

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant has had a long history of alcohol abuse. His excessive alcohol consumption has resulted in four alcohol-related arrests for Driving Under the Influence (DUI), occurring in 1974 to 1988. Applicant was arrested in 2002 for Assault with a Deadly Weapon, and for which evidence strongly suggests that alcohol was an influencing factor. Applicant continues to consume alcohol. Evidence of Applicant's alcohol reform is not sufficient to mitigate his alcohol related history. Clearance is denied.

CASENO: 03-24974.h1

DATE: 01/27/2005

DATE: January 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24974

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has had a long history of alcohol abuse. His excessive alcohol consumption has resulted in four alcohol-related arrests for Driving Under the Influence (DUI), occurring in 1974 to 1988. Applicant was arrested in 2002 for Assault with a Deadly Weapon, and for which evidence strongly suggests that alcohol was an influencing factor. Applicant continues to consume alcohol. Evidence of Applicant's alcohol reform is not sufficient to mitigate his alcohol related history. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 10, 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be granted, denied or revoked.

In a signed and sworn undated statement, dated July 28, 2004, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On August 24, 2004, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on October 12, 2004.

Department Counsel offered eight documentary exhibits (Exhibits 1-8), which have been admitted without objection. Applicant offered no documentary evidence into the record.

### **FINDINGS OF FACT**

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In the SOR, the Government alleges that a security risk may exist under Adjudicative Guidelines G and J of the Directive because of Applicant's excessive alcohol consumption. The SOR contains eight allegations, 1.a. through 1.h., under Guideline G (Alcohol Consumption) and 1 allegation, 2.a., under Guideline J (Criminal Conduct). Applicant admits allegations 1.d., 1.e., 1.f., and 1.g. He partially admits to 1.h., and denies the other allegations. The admitted allegations are incorporated as Findings of Fact.

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's Answer to the SOR, and the other admitted documents, and upon due consideration of that evidence, I make the following Findings of fact:

Applicant is 53 years old, and he is divorced. He is employed as an Engineering and Marketing consultant by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

#### **Paragraph 1 (Guideline G - Alcohol consumption)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses alcohol.

Applicant's drinking has resulted in four alcohol related incidents where he was arrested and found or pled guilty for DUI. They occurred in 1974, 1977, 1981, and 1988.

On each of these four occasions , Applicant was arrested and charged with DUI . Each time, he was found guilty, required to pay a fine, and placed on probation. For his 1988 conviction he was required attend an alcohol education class and attend six meetings of alcoholics Anonymous (Exhibits 3 and 6). Applicant has never received treatment for treatment for his alcohol consumption, nor has he received any medical diagnosis regarding his alcohol consumption.

On June 30, 2002, Applicant was arrested and charged with Assault with a Deadly Weapon. This arrest resulted from an altercation that occurred between him and his ex-wife at his home. Applicant's version of what occurred on this date (Exhibit 3) is in direct contradiction to a sheriff's report (Exhibit 8), which was prepared by deputy sheriffs upon their arrival at the Applicant's home.

Applicant contends that he never struck his ex-wife, but rather she struck him in the arm with a wrench. The report includes Applicant's daughter's version of the incident, in which she has stated that she saw Applicant punch and hit her mother. She also stated that she had thrown the wrench at Applicant and stuck him to make him stop hurting her mother.

Applicant also claimed that he had been the one who had telephoned the police for assistance. However, it is stated in the report that a woman had called 9-1-1 and requested their services, and then was cut off. Applicant's daughter also reported that it was her mother who had called the police for assistance.

Finally, Applicant claimed that this was not an alcohol related event, and that the only alcohol that he consumed was two beers, after his call to the police, while awaiting their arrival. Again the Sheriff's report contradicts this contention. The report indicates Applicant "had a strong odor of alcohol on his breath and his eyes were watery and blood shot." Additionally, based on the report, the investigating officers arrived no more than ten minutes after they had been contacted. There is simply not enough time for Applicant to have consumed two beers in that time period.

Based on all of these factors, I find that the evidence strongly suggests that alcohol was an influencing factor in this incident.

Applicant currently consumes an average of three beers on an every other day basis. He also consumes one or two glasses of wine with meals (Exhibit 6).

## **Paragraph 2 (Guideline J - Criminal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal acts. Applicant's conduct that occurred in 1974, 1977, 1981, 1988, and 2002, and which has been alleged in the SOR as 1.b. through 1.g., respectively, is included in this paragraph as criminal conduct.

## 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.

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 of alcohol

abuse and criminal conduct that demonstrates 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 continued holding 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 a security clearance.

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used alcohol to excess (Guideline G). Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

#### **(Guideline G - Alcohol Consumption)**

Applicant has had a long history of consuming alcohol to excess, and he continues to consume alcohol. While he claims that his last alcohol related arrest was in 1988, based on the evidence furnished in the Sheriff's report (Exhibit 8), I conclude that alcohol was an influencing factor in this his 2002 arrest for Assault with a Deadly Weapon.

The Government established, by substantial evidence, that Applicant was involved in alcohol-related incidents away

from work, such as driving under the influence, which is Disqualifying Condition (DC) (E2.A7.1.2.1.). It has also been established by substantial evidence that Applicant has engaged in habitual or binge consumption of alcohol to the point of impaired judgment which is which is DC (E2.A7.1.2.5.).

I cannot conclude that Mitigating Condition (MC) (E2.A7.1.3.3.) applies because there has been no evidence presented of positive changes in Applicant's behavior supportive of sobriety. Paragraph 1 is concluded against Applicant.

### **(Guideline J -Criminal Conduct)**

The Government also established by substantial evidence that Applicant engaged in criminal conduct in 1974, 1977, 1981, 1988, and as recently as 2002, as he was arrested for, and convicted of, DUI and other alcohol related criminal offenses. DC (E2.A10.1.2.1.), allegations or admissions of criminal conduct, regardless of whether the person was formally charged, and DC (E2.A10.1.2.2), a single serious crime or multiple lesser offenses, apply in this case. I find that no MC applies. Paragraph 2 is found against Applicant.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used alcohol to excess (Guideline G) and that he has engaged in criminal conduct (Guideline J). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him. Accordingly, the evidence supports a finding against Applicant.

### **FORMAL FINDINGS**

#### **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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

**Paragraph 2. Guideline J: AGAINST APPLICANT**

Subparagraph 2.a.: Against 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.

Martin H. Mogul

Administrative Judge