

DATE: November 14, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05412

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's excessive alcohol consumption (drinking to the point of intoxication and blackouts several times weekly) for two years before seeking treatment in September 1999 is mitigated by three years of moderate alcohol use since participating in the treatment program. Also considered favorably was evidence his parents have never consumed alcohol, and Applicant did not consume alcohol before attending college. Applicant voluntarily sought treatment when he realized his drinking was out of control; and voluntarily disclosed his alcohol treatment on the SF 86 (*Security Clearance Application*) he completed in January 2001. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 23, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR in writing on May 19, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on July 1, 2002. On August 27, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of four exhibits. Applicant called one witness and testified on his own behalf. A transcript (Tr. ) of the proceedings was received on September 6, 2002.

### **FINDINGS OF FACT**

The Statement of Reasons charges Applicant with excessive alcohol consumption from approximately 1995 to February

2002, with receiving "alcohol treatment" from September to November 1999, with being diagnosed as alcohol dependent during the same time period, and with continuing to drink after receiving treatment for alcohol dependence. In his answer to the SOR, Appellant admitted each of the allegations, but denied the excess alcohol consumption continued over the time period alleged, denied he was consuming alcohol at the time he was discharged from the treatment program, and denied receiving medical advice about continuing the treatment program. He asserted he had moderated his alcohol consumption since participating in the program.

I accept Applicant's admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following findings of fact:

Applicant is a 25-year-old computer engineer who began working for his current employer--a DoD contractor--in January 2001 while completing his degree in a cooperative education program. He has never held a security clearance and his current application has been held in abeyance pending resolution of the allegation of excessive alcohol consumption.

When Applicant began college in September 1995, he had never consumed alcohol, and had not been around people who did. His parents have never consumed alcohol and have never kept alcohol in their home (Tr.27). Shortly after commencing his pursuit of higher education, Applicant joined a fraternity and began consuming alcohol. The rate at which his alcohol consumption progressed from nil to drinking to the point of intoxication and blackouts several nights weekly is not disclosed by the record. However, by September 1999, Applicant, by his own admission, was drinking 7-8 beers nightly, 6 nights a week. His grades were suffering, he was gaining a lot of weight, and he was sick a lot (Tr. 32, 53). These problems and concerns caused Applicant to voluntarily seek treatment in September 1999. By this time, he had been consuming large quantities of alcohol regularly for more than two years (Tr. 26). At his administrative hearing, he recalled how excessive alcohol consumption altered his outlook on life and motivated him to seek treatment:

I felt at the time that my drinking was out of control. I was 22 years old at the time and it was affecting me, it was affecting my friends, family, and my brother<sup>(1)</sup> thought I was kind of a mess. So it got to the point where I said - - I made a decision for myself that I was going to get some help. (Tr. 21).

...I made a conscious, voluntary decision to get help and I just don't think. I'm every going to be back to that point ever again, because I like my job. I like -people like me more and I'm more awake. There's just too many bad things that could happen if I ever started drinking at that kind of level again (Tr, 30).

The course of Applicant's alcohol treatment initially involved receiving counseling from "Dr". X<sup>(2)</sup>, a counselor at the college Wellness Center. After a few counseling sessions, Dr. X referred Applicant to an outpatient group therapy program in which he participated from September to November 1999. His participation consisted of attending group therapy sessions twice weekly (Tr. 22). The treatment records from this program (Govt. Exh. 3) indicate Applicant was given a "Provisional Diagnosis" and a "Current Psychiatric Diagnosis"(DSM IV - 303.90) of Alcohol Dependence<sup>(3)</sup>. Applicant lost interest in the group therapy sessions in November after he began to feel the other participants were unable to relate to his situation (Tr. 22). When he went to talk with the "main facilitator" about leaving the program, she was not there because she has been seriously injured in a car accident. The program stopped operating a short time later (Tr. 28-29). Applicant denies leaving the treatment program against medical advice (Tr. 40). He was not drinking when he left the program (Tr. 25-26). During about the same time period, Applicant had attended four AA meetings.

After attending the treatment program in the fall of 1999, Applicant resumed moderate alcohol consumption the following semester, but has never again abused alcohol as he had during the two years before seeking treatment. In January 2000, he decided "that this was going to be a new me" (Tr. 23). His grade point average (GPA) for the semester he participated in the treatment program was 2.1. The following semester his GPA improved to 3.1. During the semester after treatment, Applicant admits he may have consumed one or two beers week, but never drank to the point of intoxication (Tr. 43-44). The following summer Applicant lived with his parents in a different part of the state from where he attended college; he did not consume alcohol at home and was not around friends with whom he had drunk in college (Tr. 45). During the fall semester of 2000, Applicant admits being intoxicated one Friday night at a fraternity party in September. He did not drink more than three beers a week the remainder of the semester (Tr. 47-48). In January 2001, Applicant moved back with his parents and began working for the DoD contractor who is his current employer

(Tr. 49-50). Thereafter, he moderated his alcohol consumption even more (Tr. 51). He stopped drinking except for those occasions when he would meet a friend and have a beer with dinner (Tr. 50).

