

DATE: August 1, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29608

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

David E. McGehee, Esquire

**SYNOPSIS**

Applicant's continued alcohol consumption (frequently to the point of intoxication), after being diagnosed as alcohol dependent in 1991 and told to abstain from alcohol, and after suffering two DUIs, two divorces, two clearance hearings, and a foreshortened military career, casts serious doubt on his judgment, reliability, and trustworthiness and suggests that he is at great risk to return to even higher levels of consumption. Clearance denied.

**STATEMENT OF THE CASE**

On 23 January 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 24 February 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me, and set for hearing on 31 March 2003. On 2 April 2003, I issued a Notice of Hearing for a hearing on 30 April 2003.

At the hearing, the government presented five exhibits--admitted without objection--and no witnesses; Applicant presented one exhibit--also admitted without objection--and the testimony of five witnesses, including himself. DOHA received the transcript on 12 May 2003.

**FINDINGS OF FACT**

Applicant admitted the factual allegations of the SOR except subparagraphs 1.e. (because he did not believe that DOHA issued his 1993 SOR in reaction to his continued drinking), 1.i. (because he did not believe his abusive drinking continued into August 1998), and 2.a. (because he did not believe his alcohol problems were indicative of untrustworthiness or unreliability). Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 48-year-old employee of a defense contractor--seeks to retain the access to classified information he has

held since approximately June 1994. He served as a commissioned officer in the U.S. Army for 13 years during which time he also had a clearance. He is a diagnosed alcohol-dependent who continues to drink, contrary to the medical advice given to him in May 1991.

In April 1991, Applicant was diagnosed as alcohol-dependent<sup>(2)</sup> by an interdisciplinary team<sup>(3)</sup> at an Army residential treatment facility (RTF) because he met five of nine (a minimum of three were required) diagnostic criteria for dependence,<sup>(4)</sup> and the symptoms had persisted for at least a month, or occurred repeatedly over a longer period of time.<sup>(5)</sup>

Applicant had been ordered to the RTF by his superior officer because of his 28 March 1991 arrest, on post, for operating a vehicle while drunk. Applicant had a .22% B.A.C. when arrested. He had consumed 15-20 beers over several hours at the officers' club, before going to the NCO (non-commissioned officers') club--which was open later--to drink some more; he was stopped by military police after leaving the NCO club. The night of the arrest was part of a two-year pattern for Applicant at his duty station: he would drink a 12-pack of beer at home before heading out to the Officers' Club to drink until it closed. On the night of his arrest, however, he had not drunk at home before going out.

Applicant began as an underage drinker in 1972, but did not experience any increase in his drinking until he entered the Army in 1979. The Army culture was more tolerant of drinking, and Applicant was quickly to the point where he was drinking a 12-pack on the weekends and some during the week. While stationed in Germany from 1980-1983, he progressed to the point where he was drinking a case of German beer per week. Back in the states, from 1983-1986 he returned to his old habit of drinking a 12-pack on weekends, some during the week. When he was assigned to post-graduate school, his wife decided that she would rather live at home than keep moving with Applicant, and his drinking became a lot heavier. It reached its peak at his next duty station, where his daily drinking reached 12 beers plus, and culminated with his arrest and order to the RTF.

Applicant's progress at the RTF was not unusual for an individual ordered into treatment (as opposed to seeking it on his own). Although he acknowledged being an alcohol abuser, he resisted the diagnosis of alcohol dependent, and initially declined to take antabuse during his treatment. However, he changed his mind and began taking the medication. As he progressed through treatment, he first began to acknowledge that he was alcohol dependent based on his admitting that he met diagnostic criteria 1, 3, and 4. By the time he had completed treatment, he ostensibly accepted that he was alcohol dependent and could not drink. He attended AA during his treatment, albeit not as frequently as his treatment team recommended. During his treatment, his participation assessment ranged from 3-4 during the early stage,<sup>(6)</sup> and progressed to 7 at discharge. He got as far as working, but not completing, step 3 in AA. At the end of May 1991, he was discharged as having successfully completed the program, conditioned on participating in the Army-required aftercare program for one year, continuing to attend AA five times per week, and continuing to take antabuse. The closing note from treatment noted Applicant's potential problem areas:

