

DATE: June 17, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32851

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of alcohol abuse and criminal conduct resulting in numerous alcohol related arrests and/or convictions have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On November 19, 2003, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on December 9, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 30, 2004. A notice of hearing was issued on February 12, 2004, scheduling the hearing for March 15, 2004. At the hearing the Government presented twenty five exhibits. The Applicant presented five exhibits and testified on his own behalf. The official transcript (Tr.) was received on April 1, 2004.

**FINDINGS OF FACT**

The Applicant is 49 years old. He is employed by a defense contractor as a Systems Support Engineer, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of 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:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admits to each of the allegations set forth in the SOR under Guidelines G and J. He began consuming alcohol at the young age of thirteen or fourteen years old. He continued to use alcohol to excess for many years. During this period, he was arrested on at least ten separate occasions. Seven of his arrests involved Driving Under the Influence. On each occasion, the Applicant was sentenced to either a fine, jail time, probation or work furlough. The Applicant's longest period of jail time served was nine months that included work furlough.

In October 1989, the Applicant came before a DOHA Administrative Judge for a security clearance hearing. The Judge determined at that time that the Applicant was ineligible for access to classified information based upon his extensive history of alcohol abuse and criminal conduct. (*See* Government Exhibit 24).

From November 1983 until February 1984, and again from July 1990 until December 1990, the Applicant participated in two separate alcohol treatment programs. During these treatment programs he was diagnosed as being alcohol dependent. The Applicant stopped consuming alcohol from 1990 through 1995, a five year period, following his second treatment program for alcoholism. During this period, he regularly attending AA meetings and completely changing his social habits and friends. In July 1994, the Applicant was granted a security clearance.

In 1996, the Applicant began consuming alcohol again. In January 1996, the Applicant was arrested and charged with Corporal Injury to Spouse, a misdemeanor. He and his wife had gone out for dinner and drinks. They had made decisions that night not to drive and took a cab. They were both intoxicated. When they got home, they got into an argument and his wife began hitting him. The Applicant hit her back with his closed fists to her face and body. He admits that he was too aggressive. His wife called the police. The Applicant was arrested and charged with Corporal Injury-Spouse, a misdemeanor. The Applicant pled guilty, and was sentenced to three years probation, forty hours of community service, a \$100.00 fine, one year of anger of management classes and was ordered to attend a Batterers Treatment Program. The Applicant has completed all of the sentencing requirements. (*See* Government Exhibits 2, 4 and 5).

The Applicant continues to consume alcohol. He last consumed a drink the Saturday before the hearing. He states that he usually consumes about two drinks a week. He stopped attending AA meetings in 1996 or 1997 about the same time he returned to using alcohol. He decided that he had a good handle on his drinking and decided that he could socialize a little.

The Applicant and his wife have divorced. He has custody of two of their three children. The oldest child is of majority. (*See* Government Exhibit 6).

A summary of his other arrests are set forth as follows:

In April 1974, he was arrested for Possession of Alcohol by a Minor. He posted a \$65.00 bail. (*See* Government Exhibit 13).

In June 1976, for (1) Possession of Marijuana for Sale and (2) Drunk Driving. He was found guilty of Count 2, fined \$250.00, and was placed on summary probation for one year. Count 2 was dismissed.

In October 1977, he was arrested for Drunk Driving on Highway. He pled guilty and was sentenced to attend an alcohol/drug program.

In 1979, he was arrested and charged for Drunk in Public.

In June 1980, he was arrested and charged with (1) Disorderly Conduct and (2) Drunk in Public. He pled guilty and the charges were dismissed. (*See* Government Exhibit 11).

From November 7, 1983 through February 1, 1984, the Applicant received treatment for alcohol/drugs. (*See* Government Exhibit 14 and 15).

In October 1986, the Applicant was arrested for Driving Under the Influence. He pled guilty and was sentenced to three years summary probation, forty-eight hours in jail, and was fined \$623.00.

