

DATE: January 7, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29400

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's alcohol abuse has resulted in at least three alcohol-related incidents, the first taking place in 1995 and the last in 2001. Applicant continues to consume alcohol to the point of intoxication. Evidence of Applicant's alcohol rehabilitation is not sufficient to mitigate his alcohol related history. Additionally, in a signed, sworn 2002 Security Clearance Application (SCA) supplied to the Government, Applicant failed to disclose his alcohol related arrest and conviction in 2001. Clearance is denied.

**STATEMENT OF THE CASE**

On January 17, 2003, 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 February 24, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On June 18, 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 no response to the FORM. The case was assigned to me on September 3, 2003.

Department Counsel offered nine documentary exhibits (Exhibits 1-9). Applicant has offered no documentary evidence into the record.

## 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 has admitted allegations 1.a., 1.b., 1.c., and 1.d., and denied 2.a. and 2.b. 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 26 years old. 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.

Applicant has consumed alcohol since approximately 1994, when he was 17 years of age. When Applicant was in college, he consumed alcohol, generally during the weekends, between four

and eight beers on each occasion, and he would become intoxicated approximately one time each weekend. Applicant continues to consume alcohol (Exhibit 5).

In 1995, Applicant was found guilty of Underage Drinking and ordered to pay a fine of \$186. As a result of this, the university that he was attending ruled that he violated its alcohol policy and required him to complete an alcohol education class. In 1996, he was charged by his university with violating its alcohol policy for possession and consumption of alcohol, and he was fined \$90. Finally, in 2001, Applicant was arrested and ultimately plead guilty to Willful, Reckless Operation of a Vehicle. Initially, he was also charged with Driving While Intoxicated, when his blood alcohol registered .10% on a Breathalyzer field test. That charge was not filed after a hospital test of his blood alcohol showed that the blood alcohol level was .084%, because that amount was under the legal limit for Driving While Intoxicated. Applicant was fined \$123, and he was ordered to complete six months of supervised probation. The judge in the case sentenced him to nine hours of DUI classes, because he believed that alcohol consumption was a significant factor in this incident (Exhibits 5 and 9).

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

The Government alleges in this paragraph that Applicant is ineligible for a clearance because he furnished untruthful information to the Government. Applicant completed a signed, sworn Security Clearance Application (SCA) on April 9, 2002. 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 the one alcohol related arrest in 1995.

Applicant did not discuss his arrest in 2001. He has stated that he had not been charged with an alcohol related offense on this occasion, so he contended that he did not have to list this arrest on his SCA (Exhibit 3).

## 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.

Conditions 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:

Condition 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 three alcohol related incidents, the most recent in 2001. While he was ultimately not charged with an alcohol related offense in the 2001 incident, it is reasonable to conclude, based on the judge's assessment and the amount of alcohol in Applicant's bloodstream, .084%, that Applicant's alcohol consumption was a significant factor in his arrest and conviction.

As to the amount of alcohol he now consumes, Applicant acknowledged in a statement to the Defense Security Service, signed under oath in 2002, that he currently, he drinks one time a week, usually on the weekend, and generally between four and eight beers at each session (Exhibit 5).

The Government established by substantial evidence that Applicant was involved in alcohol-related incidents away from work, which is Disqualifying Condition (DC) 1. He has been involved in habitual or binge consumption of alcohol to the point of impaired judgment, which is DC 5. Applicant continues to consume alcohol on a regular basis, consuming as many as four to eight beers during at least one session each week. 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.

While technically, Applicant was not charged with an alcohol related offense in 2001, the Government has established by substantial evidence that Applicant's arrest and conviction was related to his driving after he had consumed alcohol.

With respect to Guideline E, by Applicant failing to list this arrest and conviction on the 2002 SCA, he has intentionally provided less than complete information to the Government.

In reviewing the DCs under Guideline E, I conclude that DC 2 applies because of the incomplete information that Applicant provided in his SCA. Applicant has not mitigated this allegation. 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.

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