

DATE: March 12, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-01647

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was twice convicted of driving under the influence of alcohol. In 2001, he was stopped on suspicion of drunk driving, but the charge was reduced to obstructing a highway passageway because of insufficient evidence-he refused to take a Breathalyzer. Applicant failed to sufficiently mitigate the alcohol consumption and criminal conduct security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 30 September 2003, DOHA issued a Statement of Reasons (SOR)<sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 7 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 January 2004. On 11 February 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 19 February 2004.

**FINDINGS OF FACT**

Applicant is a 50-year-old training specialist for a defense contractor. He is retired from the U.S. Navy. Applicant performs his duties well and has the recommendation of his supervisor for a security clearance.

In February 1995, applicant was arrested by police on suspicion of drunken driving. Applicant pled guilty to, and was convicted of, driving with a level of alcohol in his blood in excess of the .08 statutory limit. Ex. 5 at 1, 8. He was sentenced to 180 days in jail, suspended, placed on five years' probation, ordered to pay a fine and courts costs, and ordered to attend a Mother's Against Drunk Drivers program.

In May 2000, Applicant was arrested for drunk driving. Tests showed the level of alcohol in his blood was .18 %. Applicant pled guilty to driving under the influence of alcohol (DUI). He was sentenced to serve 365 days in jail (he served 96 hours) and ordered to pay a fine, court costs, and to attend alcohol counseling classes and Alcoholics Anonymous meetings. Ex. 4.

In November 2001, Applicant was stopped by police on suspicion of drunken driving. Applicant refused to submit to a Breathalyzer test. Applicant admits he was drinking on that occasion and was taking home a drunk patron of the bar when he was stopped by the police. He was arrested for driving while intoxicated (DWI), but the charge was eventually reduced to obstructing a highway passageway, and a deferred adjudication was entered. Applicant was sentenced to 18 months' probation, pay fines and court costs totaling about \$1,200, and ordered to complete 100 hours of community service and attend an alcohol awareness class and Alcoholics Anonymous (AA) meetings. At the direction of his attorney, Applicant sought drug and alcohol screening from a counseling service specializing in prevention, intervention, and education in drug and alcohol abuse. The counselor gave Applicant the Substance Abuse Subtle Screening Inventory. The results revealed a low probability of him having a substance dependence disorder. Ex. B.

Applicant no longer consumes alcoholic beverages.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged Applicant was convicted of obstructing a highway passageway in 2001 (¶ 1.a.), DUI in 2000 (¶ 1.b.), and DUI in 1995 (¶ 1.c.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established by substantial evidence and Applicant's admissions that he committed multiple criminal offenses. DC E2.A10.1.2.1. None of the mitigating conditions listed under the guideline apply. Therefore, I find against Applicant.

### **Guideline G-Alcohol Consumption**

In the SOR, DOHA alleged Applicant was involved in a number of alcohol-related incidents identified in ¶ 1 of the SOR (¶ 2.a.) and he continues to consume alcohol (¶ 2.b.). 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. Directive ¶ E2.A7.1.1.

The Government established by substantial evidence and Applicant's admissions that he had three alcohol-related incidents away from work within the past nine years. DC E2.A7.1.2.1. Despite Applicants protestations to the contrary, he has an alcohol problem. He was twice convicted of DUI and was stopped a third time on suspicion of DUI. The fact that he was not convicted of the 2001 offense-the charge was reduced because of the lack of evidence-does not really mitigate the incident. He had been drinking and refused a Breathalyzer that would have determined whether the alcohol content of his blood exceeded the legal standard. Although the charge was reduced, the court understood it was an alcohol-related offense and ordered Applicant to attend alcohol education classes and AA meetings. While Applicant's alcohol counselors determined he had a low probability of a substance dependence disorder in January 2002, it is unclear from their report whether they were fully informed of his two previous alcohol-related arrests.

Although I found credible Applicant's testimony that he no longer consumes alcoholic beverages, I was not convinced that he quit immediately after his last arrest as he claimed. See Tr. 26-27. After considering all of the facts and circumstances, Applicant has not demonstrated behavior supportive of sobriety sufficient to mitigate these offenses. See MC E2.A7.1.3.3. I find against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

### **DECISION**

In light of all 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 Applicant. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

*Program* (Jan. 2, 1992), as amended and modified.