

DATE: April 7, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06580

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

Gerald C. Baker, Esq.

**SYNOPSIS**

Applicant's prolonged and episodic abuse of and dependence on alcohol has caused significant damage to his health and well-being. He continues to drink alcohol, raising serious concerns about his security worthiness. 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 July 16, 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 14, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on October 27, 2003. On November 18, 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 December 2, 2003.

**FINDINGS OF FACT**

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

At the time of his hearing, Applicant was 61 years of age, married, and the father of an adult child. In the 1960s he served for four years in the Marine Corps. He was a law enforcement officer for 22 years before retiring in 1992. After retirement he was unemployed for several months. He worked on carpentry and repair projects for family and friends. In February 1993 he took a full-time job in the quality control and parts division of an automobile dealership, where he worked for approximately three years. He was unemployed for a four-month period in 1996, and then took a job as a truck driver and carpenter with a company, where he worked for over three years. He was unemployed for about nine months in 1999/2000. In 2000 he took a position as a security guard with a government contractor. In June 2000 he

completed an application for a security clearance.

On December 21, 1999 Applicant was hospitalized for delirium tremens. He remained in the hospital for two weeks. On January 4, 2000, he became agitated and combative, and, as a part of his treatment, he was evaluated the next day by a staff psychiatrist. The psychiatrist diagnosed Applicant as suffering from major depression, a psychotic mental disorder, known as alcoholic encephalopathy, (3) alcohol dependence, alcoholic peripheral neuropathy, (4) and alcoholic liver disease. (5)

Applicant admits to a long history of heavy drinking. After his retirement as a law enforcement officer and before he went to work for the automobile dealership in 1993, he drank, by his estimation, one half pint of hard liquor a day. Applicant's alcohol consumption increased to over a pint of hard liquor a day when he was unemployed in 1999. During this time, he was depressed, worried about his health problems and those of his wife, and thinking a lot about a time when he was a policeman and, in self protection, either he or his partner shot and killed a suspect. (6)

Applicant stated he began drinking beer when he was in the military and did not begin to drink heavily until the 1980s. He customarily drank at home alone or with his wife, usually in the evening. Either he or his wife purchased the alcohol he drank. He continues to drink, although his physician has advised him to abstain permanently from alcohol.

Applicant has never been referred for alcohol treatment or advised to attend meetings of Alcoholics Anonymous. He has not been arrested for driving under the influence of alcohol, nor has he been reported for alcohol-related incidents at work. As a security guard, charged with protecting a federal workplace, he is authorized to carry a firearm while on duty. He is aware that his use of alcohol has seriously damaged his health. He stated his most recent use of alcohol occurred two days before his hearing, on November 16, 2003.

Applicant's Exhibit E was a letter from his supervisor attesting that he was an exemplary employee, always prepared and punctual, who performed his duties at the highest level of competence.

Applicant's Exhibit D was a notarized one-page letter, dated 11-26-02, on typed letterhead. The letter, signed by Applicant's physician, reads, in its entirety, as follows:

TO WHOM IT MAY CONCERN.

[Applicant] HAS BEEN MY PATIENT ALMOST FOR FIVE YEARS

HE STOPED DRINKING SINCE DECEMEBR 1999 AND AT RPESENT HE IS CAPABLE TO EPRFORM HIS JUB PROPERLY.

HE INDICATED THAT SOME TIME DRINKS ONE OR TWO BEERS

I BELIEVE AT THIS POINT HE IS MENTALY AND PHYSICALY ALERT AND STABLE. (7)

### **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 (DC) and mitigating conditions (MC) 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 in ¶ 1.a. that Applicant had been hospitalized and diagnosed with alcoholic encephalopathy, alcohol dependence, alcoholic peripheral neuropathy, and alcoholic liver disease. DOHA alleged in ¶ 1.b. that despite these diagnoses, Applicant continued to drink beer, on occasion, up to November 26, 2002. Applicant admits both allegations of disqualifying conduct under Guideline G. Security concerns under ¶¶ E2.A7.1.2.3 and E2.A7.1.2.5. are raised by Applicant's admissions and the record evidence. 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 as suffering from physical and mental disabilities brought on by excessive use of alcohol, thus raising a security concern under ¶ E2.A7.1.2.3 of Guideline G. He acknowledges habitual excessive alcohol consumption over many years that has impaired his judgment and physical functioning, raising a security concern under ¶ E2.A7.1.2.5. of Guideline G. While Applicant never sought and was never directed to undertake treatment for his alcohol dependence, the consequences of his excessive consumption of alcohol are reflected in the medical diagnoses he received in January 2000. He has been advised to abstain from drinking alcohol by his physician, and yet he continues to drink.

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 indicates a lifestyle and pattern of behavior. He continues to use alcohol despite his physician's counsel to abstain, and he has not sought inpatient or outpatient rehabilitation or treatment. While the record does not indicate alcohol-related incidents at work or away from work, the diagnoses he received in January 2000 are the result of prolonged and episodic excessive use of alcohol, leading to the commonsense conclusion that mitigating factors E2.A7.1.3.1, E2.A7.1.3.2, E2.A7.1.3.3 and E2.A7.1.3.4 do not apply to Applicant's case. <sup>(8)</sup>

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

### **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.
3. We take administrative notice that alcoholic encephalopathy, also known as Wernicke-Korsakoff syndrome, is a brain disorder involving loss of specific brain function caused by a thiamine deficiency. The thiamine deficiency occurs when heavy alcohol use interferes with the body's metabolism of thiamine. Wernicke-Korsakoff syndrome includes two separate sets of symptoms. Wernicke's encephalopathy involves damages to multiple nerves in both the central nervous system (brain and spinal cord) and the peripheral nervous system in the rest of the body. Korsakoff syndrome, or Korsakoff psychosis, tends to develop after Wernicke's symptoms diminish and is manifest by memory impairment. *See* Exhibit 3 for Administrative Notice.
4. We take administrative notice that alcoholic neuropathy is a disorder manifest by decreased nerve functioning and is caused by excessive drinking of alcohol, usually over a prolonged period of 10 years or more. *See* Exhibit 4 for Administrative Notice.
5. Applicant stated his physician told him after he was released from the hospital that he had no liver damage as a result of his drinking.
6. In testimony Applicant stated that he shot the suspect. The psychiatric report, based upon the psychiatrist's interview with Applicant, states that Applicant's fellow police officer shot and killed the suspect.
7. Spelling, punctuation, and syntax as in original.
8. In ISCR Case No. 02-15358 at 4 (July 22, 2003), DOHA's Appeal Board stated that the record evidence in a case supported a conclusion that episodic abuse of alcohol raised security concerns under Guideline G. The Appeal Board also stated: "Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs in the absence of a diagnosis of alcoholism or alcohol dependence. Nothing in the Directive precludes consideration of the

security significance of episodic alcohol abuse that falls short of habitual or binge drinking. Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs during off-duty hours."