In March 1987, the Applicant was arrested for Driving Under the Influence, a misdemeanor.

In February 1988, the Applicant was arrested and charged with Driving Under the Influence. He pled guilty and was ordered to attend three weekly Alcoholics Anonymous (AA) meetings. He was further sentenced to six months in jail to run consecutively to run with the May 1988 arrest below. (*See* Government Exhibit 10).

Less than three months later, in May 1988, the Applicant was again arrested and charged with Driving Under the Influence. He was found guilty and sentenced to twelve months in jail to run consecutively with the jail sentence set forth above. His driver's license was revoked for three years and he was ordered to attend AA. (*See* Government Exhibit 9).

From January 27, 1989 through August 9, 1989, the Applicant received treatment at a halfway house and was diagnosed as alcohol dependent.

In May 1990, the Applicant was arrested and charged with Driving Under the Influence. The Applicant pled guilty and was sentenced to 270 days in jail, five years probation, a suspended driver's license for four years, weekly Alcoholics Anonymous meetings, and a \$250.00 fine. (*See* Government Exhibits 19 and 20).

From July 1990 to December 1990 the Applicant received treatment and was diagnosed as being alcohol dependent.

### Mitigation.

Letters of character reference from the Applicant's supervisor and professional colleagues indicate that the Applicant is a loyal, trustworthy citizen of sober-mind and sound judgment. They have never known him to over indulge in alcohol or manage his affairs in an imprudent manner. He is considered a superb employee and an outstanding team player. (*See* Applicant's Exhibits B,C, D and E).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline G (Alcohol Consumption)

#### Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

#### Condition that could mitigate security concerns:

None.

### Guideline J (Criminal Conduct)

#### Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination." The Administrative Judge can draw only those inferences or conclusions that have 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

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 per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct and alcohol abuse that demonstrates poor judgment or unreliability.

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.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G), and criminal conduct (Guideline J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is insufficient to overcome the Government's case under Guidelines J and G of the SOR.

Applicant's extensive history of alcohol abuse began in 1974 and has continued until at least 1996, resulting in numerous alcohol related arrests and convictions. Following his second alcohol treatment program, where he was determined alcohol dependent, the Applicant abstained from alcohol for five years before returning to alcohol consumption. He was then arrested again, this time for Corporal Injury to Spouse. Today, the Applicant continues to consume alcohol on the weekends, regardless of the fact that he was diagnosed by medical professionals as being alcohol dependent and was advised to completely abstain from alcohol usage.

The Applicant believes that he no longer has an alcohol problem. However, given his twenty-four year history of alcohol abuse, it is too early in his rehabilitation to determine whether he will remain sober or return to his regular pattern of drinking. In any case, more time is needed in an alcohol free lifestyle to be assured that the Applicant will not revert to his old self. Under Guideline G, Disqualifying Conditions 1, (alcohol related incidents away from work), and 4 (binge or habitual consumption of alcohol to the point of impairment) apply. None of the mitigating factors apply. Accordingly, I find against the Applicant under Guideline J, (Alcohol Abuse).

The Applicant's criminal history began in 1974, the same time as his alcohol abuse and continued until at least 1996. The Applicant's criminal history, consisting of ten arrests and/or convictions, were either alcohol related and/or involved Driving Under the Influence of Alcohol, the most recent of which occurred in 1996. Taken together, Applicant history and pattern of criminal conduct establishes that the exercise of poor judgment is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions 1 (any criminal conduct, regardless of whether the person has been formally charged) and 2 (a single serious crime or multiple lesser offenses) are clearly applicable. None of the mitigating conditions apply. Admittedly, the Applicant's most recent arrest occurred in 1996, over eight years ago. However, in the context of so many criminal acts over so long a period, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (mitigating conditions 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

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

### **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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: For the Applicant.

Subpara. 1.o.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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.

Darlene Lokey Anderson

Administrative Judge