

DATE: March 31, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-00249

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of alcohol abuse and dependence, including arrests and convictions for

Driving While Intoxicated, have not been mitigated by sufficient evidence of rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 28, 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on August 11, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on September 16, 2003. On October 16, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on October 24, 2003.

**FINDINGS OF FACT**

The SOR contains six allegations of disqualifying conduct under Guideline G, Alcohol Consumption. Applicant admits all six allegations. His admissions are incorporated as findings of fact.

At the time of his hearing, Applicant was 49 years old and employed by a defense contractor as a program manager. He has worked in telecommunications for defense contractors for 26 years. He has been married three times and divorced twice. He is the father of one adult child.

Applicant submitted copies of his performance appraisals for 2001, 2002, and 2003, letters of commendation, and letters attesting to his good character and strong work ethic. He also submitted a commendation from a federal agency for his work and a letter from the director of an alcohol treatment center confirming Applicant's successful completion of a 26-

week alcohol treatment program in January 2003.

Applicant described himself as a social drinker. He began drinking alcoholic beverages in his early 20s, and, when he drank, he would consume three or four 12-ounce beers and one or two drinks of vodka. He believed that the amount of alcohol he drank was less significant than the frequency and regularity of his drinking patterns.

In December 1994, Applicant attended an office party at which he consumed between six and eight 12-ounce beers and four or five drinks of vodka. He was arrested on his way home from the party and charged with driving while intoxicated. He pled guilty to the charge and was sentenced to six months unsupervised probation before judgment and fined. From December 1994 to March 1995, Applicant participated in and completed an eight-week outpatient program identified as Substance Abuse Self Diagnosis Education.

Applicant continued to drink alcohol, although he drank less than he had earlier. In March 1996, Applicant was diagnosed with congestive heart failure. His physician advised him to abstain from drinking alcoholic beverages. Applicant tried several times to abstain completely from alcohol but was unsuccessful. In June 1999, he voluntarily enrolled in an outpatient alcohol treatment program which provided comprehensive detoxification, rehabilitation, and continued care services. He participated in the program for five months, and during that time took Antabuse, a drug prescribed by the physician treating him. After completing the alcohol treatment program in November 1999, Applicant was able to abstain from alcohol for several years. From 1999 to April 2002, he regularly attended meetings of Alcoholics Anonymous. He did not take Antabuse because he did not believe he needed it in order to refrain from consuming alcohol.

In April 2002, Applicant relapsed and began drinking alcohol again. He stated that he drank again because he had become depressed and worried about his mother's health. During the time when he was drinking again, Applicant was arrested and charged with driving while intoxicated. He was sentenced to one weekend in jail and one year of supervised probation. Additionally, he was ordered to abstain completely from alcohol, to complete, as an outpatient, a 26-week alcohol education treatment program, to attend one meeting of Alcoholics Anonymous each week while on probation, and to attend one meeting of others Against Drunk Driving.

Applicant completed the outpatient alcohol treatment program in January 2003. He is currently under treatment by a physician for alcohol dependency. Each day he takes 250 mg. of Antabuse, as prescribed by his physician. He explained that if he were to drink alcohol while taking Antabuse, he would experience lightheadedness and nausea. He stated that he currently takes Antabuse to control his desire for impulse drinking, although he anticipates that at some time in the future he will no longer need to take Antabuse daily.

## 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 that 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. Or. 12968, *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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline G, Alcohol Consumption**

In the SOR, DOHA alleged under Guideline G that Applicant that Applicant was charged with driving under the influence of alcohol in April 2002 and ordered to complete a 26-week alcohol treatment program, including attendance at Alcoholics Anonymous and Mothers Against Drunk Driving meetings, and sentenced to one weekend in jail and one year of supervised probation (¶ 1.a.); received in 1996 a diagnosis of congestive heart failure and, contrary to the advice of his cardiologist to abstain from alcohol consumption, continued to drink alcohol (¶ 1.b.); entered a five-month outpatient alcohol treatment program in June 1999 (¶ 1.c.); from December 1994 to March 1995 participated in an eight-week substance abuse program (¶ 1.d.); was charged with and pled guilty to driving while intoxicated in December 1994 and was sentenced to six months unsupervised probation before judgment and fined (¶ 1.e.); and is currently under treatment by a physician for alcohol dependency and receiving prescribed Antabuse daily (¶ 1.f.).

Applicant admits all 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 to excess and by alcohol related incidents away from his workplace in 1994 and 2002. 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.

Applicant has been diagnosed as alcohol dependent and is currently under the care of a physician for alcohol dependence, thus raising a security concern under ¶ E2.A7.1.2.3. He has taken part three times in alcohol awareness and treatment programs. He enrolled in a program in 1994 after his first arrest for driving under the influence. After completing the program, he was unable to stop drinking alcohol, although his use of alcohol diminished. In 1996, his physician diagnosed him as suffering from congestive heart failure and advised him to abstain completely from drinking alcohol. Applicant was unable to stop drinking altogether; in 1999 he voluntarily enrolled in a five-month outpatient program that provided comprehensive detoxification and rehabilitation services. While in the alcohol rehabilitation program, he was directed to take Antabuse and to attend meetings of Alcoholics Anonymous. Following completion of the program, he remained sober for almost two years. In April 2002, Applicant relapsed and began drinking again, and was arrested a second time for driving under the influence, thus raising a security concern under ¶ E2.A7.1.2.6.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (¶ E2.A7.1.3.1), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (¶ E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (¶ E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. (¶ E2.A7.1.3.4.)

Applicant's dependence on alcohol has persisted, despite his sincere attempts at treatment and education. His alcohol-related incidents indicate a pattern of behavior. His most recent arrest for driving under the influence of alcohol occurred in 2002, two years after he completed his security clearance application, and is of recent occurrence. Thus, neither mitigating factor E2.A7.1.3.1 nor E2.A7.1.3.2 applies to Applicant's case.

Applicant has stated he has a strong desire to live a productive and alcohol-free life. To his credit, Applicant has taken positive steps to change his behavior and has chosen sobriety as his goal, demonstrating that mitigating factor E2.A7.1.3.3 is applicable. Applicant is under the care of a physician for alcohol dependence, and he takes Antabuse daily to control his desire for impulse drinking. Over one year ago he successfully completed a 26-week outpatient alcohol treatment program. He would appear to be on the way to overcoming his alcohol dependence.

Applicant is aware that even though he has completed alcohol treatment programs in the past and embraced sobriety, he has relapsed into drinking within approximately two and one half years of outpatient treatment. He continues to be treated by his physician for alcohol dependence and he could offer no date when his need for Antabuse might end. While it is hoped that Applicant will pursue a life free of involvement with alcohol, it is too soon to tell whether his behavior changes signal security worthiness that can be relied upon by the government.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the Guideline G allegations in the SOR are concluded against the Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

### **DECISION**

In light of all of 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 Applicant. Clearance is denied.

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**Joan Caton Anthony**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.