

DATE: November 24, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03613

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's alcohol abuse has resulted in at least five alcohol-related arrests and convictions for Driving Under the Influence (DUI), the first taking place in 1987 and the last in 1999. Evidence of Applicant's alcohol rehabilitation is not sufficient to mitigate his alcohol related history. Additionally, in a signed, sworn 1999 Security Clearance Application (SCA) supplied to the Government, Applicant knowingly failed to disclose that he received five DUI convictions; he only identified one. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 12, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *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, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated December 31, 2002, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On June 10, 2003, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on July 9, 2003. The case was assigned to me on July 22, 2003.

Department Counsel offered 11 documentary exhibits (Exhibits 1-11). Applicant's three page response to the FORM has been identified and entered into the record as Exhibit A.

## FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In his response to the SOR, Applicant admits all of the allegations. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 41 years old and married. He is employed by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline G - Alcohol consumption)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant has consumed alcohol since approximately 1983, when he was 21 years of age. He continues to drink alcohol. At one point in time, Applicant would consume as many as 36, 12 ounce, bottles of beer in one night. During this period he was also experiencing blackouts, up to a frequency of two times a month (Exhibit 6). Applicant's drinking has resulted in five alcohol related incidents where he was arrested and found or pled guilty for DUI. They occurred in 1987, 1989, 1996, 1998, and 1999.

The first two DUI arrests in 1987 and 1989 resulted in Article 15s of the Uniformed Code of Military Justice (UCMJ) (Exhibits 9 and 10). The 1987 DUI also resulted in Applicant's reduction in grade to E-4. Because of the third arrest in 1996, Applicant paid a fine and received 12 months probation (Exhibit 8). In 1998, Applicant was arrested a fourth time for DUI. He paid a fine and was sentenced to alcohol and drug screening (Exhibit 7). Finally, in 1999, Applicant was arrested for a fifth time for DUI. For this arrest, he paid a fine and was sentenced to confinement in jail (Exhibit 6).

### **Paragraph 2 (Guideline E - Personal conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished untruthful information to the Government. Applicant completed a signed, sworn Security Clearance Application (SCA) on October 6, 1999. Question #24 asks, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered "Yes" to question #24, and he listed one DUI arrest in 1999. As discussed above, Applicant was also arrested for DUIs in 1998, 1996, 1989, and 1987. Applicant clearly failed to give a complete and truthful answer to this extremely significant question (Exhibit 5).

Also, while it was not alleged in the SOR, when Applicant met with a Defense Security Service agent and created a signed, sworn statement in 2001, he talked about the arrests in 1999 and 1996, but failed to furnish information regarding the other three DUI convictions. He stated, "The only time I have had a problems as a result of my drinking is the two arrests listed above." (Exhibit 6).

### **Mitigation**

In his response to the FORM, Applicant discussed the fact that he is raising his two children, he is remarried and that he is changing his life for the better (Exhibit A). There was no mention about his abstaining from consuming alcohol.

## 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)**

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.

Condition that could raise a security concern and may be disqualifying include:

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 use; (E2.A7.1.2.1.).
5. Habitual of binge consumption of alcohol to the point of impaired judgment; (E2.A7.1.2.5.).

Condition that could mitigate security concerns include:

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

### **Guideline E - Personal Conduct:**

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Conditions that could raise a security concern and may be disqualifying also include:

1. The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;(E2.A5.1.2.2.).

Conditions that could mitigate security concerns include:

None.

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 acts of alcohol abuse and conduct 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 Applicant has used alcohol to excess (Guideline G) and that he furnished untruthful information to the Government (Guideline E). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

**Paragraph 1 (Guideline G - Alcohol Consumption)** Applicant's alcohol consumption has resulted in five alcohol related incidents from 1987 to 1999. It is reasonable to conclude Applicant was drinking heavily and these incidents are indicative of his high level of alcohol consumption. As discussed above, at one point Applicant consumed as many as 32 beers at one sitting and suffered up to two blackouts a month.

As to the amount of alcohol he now consumes, Applicant acknowledged in a statement to the Defense Security Service, signed under oath in 2001, that he was an alcoholic, and he stated, "I have not drank any alcoholic beverage, to include beer, since my arrest in March 1999." (Exhibit 6). However, in interrogatory responses that he completed in October 2002, he indicated that he currently consumes about 6 glasses of beer a month and that he intends to continue drinking alcohol in the future (Exhibit 11).

The Government established by substantial evidence that Applicant was involved in alcohol-related incidents away from work, five DUIs, which is Disqualifying Condition (DC) 1. He was involved in habitual or binge consumption of alcohol to the point of impaired judgment up until at least 1999, which is DC 5. Applicant continues to consume alcohol on a regular basis, despite stating on May 2001 that he has not been consuming alcohol, nor will he in the future. Applicant has a demonstrated history of drinking to excess, and he presents no credible evidence to support a conclusion he has reformed his habit. No mitigating Condition (MC) applies. Paragraph 1 is concluded against Applicant.

**Guideline E (Personal conduct)** The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

The Government has established by substantial evidence that Applicant was arrested and convicted of five DUIs. Applicant failed to list four of the five arrests and convictions on his SCA. With respect to Guideline E, the evidence proves that Applicant intentionally provided false material information to the Government in response to a question on the SCA that he executed in May 1999.

In reviewing the DCs under Guideline E, I conclude that DC 2 applies because of the false information that Applicant provided in his SCA. Applicant has not mitigated this allegation. Also, Applicant's failure to furnish information to the Defense Security Service agent regarding three of the five DUI convictions must be considered adversely against Applicant. Paragraph 2 is found against Applicant.

On balance, it is concluded that Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

### **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: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

### **DECISION**

In light of all 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 the Applicant.

Martin H. Mogul

Administrative Judge