

DATE: April 4, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01952

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Ligon Noel, Esquire, Department Counsel

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

John P. Mahoney, Esquire

**SYNOPSIS**

Applicant's history of alcohol abuse--documented by his five alcohol-related incidents between March 1989 and January 2000--was mitigated by the passage of over four years without recurrence of alcohol-related incidents as well as positive lifestyle changes supportive of sobriety. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 14 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption and criminal conduct.<sup>(1)</sup> Applicant answered the SOR on 18 December 2003 and requested a hearing. DOHA assigned the case to me 10 June 2004 and I convened a hearing on 21 July 2004. DOHA received the transcript 3 August 2004.

**FINDINGS OF FACT**

Applicant admitted the factual allegations of the SOR except subparagraph 1. e.<sup>(2)</sup> Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 42-year-old parachute rigger for a defense contractor--seeks to retain access to classified information. He previously served nearly nine years in the U.S. Army as a parachute rigger.

Applicant has a history of alcohol abuse, punctuated by five DUIs: March 1989, September 1993 (B.A.C. .07%), December 1996, May 1998, and January 2000. He suffered various consequences for these offenses: he paid a fine and had his license suspended for the March 1989 offense, he received a non-punitive letter of reprimand for his September 1993 offense, and received non-judicial punishment for his December 1996 and May 1998 offenses.<sup>(3)</sup> His January 2000 offense was apparently never adjudicated in court, but did result in suspension of his license. This suspension, in turn, triggered a suspension by his home state,<sup>(4)</sup> that could only be lifted if he attended an alcohol safety awareness

program. Applicant entered a four-month program in another state (A.E. A), which he successfully completed in June 2002 (A.E. B) and obtained a recommendation for reinstatement of his license (A.E. C).

Applicant testified that before his last DUI in January 2000, he drank and drove (although not necessarily intoxicated) much more often than his five incidents would indicate. However, after his January 2000 DUI, he no longer drank and drove, but he did continue to drink. Typically, he would buy a 12-pack of beer on the way home from work on Thursday and consume it over the course of the weekend through Sunday sporting events on television. He seldom drank to intoxication. When he was attending the alcohol program in March 2002, he began to think more seriously about his problems with alcohol. Although he initially acknowledged being an alcoholic as part of his efforts to fit in with the group, he later came to realize the possibility that he was in fact an alcoholic. Nevertheless, he has never been formally diagnosed as an alcohol abuser or dependent.

After completing his alcohol program in June 2002, Applicant realized the real importance of moderating his alcohol consumption. He spent more time at home and less time in bars. He works two jobs in part because it keeps him active providing for his family and avoiding the club scene that previously provided the background for his alcohol abuse. He has had no further alcohol-related incidents since his January 2000 DUI. In January 2004, he stopped drinking altogether, mistakenly believing that total abstinence was required for him to retain his clearance. Although he has wanted to drink, his increased work activity and family support has kept him abstinent. He last drank to intoxication at a New Year's Eve 2003 party in his home.

Applicant's spouse of nine years has noticed his positive efforts to be more responsible about his alcohol consumption since January 2000, as well as being a better father to their children. Applicant's character references from his two jobs, many of whom are aware of his alcohol history, note improvement in his work performance and consider him a trustworthy and reliable employee.

### **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).<sup>(5)</sup>

### **Burden of Proof**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(6)</sup>

### **CONCLUSIONS**

The government established a Guideline G case. However, the alcohol abuse is mitigated. Applicant had five alcohol-related arrests over an eleven-year period over four years ago. He was appropriately disciplined and completed the

counseling requirements of his respective offenses. Although he continued to drink, he reduced his consumption dramatically between January 2000 and January 2004--stopping altogether in January 2004--and has had no further incidents. He appears to have drunk to the point of intoxication seldom between January 2000 and December 2003. He has never been formally diagnosed as alcohol dependent or an alcohol abuser. He recognizes the importance of a sober lifestyle, both for his family as well as his job and clearance. I conclude that Applicant is unlikely to return to abusive levels of drinking. Accordingly, I resolve Guideline G for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Paragraph 2. Guideline J: FOR THE APPLICANT

Subparagraph a: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Which he claimed, and the government conceded (Tr. 101-102), was merely the court date for the arrest listed in 1.f.
3. He received informal military counseling after each of these offenses. His reduction in rate for his May 1998 offense caused him to be released from active duty at the expiration of his enlistment because he exceeded retention limits for his pay grade.
4. The same state where he had the March 1989 offense before entering the military.
5. Although the SOR alleges all the alcohol incidents as Criminal Conduct under Guideline J, the gravamen of the security concerns in this case is the mind altering potential of alcohol abuse and not the concerns usually associated with criminal activity. Consequently, I conclude the Guideline J allegations add nothing to the analysis of this case and resolve them in Applicant's favor.
6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).