

DATE: September 3, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18330

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 34-year-old electrician employed by a defense contractor, has failed to mitigate alcohol-related incidents away from work, including two convictions for Driving While Intoxicated (DWI) and another for being Intoxicated in Public. He received a "poor" prognosis at the conclusion of an alcohol counseling program. Applicant refuses to acknowledge that he has a drinking problem and admits that he continues to consume alcohol. He also deliberately omitted his most recent alcohol-related convictions from his security clearance application. Clearance is denied.

**STATEMENT OF THE CASE**

On September 12, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, 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 Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to any classified information and recommends that his case be submitted to an Administrative Judge. On October 21, 2002, Applicant executed a response to the SOR and requested a hearing. This case was assigned to me on January 8, 2003. A notice of hearing was issued on February 6, 2003, and the hearing was held on February 21, 2003. During the hearing, seven Government (Govt) exhibits and the testimony of Applicant were received. The transcript (Tr.) was received on February 28, 2003.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is a 34-year-old electrician, who is employed by a defense contractor and is seeking a security clearance.

On October 20, 1990, Applicant was arrested and charged with Driving While Intoxicated (DWI). He was convicted of

the offense on November 26, 1990. <sup>(1)</sup>

On October 24, 1998, Applicant was arrested and charged with Intoxicated in Public. <sup>(2)</sup> He was convicted and fined \$25.00 plus court costs. <sup>(3)</sup>

Applicant was again arrested and charged with DWI and Speeding on February 11, 2001, after he registered .16 on a blood alcohol test (BAT). On April 30, 2001, he was convicted. Applicant's sentence included: 180 days in jail, with 178 days suspended; a fine of \$350.00; a 12 month suspension of his driver's license; and referral to an alcohol counseling program. <sup>(4)</sup>

Although Applicant actively participated in the alcohol counseling program that he was referred to as a result of his second DWI, his counselor gave him a prognosis of "poor." The counselor also noted that "he endorsed numerous symptoms of alcoholism." <sup>(5)</sup>

Applicant continues to consume alcohol. <sup>(6)</sup> Applicant attended Alcoholics Anonymous (AA) meetings during the 17 weeks he was in the alcohol safety program but stopped at the completion of the course. <sup>(7)</sup>

On March 16, 2001, Applicant completed a security clearance application. He answered, "yes," to question 24, "have you ever been charged or convicted of any offense(s) related to alcohol or drugs?" However, Applicant only listed a DWI in 1989 and he deliberately omitted his most recent DWI arrest the month before, as well as his Intoxicated in Public conviction in 1998. <sup>(8)</sup>

When interviewed by a special agent of the Defense Investigative Service (DIS) on May 31, 2001, Applicant provided a sworn statement in which he addressed his arrest and conviction for DWI in 2001.

### **POLICIES**

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline G: Alcohol Consumption

The concern under Guideline G is that 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:

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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include:

The alcohol related incidents do not indicate a pattern (Mitigating Condition 1);

The problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2);

Positive changes in behavior supportive of sobriety (Mitigating Condition 3);

Following diagnosis of alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program (Mitigating Condition 4).

#### Guideline E - Personal Conduct

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.

Conditions that could raise a security concern and may be disqualifying include:

The deliberate omission, concealment, or falsification 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 (Disqualifying Condition 2).

Conditions that could mitigate security concerns include:

The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily (Mitigating Condition 2);

The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

#### Guideline J - Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

Allegations or admissions of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition a).

Conditions that could mitigate security concerns include:

The crime was an isolated incident (Mitigating Condition b).

### **CONCLUSIONS**

#### Guideline G

Applicant's alcohol-related incidents away from work, including his two DWI offenses (SOR ¶ 1.a and SOR ¶ 1.c) and Intoxicated in Public offense (SOR ¶ 1.b), establish Disqualifying Condition 1. The diagnosis of his alcohol condition by his counselor (SOR ¶ 1.d) does not satisfy the requirements of Disqualifying Conditions 3 or 4 because it has not been made by a person with the requisite credentials. However, that assessment constitutes further evidence of his alcohol problem.

Applicant admits both of his DWI convictions, as well as his conviction for being intoxicated in public. Although he takes exception to the evaluation, he also acknowledges the assessment given by his alcohol abuse counselor (SOR ¶ 1.d). Moreover, Applicant admits that he continues to consume alcohol (SOR ¶ 1.e). Given the pattern of his alcohol abuse, the fact his most recent offense occurred the month before he submitted his security clearance application, and the fact he does not abstain from the use of alcohol, Applicant faces a difficult task to meet his burden, in accordance with the Directive, and demonstrate that it is the interest of national security to grant him a security clearance.

It appears that Applicant attempts to establish positive changes in behavior supportive of sobriety (Mitigating Condition 3). He testified that he only drinks on weekends and his wife drives if he drinks away from home. Such testimony is not sufficiently persuasive to mitigate the Government's case, in light of the other evidence of record.