The most crucial areas requiring aftercare assistance toward sobriety maintenance are: 1) seek out a strong AA Sponsor and work to develop a trusting and healthy sober relationship to help deal with his difficulties with self disclosure and emotional denial; 2) establish a consistent CONFRONTATIVE feedback system within AA to address his recovery, and his resistance to change; and 3) invest in a therapeutic relationship to address his social manipulation and insensitivity to others. (Emphasis in original).

In June 1991, Applicant received general officer non judicial punishment for his drunk driving offense on post, an effective career killer for a commissioned officer. Although he did not continue to take antabuse or go into therapy as recommended by his treatment team, he apparently attended the aftercare program and AA for a year; he obtained his one-year sobriety coin from AA. He attempted to regain his flight status with the Army, but was unsuccessful. Knowing that his Army career was effectively over, Applicant obtained employment with a defense contractor, and resigned his commission in August 1992. Applicant stopped going to AA in approximately May 1992. While on terminal leave, he moved to his new job, and within a month or two began drinking again. His final officer fitness report recommended that Applicant not be brought back on active duty because "He continues to fight a personal problem with alcohol, however, with less than the total success demanded by the Army."

Applicant moved to the state where he currently resides, began working for his company, and, in September 1992,

applied for his security clearance. He truthfully disclosed his drunk driving offense and his treatment. However, after he started drinking again, he was soon at a point where he normally drank a 6-pack of beer on the weekend plus another 6-8 beers on Wednesday and Friday nights. He was interviewed by the Defense Security Service (DSS) in May 1993, and minimized both his current level of alcohol consumption and his consumption on the night of his 1991 drunk driving arrest.<sup>(7)</sup> DSS returned to interview Applicant later in May 1993, and he provided a different description of his current alcohol consumption:

I would like to revise my previous statement to say that during a normal week, I may drink up to two six-packs of beer instead of one. Normally, I'll have a six-pack at home over the weekend and on Wednesday and Friday, I'll stop and have one or two beers after work with friends. The maximum number of beers on Wednesday and Friday is four, usually two to three. **This past Friday I had six beers after work at a local club. This "snuck" up on me and is the most I've had at one sitting since the DUI. I will try to avoid having more than four beers in the future as it causes nothing but trouble.** (Emphasis added).

In October 1993, DOHA issued Applicant an SOR, alleging the alcohol abuse history recounted above. At the time of the hearing in April 1994, Applicant's drinking had increased to a 12-pack during the weekend plus four beers on the way home from work a couple of times a week.

Nevertheless, the Administrative Judge granted Applicant's clearance, believing that the Applicant would not abuse alcohol in the future.<sup>(8)</sup>

Subsequently, Applicant's drinking only got worse. In May 1997, he was arrested again for DUI. He was found guilty in August 1997 and ordered to attend driving school (which included having to go to AA), but not otherwise ordered into treatment or counseling. Applicant described his most recent DUI in May 1998:

In May of 1997 I was arrested for DUI. At the time of my arrest I was drinking nightly to excess. Typical consumption was a minimum of 10 to 12 mugs of beer over a six to seven hour time frame at local pool halls and restaurants. There were occasions when I consumed less and at times more, however on average, I believe these numbers to be accurate. As a result of my arrest and eventual conviction in August, daily consumption did not change. In fact it probably worsened initially, due to depression and the humiliation of conviction. As part of the punishment I was required to attend a DUI school in February and early arch of 1998. Attending AA was a requirement for successful completion of the program. I had already heard most of what was being discussed, but had always believed myself to be different and somehow immune to the consequences. This time I was able to identify myself with the people in the films during class, and certainly with the others attending AA. For the first time I admitted to myself that I had a significant problem with alcohol. While attending class and AA I quit drinking. I still went out and socialized, however I would only drink club soda. It was during this time that I discovered that it was not necessary for me to get drunk to have a good time. In fact I was amazed that far from being outcast I was accepted as a man with a potential problem and was dealing with it. **It was during this time that I met a lady that has become a close friend who is very supportive in my continuing efforts to stop entirely.**<sup>(9)</sup> Recently, I have stumbled. However, not to excess and certainly not to the previous levels of consumption. **It continues to be my intent to stop completely.** With the ongoing support of my friends, co-workers, and if necessary AA, I will succeed. (Emphasis added).

