

DATE: January 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23727

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esquire, Department Counsel

**FOR APPLICANT**

David Fielding, Esquire, Applicant's Counsel

Laura Mallmon, Esquire, Applicant's Counsel

**SYNOPSIS**

Although the Applicant's alleged Sexual Behavior and related Personal Conduct are not of security significance, the same can not be said as to the Applicant's Personality Disorder and Alcohol Consumption. In May of 2004, the Applicant was diagnosed as suffering from a Generalized Anxiety Disorder and from Alcohol Abuse. The clinical psychologist averred that the "condition could result in defects in judgment, reliability, and stability." The psychologist further averred that the Applicant "needs to stop drinking alcohol entirely as it impairs his judgment . . ." The Applicant still consumes alcohol, and there is no countervailing opinion by a credentialed mental health professional as to his reliability. Mitigation is not shown. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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. Applicant filed an Answer to the SOR on October 18, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 24, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 7, 2004, and Applicant's Response was received on or about January 6, 2005. The case was received by the undersigned for resolution that same day.

The Department Counsel, objects to the admission of Item 1 of the Applicant's Response. Department Counsel avers

that this one page document, "Criminal Person Case Listing from Tarrant County District Clerk's database with regard to . . . [the mother of the Applicant's alleged accuser]," does not come within the purview of Federal Rules of Evidence (FRE) 608 and 609<sup>(1)</sup>. Under subparagraph E3.1.19 of the Directive, however, the "technical rules of evidence may be relaxed" in favor of "a full and complete record." Item 1 is relevant, material and helps to provide a full and complete record. Items 1~14 of the Applicant's Response are therefore admitted into evidence.

The issues raised here are whether the Applicant's Personality Disorder, Alcohol Involvement, and alleged Sexual Behavior and related Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis regarding the Personality Disorder and Alcohol Involvement, but denies the Sexual Behavior and the related Personal Conduct.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 46 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline I - Emotional, Mental, and Personality Disorders, Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

3.a. and 4.b. In March of 1990, the Applicant was arrested for, and subsequently pled guilty to, Driving While Intoxicated (DWI) (FORM Item 4 at page 1). He was fined \$400 and sentenced to 90 days confinement (*Id*). The confinement was suspended (*Ibid*).

1.a. and 3.b. In May of 2004, the Applicant was evaluated by a clinical psychologist (FORM Item 8). The Applicant was diagnosed as suffering from a Generalized Anxiety Disorder and Alcohol Abuse on Axis I, and as having "Dependent traits, avoidant personality features" on Axis II (*Id* at page 2). The RECOMMENDATION of the psychologist was, in part, the following:

The extent and duration of these diagnoses is(*sic*) most of his life for the anxiety and probably for the personality traits. The prognosis is good if he engages in psychotherapy, has medication for anxiety and depression, and experiences success for tentative efforts at more assertive and competent behavior. **The condition could result in defects in judgement, reliability, and stability.** This is because [of] great dependency needs and high fear of rejection which make him vulnerable to being manipulated by someone pretending to be his friend. . . . If he does not engage in psychotherapy, I expect his present condition to continue indefinitely. **He needs to stop drinking alcohol entirely** as it impairs his judgment as well as his ability to process information (*Id*, emphasis supplied).

In his Answer to the SOR, the Applicant avers that "[w]ith medication, I am virtually free of most symptoms" (FORM Item 3 at page 5). He further avers "I have greatly reduced the amount of alcohol I consume" (FORM Item 3 at page 6).

### Guideline D - Sexual Behavior & Guideline E - Personal Conduct

2.a.~2.d, and 4.a. The allegations of improper Sexual Behavior are, for the most part, based on allegations by the mother of a, then, minor child, as to sexual conduct that, allegedly, occurred more than 20 years ago (FORM Item 6). [There is no statement from the former minor child who is now in his late 20s.] The accuser wishes to keep this matter out of the courts in exchange for monetary consideration (*Id*). The Applicant vehemently denies the gravamen of her allegations. He does admit, however, getting sexual gratification by brushing up against the then, minor child (FORM Item 5). He further admits fantasizing about prepubescent boys and masturbating (*Id*).

### Mitigation

In his Response to the FORM, the Applicant offers the affidavits of eleven individuals who have known the Applicant for from 4~23 years (Response Items 2~12). All are most laudatory in their comments as to the Applicant, and, for the most part, believe he "is honest, trustworthy, hardworking, dependable and loyal" (*Id*).

## POLICIES

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline I (Emotional, Mental, and Personality Disorders), Guideline D (Sexual Behavior), Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who suffers from a mental disorder may have a defect in judgement, reliability or stability. Alcohol abuse 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. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

## CONCLUSIONS

The Applicant is suffering from a personality disorder, which, in the opinion of a credentialed mental health professional, "could result in defects in judgement, reliability, and stability." The first disqualifying condition is therefore applicable as there is an "opinion by a credentialed mental health professional that the individual has a condition that may indicate a defect in judgement, reliability, and stability." The Applicant avers that "[w]ith medication, I am virtually free of most symptoms," but there is no countervailing mitigating condition. According to the clinical psychologist the questionable personality disorder is current, continuing, and this diagnosis is un rebutted. Guideline I is thus found against the Applicant.

Considering next the Applicant's Alcohol Consumption, he has also been diagnosed as suffering from alcohol abuse. The third disqualifying condition is therefore applicable, as there is a "[d]iagnosis by a credentialed medical professional . . . of alcohol abuse . . . ." The psychologist further opines that the Applicant "needs to stop drinking alcohol entirely as it impairs his judgment as well as his ability to process information." Although the Applicant has "greatly reduced" his alcohol consumption, he still consumes the intoxicant. The first disqualifying condition is also, arguably, applicable for in 1990 he was convicted of a DWI. Although this "[a]lcohol-related incident" occurred more than 14 years ago, it is symptomatic of one suffering from alcohol abuse. Again, there is no countervailing mitigating condition, as the Applicant has neither "completed inpatient or outpatient rehabilitation," nor "abstained from alcohol for a period of at least 12 months." Guideline G is also found against the Applicant.

As to the Applicant's Sexual Behavior and related Personal Conduct, arguably, the first disqualifying condition under Sexual Behavior is applicable, as he got sexual gratification by brushing up against a minor child. This is "[s]exual behavior of a criminal nature, whether or not the individual has been prosecuted." However, this occurred more than 20 years ago; and as such, the second mitigating condition is applicable as the "behavior was not recent and there is no evidence of subsequent conduct of a similar nature." Guidelines D and E are found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his personality disorder, and his alcohol abuse. The Applicant has thus not met the mitigating conditions of Guidelines I and G, and of Section E2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines I and G.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

#### Paragraph 1: AGAINST THE APPLICANT

a. Against the Applicant.

#### Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

#### Paragraph 3: AGAINST THE APPLICANT

a. Against the Applicant.

b. Against the Applicant.

#### Paragraph 4: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of 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.

Richard A. Cefola

Administrative Judge

1. FRE 608 is styled "Evidence of Character and Conduct of Witness," and FRE 609 is styled "Impeachment by Evidence of Conviction of Crime."