Serious doubt about Applicant's ability to reform, in light of the assessment of his counselor at the alcohol counseling program he attended. The counselor's prognosis for him was "poor." Moreover, the counselor was concerned that Applicant's problem went beyond abuse, since he exhibited symptoms of alcoholism.

Although admitting three alcohol related convictions, Applicant continues to deny that he has a drinking problem. Rather than focusing on his drinking problem in regard to his latest alcohol related offenses, he seems more concerned with feeling he should not have been convicted. As to the latest DWI, Applicant admits that he registered .16 on the BAT and drove his vehicle after consuming several alcoholic beverages at two locations. However, he suggested that his conviction was not proper because he was no longer with his vehicle, but in the bar, when the police officer arrested him. Applicant also denies that he was intoxicated at the time he was arrested for being intoxicated in public, even though he admitted he had been drinking and elected to sleep in his vehicle rather than drive home.

Applicant testified that he stopped going to AA meetings because, "I don't feel I have a drinking problem."<sup>(9)</sup> He further stated, "I don't think I'm an abuser of alcohol."<sup>(10)</sup> Since Applicant denies he has a drinking problem, despite his history of alcohol offenses, it is difficult to accept that he can really feel a compelling need to transform his behavior. The record does not demonstrate that Applicant has accomplished positive changes in his behavior supportive of sobriety nor is it otherwise sufficient to mitigate the Government's case. Therefore, I find against Applicant.

#### Guideline E

As addressed by SOR ¶ 2.a, Applicant failed to report his most recent arrest for DWI, as well as his 1998 conviction for being intoxicated in public, in his security clearance application. These omissions are sufficient to establish Disqualifying Condition 2.

Although the Government also alleges that Applicant deliberately omitted his DWI conviction in 1990, I believe that he was referring to that offense when he listed a DWI in 1989 in response to question 24.

Applicant contends that he did not deliberately omit his DWI arrest in February 2001 but that he did so inadvertently. He says that he completed a security clearance application prior to his arrest and that, in haste, he failed to include it when his security officer had him sign and date the security clearance application actually submitted.

It is difficult to accept that, even in haste, one could fail to recognize the significance of a recent arrest on a security clearance application. It is also difficult to imagine that Applicant would not give substantial thought to a pending criminal charge against him. To whatever extent, his account might be plausible standing alone, it becomes untenable given his other omission. Applicant does not even address why he failed to include his 1998 conviction for being intoxicated in public. This adversely affects his credibility with regard to the omissions.

Applicant appears to argue the applicability of Mitigating Condition 2 and Mitigating Condition 3 to his circumstances. His reliance is misplaced. Although he contends the omission was an isolated incident, Applicant fails to address the fact his latest DWI conviction is more recent than his security clearance application. On that basis, Mitigating Condition 2 is not applicable. It also is not appropriate, nor is Mitigating Condition 3, because Applicant has failed to show that he provided correct information voluntarily or that he made a prompt, good-faith effort to correct it before being confronted with the facts. Based on the evidence of record, he did not discuss his latest DWI until he was interviewed by a DIS special agent on May 31, 2001. Even then, Applicant failed to address his 1998 conviction for being intoxicated in public. I find against Applicant.

#### Guideline J

Although he has not been charged, Applicant's false statement on his security clearance application, as discussed under Guideline E, above, is sufficient to raise Disqualifying Condition a. If this were his only criminal offense, it could be mitigated pursuant to Mitigating Condition b. However, the record includes three other criminal offenses of Applicant, even though the Government did not re-allege those alcohol-related convictions under Guideline J. Since his falsification on his security clearance application is not otherwise mitigated under Guideline J, I must again find against Applicant.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

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

Subparagraph 2.a: Against Applicant

#### Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Applicant admits to his arrest and conviction for this offense but can provide no details of the surrounding circumstances. "I do not recall the evening to be honest with you." Tr 33.

2. Govt Ex 4.

3. Applicant testified that he had gone to "happy hour" with co-workers, after a long and hard day, and that he and others were arrested when a police officer found them sleeping in their vehicle. Tr 33-35.

4. Govt Ex 5; Tr 39. Although SOR ¶ 1.c indicates that the fine was \$450.00, the official court record states that it was \$350.00. Govt Ex 5 at 2. Applicant testified that he drank about three beers while golfing with an old friend. Afterward, they went to dinner and had more drinks and then to a bar, where Applicant was arrested by a police officer. The officer told Applicant that he observed him driving his truck and asked him to take a blood alcohol test. Govt Ex 3; Tr 37-39.

5. Govt Ex 6.

6. Tr 41. Applicant testified that he only drinks occasionally on weekends. In his sworn statement to a Defense Investigative Service special agent, he said that he drinks at home or at friends, in which case his wife drives. Govt Ex 2.

7. Tr 43.

8. Govt Ex 1 at 8.

9. Tr 43.

10. *Id.*