

DATE: February 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11454

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's only alcohol-related incident, a Minor in Possession of Alcohol, occurred in 1994, when he was 19 years of age. While Applicant's consumption of alcohol was at times, in excess and to the point of intoxication, it has diminished significantly. Evidence of Applicant's alcohol rehabilitation is sufficient to mitigate his alcohol related history. Clearance is granted.

**STATEMENT OF THE CASE**

On June 4, 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 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 or denied.

In a signed and sworn statement, dated June 16, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On September 8, 2003, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to 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 this Administrative Judge on October 27, 2003.

Department Counsel offered six documentary exhibits (Exhibits 1-6), which were admitted without objection. Applicant 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 the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline G (Alcohol Consumption) of the Directive. The SOR contains four allegations, 1.a. through 1.d., under Guideline G.

In his response to the SOR, Applicant admits all of the allegations. These 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 following additional findings of fact:

Applicant is a 28 year old employee of a defense contractor, who seeks a security clearance on behalf of Applicant. He is divorced and has no children. He received a Bachelor of Science Degree in 1998.

### **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 he was 16 years of age. Initially he consumed approximately four 12 ounce bottles of beer on a weekend, two times a month. In 1997, as a result of a more stressful life his consumption increased to four 12 ounce bottles of beer, one or two times a week. In 1998, during the period of being separated from his then current wife his alcohol consumption fluctuated between as few as one or two beers every other day to as many as twelve beers in a day (Exhibit 6). Applicant continues to consume alcohol.

In 1994, as a result of walking home from a party with a cup of beer in his possession, Applicant was arrested for Minor in Possession of Alcohol. He plead guilty and paid a fine. (Exhibit 6). This is the only alcohol related incident in Applicant's background.

Applicant has received therapy for a number of issues including depression, sex addiction and related excessive consumption of alcohol. He has attended substance and addictive behavior education classes (Exhibit 6). [No medical records were introduced into evidence.](#)

## **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 or 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.).

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.

**Paragraph 1 (Guideline G - Alcohol Consumption)** In this case, the Government has met its initial burden of proving that Applicant has used alcohol to excess (Guideline G). On the other hand, Applicant has introduced persuasive

evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Applicant's alcohol consumption resulted in one alcohol related incident, which occurred in 1994, and involved 19 year old Applicant carrying a cup of beer on a street. Applicant has consumed alcohol, at times in excess, from 1991 to the present. He has consumed as many as 12 bottles of beer in one day.

As to the amount of alcohol he now consumes, Applicant stated, in a response to interrogatories, signed under oath on March 25, 2003, that he currently drinks at a rate of six to nine glasses of beer or mixed drinks per week (Exhibit 5).

The Government established that Applicant was involved in one alcohol-related incident away from work, which is Disqualifying Condition (DC) 1. He has, at times, been involved in habitual or binge consumption of alcohol to the point of impaired judgment, which is DC 5. However, Applicant's consumption of alcohol has diminished significantly. He now consumes far less alcohol, no more than six to nine glasses of beer or mixed drinks during any week, and the only alcohol related incident in Applicant's life occurred ten years ago. Applicant has presented credible evidence to support a conclusion that he has reformed his habit. Mitigating Condition (MC) 1 applies. As there has been no medical evidence introduced into this case, I cannot conclude that he is, or has been diagnosed as an alcoholic or alcohol dependent.

On balance, it is concluded that Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the allegations expressed in Paragraphs 1 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: 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 or continue a security clearance for the Applicant.

Martin H. Mogul

Administrative Judge