Alcohol consumption has not caused any problems at work. There has been no absenteeism and no one in my chain of command has indicated that my performance is anything but outstanding. No one has ever accused me of drinking on duty, arriving drunk, or even being hung over. I have remarked in the past that I had partied too much the night before and didn't feel too hot, but these revelations were not taken as a serious problem. Alcohol consumption did put me at ease and allow me to interact with others more openly, but at no time and under no circumstances have I ever compromised confidential or secret information.

Applicant's new wife testified that she met Applicant in approximately July 1998, and that when she met him he was drinking 10-12 beers per night at bars, conduct that continued for several more months after she expressed her concern to him. Eventually, he did cut back to drinking 3-4 beers on weekends. Applicant attributed this reduction to his new wife.

However, Applicant's February 2003 Answer, asserted that the DUI school was the turning point for him: ". . . I have **stopped drinking to excess** period. I refrain from going to bars because **I know I can not drink responsibly**. I may have a drink on occasion at home but I **avoid situations that put me at risk. I have accepted the fact that I have a problem and I do not want that problem to jeopardize my civilian career.**" (Emphasis added). Yet at the hearing, Applicant's drinking is reported by himself, and others, as 3-4 beers on the weekend, occasionally a drink out at a restaurant. He believes--as he did during his first hearing--that he can drink moderately. <sup>(10)</sup> He acknowledges that he has a significant problem with alcohol but does not believe he has to stop drinking. He states that he is alcohol dependent, which for him means "that I'm in danger of losing control whenever I drink." (Tr. 84). In addition to the two DUIs, he acknowledges that drinking cost him his Army career, and two marriages. <sup>(11)</sup> He has, of course, been subjected to two clearance proceedings because of his drinking. He thinks he has heard of studies that suggest a diagnosed alcohol dependent can safely resume drinking, but provided no reliable studies to that effect. He has not been evaluated for alcohol issues since his 1991 treatment. He no longer attends AA. He never got past step three and he never accepted for himself that he could not drink alcohol.

Applicant's military career was otherwise exemplary, and his performance for his company has been exceptional over the years.

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

#### ALCOHOL CONSUMPTION (GUIDELINE G)

E2.A7.1.1. 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.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. 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.A7.1.2.2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychiatrist, or psychiatrist) of alcohol abuse or alcohol dependence;

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

E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

E2.A7.1.3. Conditions that could mitigate security concerns:

E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;

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

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

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. **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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline G, and Applicant's alcohol consumption is not mitigated. Applicant's alcohol dependence was established in April 1991 when he received treatment in a command-directed residential treatment program. Although he had only the March 1991 DUI as the immediate precipitant, he had been driving while intoxicated for at least two years on a regular basis. He went to work feeling the effects of his drinking. Though his superiors apparently never noticed any drop off in performance, I conclude that Applicant had a high tolerance for alcohol (as noted by the treatment records) and was--and is--a functional alcoholic, who never internalized for himself the treatment program and AA recommendations that he stop drinking alcohol entirely. Although his only DUI and subsequent non judicial punishment cost him his Army career, he resumed drinking shortly after leaving active duty and quickly reached consumption levels that raised security concerns.