Applicant lived with his parents until March 2002 when he moved out and got his own apartment. He is much closer to his parents now than he has been in the past; however, he has never disclosed his bout of excessive alcohol consumption to them, and to the best of his knowledge and information, they have never been made aware of their son's indiscretion. Because he knows they would have disapproved and been very upset, he would rather they not learn of their son's indiscretion (Tr. 40, 45-46, 54). Applicant was last intoxicated in May 2002 when he was celebrating his graduation from college with some friends. As stated above, his current/recent alcohol consumption is limited to the occasions when he meets a friend for dinner. He does not keep alcohol in his apartment and realizes the importance of having a security clearance, and what is at stake for him if he abuses alcohol:

I'd love my job even more if I had a clearance because at least once a week there's something, some bit of information that could just - - that I can't get to because I don't have a clearance and it kind of makes my job harder than I think it should be (Tr. 53).

I don't want to jeopardize anything, my job, my physical well-being, people I associate with, most of them aren't heavy drinkers (Tr. 54).

When asked why he drank excessively for two years before seeking treatment, he explained he drank because of stress, being unhappy and believing it would be more fun when he started out (Tr. 53).

During the time Applicant was consuming alcohol at the rate described above, he was never involved in any alcohol-induced or alcohol-related misconduct: no fights, no arrests, no DUI's (Tr. 32). Nor did the prior consumption of alcohol cause him to miss classes or miss working at his part-time job (Tr. 34).

When Applicant completed the SF 86 (Security Clearance Application ) in January 2001, he answered "yes" to question 30 which asked if his use of alcoholic beverages had resulted in any alcohol-related treatment or counseling within the last 7 years (Govt. Exh. 1). The Defense Security Service special agent--whom Applicant called as his witness--testified the Government became aware of Applicant's episode of alcohol abuse and alcohol-related treatment only because he disclosed this information on his SF 86 (Tr. 58-60).

The record does not include any information about Applicant's professional skills or aptitude.

## POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the national interest. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact's alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

### ALCOHOL CONSUMPTION

#### (Guideline G)

**The Concern:** Excessive alcohol consumption often lead to the exercise of questionabel judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

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

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

E2.A7.1.2.6. Evaluation of alcohol abuse or alcohol dependence by a licenced clinical social worker who is a staff member of a recognized alcohol treatment program.

**Conditions that could mitigate security concerns include:**

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

**Burden of Proof**

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

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 raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

**CONCLUSION**

Having considered the record evidence under the appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guideline G. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2., as well as those referred to in the section dealing with the Adjudicative Guidelines.

A security concern is raised by Applicant's consuming alcohol to the point of intoxication and blackouts several times weekly before seeking alcohol-related treatment in September 1999--during which he was evaluated as alcohol dependent by a licensed clinical social worker. 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.

Applicant's excessive alcohol consumption and his alcohol dependent evaluation have been mitigated by the positive changes in his behavior supportive of sobriety. By seeking help early in his downward spiral into the world of alcohol abuse, Applicant demonstrated considerable insight and intelligence in recognizing the danger signs. He sought help because he realized he was going someplace he did not want to go, and now that he has directed his time and energies in a different direction, he knows he does not want to go back to the place where alcohol had taken him. Sobriety and abstinence have been the more prevalent condition in Applicant's life. His parents have never used alcohol, and he did not drink alcohol before attending college. Now that he is back living in close proximity to his parents, and removed from the environment where the abuse occurred, the prevalent condition of sobriety and abstinence--or something closely approximating it--have again become the norm.

While Applicant has continued to consume alcohol, his rate of consumption since November 1999 is at a much more moderate level. He typically drinks only an occasional beer with dinner; he seldom drinks to the point of intoxication, and he has not experienced a blackout since participating in the treatment program. In addition to the discipline he has imposed on himself; there are other powerful incentives for him to maintain this moderate level of consumption. He knows he will jeopardize his job and future with his current employer if he abuses alcohol and does not get a security clearance, or if he is granted a clearance and then loses it because of excessive alcohol consumption. Because Applicant enjoys his job and enjoys life more since he has been getting up every morning without a hangover, it appears very unlikely he would revert to the pattern of abuse of 1999. Applicant currently enjoys a closer relationship with his parents that would likely be jeopardized if he abused alcohol and in so doing, revealed his earlier years of alcohol abuse-

-about which they are not currently aware.

Finally, favorable consideration has been given to Applicant's voluntarily seeking alcohol treatment before he was arrested for driving while intoxicated, or for other alcohol-related misconduct. Not only did he voluntarily seek treatment, Appellant has been consistently honest and forthright in disclosing the full extent of his problem during his background investigation. While the current Adjudicative Guidelines do not specifically recognize voluntarily seeking treatment as a mitigating condition, according favorable consideration to an individual who admits his alcohol problem and seeks help **before** experiencing adverse legal consequences--that would/could physically endanger himself and others--is a common sense policy. It is far better to encourage an individual to come forward and seek treatment, than to stigmatize an effort that could save his life and the lives of others. Guideline G is concluded for Applicant.

### **FORMAL FINDINGS**

Formal findings as required by Section 3, Paragraph 7, of enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Guideline G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Applicant and his brother are fraternal twins and appear to have a close relationship (Tr. 54). His brother's concern and disapproval was a motivation for him to stop drinking.
2. Although Applicant refers to this counselor as "Dr," it does not appear he was a medical doctor, See Government Exhibit 4.
3. There is no indication in the treatment records (Govt. Exhs. 3 and 4) Applicant was ever diagnosed by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) as that term is defined in the Directive. Rather, it appears the "diagnosis" was not a diagnosis, but an evaluation rendered by a "licensed clinical social worker."