

DATE: November 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21116

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Braden M. Murphy, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Between the late 1980s and April 2002, Applicant was arrested and charged with six offenses related to intoxication or driving under the influence of alcohol. He continues to drink alcohol. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's excessive alcohol consumption. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 26, 2004, 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 [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 18, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On September 28, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated August 16, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. Applicant's response to the FORM was due on October 28, 2004. No response has been received. In the FORM, DC presented 5 exhibits (Items). The Applicant submitted no exhibits. I was assigned the case on November 16, 2004.

### **FINDINGS OF FACT**

The SOR alleges excessive Alcohol Consumption. The Applicant admits to the following:

from the late 1980s to at least April 2003, he consumed alcohol, at times to excess and to the point of intoxication, at times daily. He admits from the late 1980s to the early 1990s: he was arrested three times for driving under the influence of alcohol, a 2002 arrest for attempting to drive a vehicle while under the influence (this was *nolle prosequi*) (Item 5), and attending a court ordered alcohol safety awareness program. He admits being intoxicated t the time he was arrested

for playing music too loud in his home and another incident for yelling at teenagers in his neighborhood. He admits he continues to drink alcohol notwithstanding having attended the alcohol safety awareness program. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 46-years-old, has worked for a defense contractor since May 1979, and is seeking to obtain a security clearance. Applicant was arrested six times between the late 1980's and April 2002. The charges in the most recent arrest--April 2002--were *nolle prossed*. The record establishes for the other five arrests, he spent one day in jail, paid a fine, and had to attend a court ordered alcohol safety awareness program. He attended the program sometime between the late 1980s and the early 1990s. He continues to drink.

### **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption, guideline G, 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.

Conditions that could mitigate security concerns include:

None apply.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See Executive Orders 10865 § 2 and 12968 § 3.1(b)*. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption (Guideline G). Between the late 1980s and April 2002, Applicant was arrested and charged with driving under the influence of alcohol, attempting to drive a vehicle while under the influence of alcohol, and Applicant was intoxicated when he was arrested for yelling at neighborhood teenagers and for playing music too loud. Disqualifying condition 1 <sup>(2)</sup> applies.

As a result of these six arrests, Applicant paid a fine, spent one day in jail, and, sometime prior to the early 1990s, he was required to attend a court ordered alcohol safety awareness program. None of the mitigating factors (MC) apply. With six arrests, MC 1 (The alcohol related incidents do not indicate a pattern.) does not apply. The most recent arrest occurred in 2002, which is recent, therefore, MC 2 (The problem occurred a number of years ago and there is no indication of a recent problem.) does not apply.

The record is silent as to Applicant's current drinking habits, except to say he still consumes alcohol. No evidence has been presented to establish MC 3 (Positive changes in behavior supportive of sobriety.) Nor has there been a showing of any type of rehabilitation. I find against Applicant because his alcohol consumption resulted in six arrests. I find against him as to SOR paragraphs 1.a, 1.b, 1.d, 1.e, and 1.f. Applicant continues to consume alcohol after six arrests. Without a showings of a change of lifestyle, behavior supportive of sobriety, or rehabilitation, I find against Applicant as to SOR paragraph 1.g.

I do not find against Applicant because he had to attend a court ordered alcohol safety awareness program ten years ago. I find for Applicant as to SOR paragraph 1.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Alcohol: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.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 the Applicant. Clearance is denied.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 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.)