

DATE: January 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03043

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Esquire

McKenna, Long and Aldridge

**SYNOPSIS**

The Applicant abused alcohol for several years before March 2001. In March 2001 he was arrested for Driving Under the Influence. He has been abstinent for over two years, has successfully attended outpatient alcohol treatment, has a favorable prognosis from the same doctor who diagnosed him as alcohol dependent, and has considerable favorable mitigating evidence. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On February 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 4, 2003, and requested a hearing. The case was received by the undersigned on August 19, 2003, and a Notice of Hearing was issued on September 12, 2003.

A hearing was held on September 18, 2003, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted eight exhibits. The transcript was received on September 29, 2003.

**FINDINGS OF FACT**

The Applicant is 45, married and has a Master of Arts degree in applied mathematics. He is employed by a defense contractor as a Deputy Team Lead, and he seeks to retain a Top Secret-level DoD security clearance previously granted

in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess.

The Applicant first began using alcohol to excess when he was attending college in the late 1970s. After he received his Master's degree and married, his alcohol use decreased.

In about 1993 the Applicant began traveling frequently for business. During these business trips his drinking increased markedly. He primarily drank when he was out of town and did not drink to excess at home. During the 1990s, on two occasions, the Applicant was talked to informally about his drinking by fellow employees. (Transcript at 34-37.)

The Applicant continued this pattern of excessive drinking while traveling for business until March 6, 2001. On that date the Applicant was arrested for Driving While Under the Influence of Alcohol. The Applicant was granted a deferred prosecution and was ordered to attend a Alcohol Information School. (Government Exhibits 2 and 3.) The Applicant stopped drinking immediately after his arrest.

Instead of attending an Alcohol Information School, the Applicant elected to go into an intensive outpatient alcohol treatment program at a hospital. The medical director of the chemical program, a doctor, diagnosed the Applicant as being alcohol dependent when he entered treatment in July 2001. (Government Exhibit 4, Transcript at 21-24.) The Applicant testified about his treatment:

The program had three parts to it. The first part was an intensive, I think you had to have 80 hours over two months. I entered the [hospital] outpatient program which met four days a week, Monday, Tuesday, Thursday, Friday, for eight weeks, three hours a night. We got there about six and finished by nine. After that I completed that, the next step was a six month period where you had to have weekly aftercare. There was a two hour meeting that I would attend at home on a weekly basis and then after six months, you had to have a monthly interaction and I used the [hospital] aftercare program on a monthly basis. (Transcript at 20-21.)

The medical director of the program, and the continuing care coordinator, submitted statements on the Applicant's behalf. The medical director states, "As [the Applicant] has more than two years of sobriety, his prognosis of staying sober is excellent." (Applicant's Exhibit F.) The continuing care coordinator writes, "[The Applicant] entered our program on July, 2001, has stayed closely connected to [the hospital] since that time and has had continuous sobriety. [The Applicant] is very comfortable with his sobriety and is very active in his continuing care group. He is working a strong recovery program and it is a pleasure to be able to participate in his recovery." (Applicant's Exhibit G.) The Applicant intends on going to aftercare on a monthly basis. He is comfortable with his sobriety and with being a non-drinker.

#### Mitigation.

Several of the Applicant's co-workers, and current and former supervisors, all senior executives in the defense industry, submitted written statements on the Applicant's behalf. All of these individuals recommend the Applicant for a position of trust and responsibility.

The Director, Plans and Resources, states, "[The Applicant] is a very good team player, with a strong ethical foundation and demonstrated ability to comply with both standard engineering processes and company rules and regulations." (Applicant's Exhibit A.)

The Applicant's supervisor when he was arrested also submitted a statement. This Director, Integrated Defense Systems, a retired Air Force colonel, states:

[The Applicant] did not hesitate in reporting his DUI to me, nor did he make any excuses. He fully accepted responsibility for his conduct. He immediately decided to stop drinking, and to pursue a program which would help him address his DUI and his drinking. I have not seen [the Applicant] take a drink since the DUI. It is well known that he is no longer drinking. [The Applicant] has not had any difficulty in dealing with his decision to stop drinking. He understands the serious nature of his problem, and takes his commitment to sobriety just as seriously. (Applicant's Exhibit B.)

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline G (Alcohol consumption)

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

- (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;
- (3) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

#### Conditions that could mitigate security concerns:

- (1) the alcohol related incidents do not indicate a pattern;
- (3) positive changes in behavior supportive of sobriety;
- (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, 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 treatment program.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in act of alcohol abuse or dependence that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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, and been involved in an alcohol related incident (Guideline G).

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that, since he entered treatment in 2001 after his single alcohol related arrest, the Applicant has eliminated alcohol consumption. He has successfully completed an alcohol rehabilitation program and has a favorable prognosis from the doctor who is the medical director of the treatment program. The Applicant's compelling testimony shows that his alcohol abuse was situational in nature, that he is determined to remain sober, and that he has learned how to deal with the problems he has with alcohol. Accordingly, mitigating conditions 1, 3 and 4 apply. In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant shows considerable evidence of rehabilitation (Factor f), and, under the circumstances of this case, the probability that the Applicant will return to his drinking ways are virtually nil (Factor i).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for 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: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: 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 the Applicant.

Wilford H. Ross

Administrative Judge