Cleared under different alcohol guidelines, Applicant's drinking during that time must be reevaluated against his later conduct and the newer alcohol guidelines. After his clearance was granted in 1994, Applicant's drinking increased. He experienced two divorces due, in part, to his alcohol abuse, but his drinking did not diminish. He had a second DUI, which did not cause him to stop drinking. Indeed, his drinking increased. Although he claimed to see the light when he attended the DUI school and AA in February and March 1998, and he topped drinking during that time, he resumed drinking afterward, and he continued to the abusive levels described by his third wife until well past July 1998.

Applicant asserts that he has not been intoxicated since 1998. Possibly so, given his demonstrated tolerance for alcohol. Yet he continues to drink knowing that he is at great risk for losing control every time he puts a glass of alcohol to his lips. While he purports to have learned what alcohol can do to him, and has learned the language of acknowledging his

alcohol problem from his time in treatment and AA, his past statements conflict with his conduct and minimize the seriousness of his problem. He demonstrates little insight into what alcohol has done to his life.

Even if I credit his testimony that he has not "abused" alcohol in over five years, that is a comparatively short time compared to the period of abuse that goes back to at least 1979. Nevertheless, Applicant is an adult; his conduct is legal. It is a risk that he is entitled to run. However, the government is not required to run the risk with him, even with the evidence that he has never mishandled classified information at work or had any work-related performance issues because of his alcohol consumption. I conclude that Applicant is more likely than not to resume drinking at increased levels. Accordingly, I resolve Guideline G against Applicant.

The government has established its case under Guideline E. Applicant's pattern of alcohol abuse and continued consumption in the face of two DUIs, two divorces, two clearance hearings, and a truncated military career casts serious doubt on his judgment, reliability, and trustworthiness. Although he has previously been granted a clearance, the conduct has continued since 1994. I resolve Guideline E against Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

#### Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: 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 Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Under the Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R).
3. Consisting of a medical doctor, a Ph.D. clinical psychologist, a master's degree psychologist and certified drug and

alcohol counselor, an intern, and a psychiatric clinic nurse specialist. Three of these individuals satisfy the Directive requirement for "credentialed medical professional."

4. (1) substance often taken in larger amounts or over a longer period than the person intended; (3) a great deal of time spent in activities necessary to get the substance. . .taking the substance. . ., or recovering from its effects; (4) frequent intoxication or withdrawal symptoms when expected to fulfill major role obligations at work, school, or home. . ., or when substance use is physically hazardous (e.g., drives when intoxicated); (6) continued substance use despite knowledge of having a persistent or recurrent social, psychological, or physical problem that is caused or exacerbated by the use of the substance. . .; (7) marked tolerance: need for markedly increased amounts of the substance (i.e., at least a 50% increase) in order to achieve intoxication or desired effect, or markedly diminished effect with continued use of the same amount.

5. Applicant reported a loss of control in his drinking over the last two years, drinking as many as 24 beers in 24 hours, but consistently drinking over 12 beers daily, with three blackouts. In fact, his abusive consumption began much earlier, but was not known to the treating team.

6. On a 10-point scale with 1 being the least participation, 10 the most.

7. Falsification is not alleged in the current SOR, and I do not find that Applicant falsified this statement to the DSS. However, his minimization of his alcohol consumption is relevant in assessing the alcohol issues alleged in the SOR.

8. The 1994 case was adjudicated under different alcohol guidelines, and Applicant had excellent character references testify on his behalf that they never observed Applicant intoxicated.

9. She eventually married Applicant in May 1999 (Tr. 44).

10. The two transcripts are remarkably similar. Applicant's character witnesses (at least one of whom testified at both hearings) extol his work ethic, his honesty and integrity, and his security worthiness. None have noticed an evidence of alcohol use at work. Indeed, the only major difference in the two hearings is that Applicant's drinking is now 3-4 beers on the weekend instead of the 12-plus in 1994.

11. At the time of his first hearing, he was still living apart from his first wife. Between April 1994 and May 1998, he divorced, remarried a second time, and divorced again, with alcohol a contributing factor in both divorces.