

DATE: June 25, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-11503

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Ligon Noel, Esquire, Department Counsel

**FOR APPLICANT**

Clifton N. Miller, Esquire

**SYNOPSIS**

Applicant's extensive history of alcohol abuse is not mitigated where it was punctuated by six alcohol-related incidents between January 1976 and January 1998, and where Applicant continues to drink. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 28 May 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) <sup>(1)</sup> recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and later requested a decision without a hearing on 1 December 2003. <sup>(2)</sup> He responded to the Government's File of Relevant Material (FORM) on 14 May 2003; the record in this case closed 3 June 2004, the day Department Counsel submitted her objection to Applicant's response. The case was assigned to me on 8 June 2004 to decide if clearance should be granted, continued, denied, or revoked.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 51-year-old iron worker at a defense contractor--seeks to retain the clearance he has held since approximately September 1984. He has an exemplary work record with the same employer for over 20 years. His union leadership consider him an excellent worker.

Applicant has an extensive history of alcohol abuse punctuated by six alcohol-related incidents. He continues to consume alcohol.

Applicant began abusing alcohol in approximately 1972, when he was 19 years old. Between the ages of 22 and 30, Applicant was arrested five times for alcohol-related incidents: in January 1976, he was arrested for DWI, later reduced to reckless driving; in April 1976, he was arrested for public drunk and fined; in February 1982, he was arrested for

DWI, later reduced to reckless driving. In November 1982 and October 1983, he was charged with DUI--on each occasion after drinking 8-10 beers. He pled guilty to the November 1982 DUI, was found guilty of the October 1983 DUI.

Applicant discussed his November 1982 and October 1983 DUIs during a subject interview for his clearance in August 1984. He also discussed his February 1982 reckless driving conviction, but not in any terms that revealed its alcohol-related nature. He did not discuss his January 1976 DWI or his April 1976 public drunk arrests. He professed to have learned his lesson about drinking and driving. Applicant received his security clearance in September 1984.

In January 1998, Applicant was charged with DUI, when he was stopped for speeding after consuming 7-8 beers at a pool hall. He later pled guilty to reckless driving. Applicant disclosed the 1998 reckless driving conviction and the 1983 DUI conviction on his clearance update application in February 2001.

Applicant answered alcohol interrogatories in February 2003, in which he claimed that he still drinks alcohol--about 8 beers weekly--but not to the point of intoxication. He claimed that he does not drink at work or before going to work. He asserts that his drinking pattern is a couple of beers a couple of nights per week and 3-4 beers on the weekend, but not every weekend. He does not believe he has an alcohol problem, or has ever had a problem. He foreswears drinking and driving in the future. Asked to disclose all arrests for any reason and provide an explanation, Applicant discussed only his 1983 and 1998 arrests.

### **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 F.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.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A6.1.3. 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 the applicant to establish 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. Applicant's history of alcohol abuse is well documented by his multiple alcohol-related arrests. Applicant invites me to disregard his five alcohol-related arrests before 1984 as having been adjudicated by his grant of a clearance in September 1984. I decline to do so for the legal reasons that the 1984 adjudication occurred under substantially different adjudication guidelines and the Government is not equitably estopped from considering previously adjudicated misconduct in light of later misconduct. I decline to disregard the pre-1984 for the factual for the factual reason that it appears that the Government was only aware of two alcohol-related incidents at the time of that adjudication.

Applicant also invites me to consider the 1998 DUI arrest as an isolated incident in an otherwise exemplary employment history. To do so would require me to ignore the evidence of a significant alcohol problem between 1976 and 1983--well established by the five arrests--and presume that Applicant's 1998 DUI arrest occurred on the only occasion between 1983 and 2003 when Applicant drank as many as 7-8 beers in a bar and then drove home, something not likely to be true. I note Applicant's excellent work history, but note that he does not drink at work or before going to work, so there is no reason to expect that his work record would be otherwise. Further, it appears that all of Applicant's alcohol-related arrests occurred in his off-duty hours.

Despite the long period of time before and after the 1998 DUI arrest with no evidence of alcoholic misconduct, the record nevertheless establishes a history of alcohol abuse that shifts the burden of persuasion to Applicant to establish that he does not have a problem with alcohol. Applicant's evidence falls short of meeting that burden. Consequently, I conclude Guideline G 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

### 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, as amended (Directive).
2. The case was originally assigned for hearing to two other administrative judges and had been set for hearing in December 2003 when Applicant withdrew his request for hearing.