions occur most often among younger men as they mature and relinquish the lifestyle behaviors and circumstances which support excessive and dependent use of alcohol. *See* Hermos, J.A. *et al. Predictors of reduction and cessation of drinking in community-dwelling men: Results from the normative aging study*, Journal of Studies on Alcohol, 49, 363-368. In weighing the record evidence of Applicant's current state of alcohol dependence or non-dependence, I conclude that Applicant has presented credible persuasive evidence in refutation of the 1998 diagnosis by a licensed medical professional that he was alcohol dependent, a determination that raised a security concern under E2.A7.1.2.3 of Guideline G and which, under the Guideline, required mitigating behavior specified by E2.A7.1.3.4.

Applicant has a history of youthful over-indulgence and irresponsibility while single and in military service. He presents, in mitigation, evidence that, with marriage, fatherhood, and a serious commitment to his career and the support of his family, he has made significant changes in his

outlook and behavior supportive of sobriety. This falls within Mitigating Condition E2.A7.1.3.3, identified *supra*. While Applicant admits to drinking on occasion, he reports that he drinks in moderation. His last alcohol-related incident occurred more than six years ago. This falls within the scope of Mitigating Condition E2.A7.1.3.2, also identified *supra*. While Applicant's alcohol-related incidents way from work suggested a pattern in his earlier life, he has demonstrated persuasively that the pattern no longer exists in his current life. *See* Disqualifying Condition E2.A7.1.2.1 and Mitigating Conditions E2.A7.1.3.1 and E2.A7.1.3.2. Applicant's statements and behavior demonstrate a commitment to reliable conduct, to using good judgment, and particularly to responsible and lawful drinking.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2 and Adjudicative Guideline G. The Directive requires that the whole person concept as specified in Enclosure 2 be considered, in addition to Guideline G, as appropriate, in making this decision. In applying these criteria from the Directive, I conclude that the nature and seriousness of Applicant's former drinking patterns and his three alcohol-related incidents weigh against him, although his age and immaturity during which this behavior occurred are viewed in mitigation. Applicant's former pattern of apparent overindulgence and irresponsibility has not occurred within the past six years and took place under personal circumstances unrepresentative of his current situation. On the basis of the evidence before me, I conclude that there is a high probability that he will not abuse alcohol in the future. Therefore, Paragraph 1 of the SOR is concluded favorably for the Applicant.

## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Alcohol Consumption (Guideline G): FOR APPLICANT

Subparagraph 1. a: For Applicant

Subparagraph 1. b: For Applicant

Subparagraph 1. c: For Applicant

Subparagraph 1. d: For Applicant

Subparagraph 1. e.: 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 a security clearance for the Applicant. Clearance is granted.

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Joan Caton Anthony

Administrative Judge

1. The Multiaxial System is defined in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, Text Revision (DSM-IV-TR), American Psychiatric Association, Washington, D.C. 2000, as "an assessment on several axes, each of which refers to a different domain of information that may help the clinician plan treatment and predict outcome." The five axes included in the DSM-IV multiaxial classification are: Axis I: Clinical Disorders and Other Conditions That May Be a Focus of Clinical Attention; Axis II: Personality Disorders, Mental Retardation; Axis III: General Medical Conditions; Axis IV: Psychosocial and Environmental Problems; Axis V: Global Assessment of Functioning. *See* DSM-IV-TR, 27-36.
2. Applicant disputed the credentials and diagnosis made by the military psychiatrist in July 1998. The Government presented evidence to show that the physician was board certified in Psychiatry and was therefore qualified to make a diagnosis of alcohol dependency. (Ex. 7.)