

DATE: December 22, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25699

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant was arrested for Driving Under the Influence in 1998. He was convicted and sentenced to three years summary probation. He had two subsequent, minor, alcohol related incidents in 2000 and 2001. Since 2001 he has severely reduced his drinking and shows a credible intent not to be involved in alcohol related incidents in the future. He did not falsify a statement to Defense Security Service (DSS). The Applicant did not show poor judgment in agreeing to sponsor his brother's foreign born wife for entry into the United States. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On June 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 7, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 4, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on August 11, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on September 28, 2004.

**FINDINGS OF FACT**

The Applicant is 29, single and has a Bachelor of Science degree. He is employed by a defense contractor as an Engineer, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess.

The Applicant admits that he has used alcohol to excess from at least March 1998 to January 2002. As a result of his drinking he has had three alcohol related arrests or detentions.

The first and most serious occurred in March 1998, when the Applicant was arrested for Driving Under the Influence of Alcohol. As a result of his plea he was placed on three years summary probation, fined and had to attend a three month First Offender program. The Applicant successfully completed all the requirements of his arrest. (Government Exhibits 5, 6 and 7.)

On the morning of January 1, 2000, the Applicant was arrested for being drunk in public. (Government Exhibit 9.) By his own admission, "I was drinking whiskey and cokes with my friends, and I drank more than I ever had before, probably over ten drinks. I was walking home from the apartment of my friend, and because I was so drunk I became lost and could not find my home." (Government Exhibit 8 at 1-2.) The police held the Applicant in the local jail overnight for his own protection. There were no subsequent court proceedings. The Applicant told the DSS investigator that the date of the interview (January 2002) was the first time he saw the police report or new he had been arrested. (Government Exhibit 8 at 2.)

The third incident happened in the Fall of 2001. The Applicant was drinking at a bar, became belligerent, was removed by the bouncer and eventually detained overnight by police.

The Applicant stated in January 2002 that he had severely reduced his drinking due to the above incidents. (Government Exhibit 8 at 2.) He further stated that spending time with his brother, who was going through alcohol rehabilitation, also had an effect on him. "I began to see the road I could easily happen upon and made a conscious decision to ease up." (Applicant's Answer at 2.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process; and that he engaged in conduct which shows poor judgment, unreliability or untrustworthiness.

On January 22, 2002, the Applicant prepared a sworn statement for a DSS agent in which he stated he had been arrested only one time, specifically in 1998 for Driving Under the Influence. This was a false answer as the Applicant had been arrested on January 1, 2000, for being Drunk In Public. As stated above, the Applicant alleges that he did not know he had been arrested instead of detained until the agent showed him a copy of the arrest report.

The Applicant agreed to sponsor his brother's wife for entry into the United States from Indonesia. He had only met this woman one time and agreed to do it as a favor for his brother. In his Answer to the SOR, the Applicant states that eventually one of his sisters actually sponsored the woman.

## 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)Condition that could raise a security concern:

(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 abuse;

Conditions that could mitigate security concerns:

- (1) the alcohol related incidents do not indicate a pattern;
- (3) positive changes in behavior supportive of sobriety;

Guideline E (Personal conduct)Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 related to alcohol abuse, falsification and poor judgment, that demonstrate 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 granting 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 the Applicant has had several alcohol related incidents (Guideline G). The Applicant, on the other hand, has successfully mitigated the Government's case.

The evidence shows that the Applicant, while a young man, had one serious alcohol-related arrest in 1998. He had two subsequent alcohol incidents in 2000 and 2001. After the last incident, he severely cut down on his drinking and there have been no other incidents for almost three years. The Applicant's written submissions show an understanding of the problems alcohol has caused for him and a credible intent to correct the problem. Disqualifying condition 1 applies to this case (*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 abuse*). However, Mitigating Conditions 1 (*the alcohol related incidents do not indicate a pattern*) and 3 (*positive changes in behavior supportive of sobriety*) also apply.

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant is motivated to continue not to have alcohol related incidents (factor g.), he shows considerable evidence of rehabilitation (factor e.), and, under the circumstances of this case, the probability that the Applicant will return to his drinking ways are virtually nil (factor i.). Paragraph 1 is found for the Applicant.

The Applicant states that he had no intent to falsify his statement to DSS because he honestly believed he had not been arrested in 2000. The evidence indicates that the Applicant was seriously intoxicated on the day in question and may not have fully understood what happened to him. I find that the Applicant did not have any intent to falsify his statement to DSS. Subparagraph 2.a. is found for the Applicant.

The Government posits that the mere fact the Applicant agreed to sponsor his brother's wife to the United States shows poor judgment. Under the particular facts of this case, such an allegation is insufficient on its face. Subparagraph 2.b. is also found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### 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.

Subparagraphs 1.a. through 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.b.: 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.

Wilford H. Ross

Administrative Judge