

DATE: March 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-05134

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

**FOR APPLICANT**

Thomas Wolpert, Esq.

**SYNOPSIS**

Applicant has a history of alcohol consumption concerns as a result of seven alcohol-related incidents in the 1980s and four alcohol-related incidents in the 1990s. Beginning in 1995, Applicant began tapering his drinking down until he reached total abstinence in January 2004. Additionally, he has undergone positive behavior changes supportive of sobriety. Applicant has successfully mitigated the security concerns as a result of past alcohol-related incidents. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 15, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on January 23, 2004, and elected to have a hearing before an administrative judge. The case was assigned to me March 22, 2004. On April 30, 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.

The government withdrew SOR ¶¶ 1.c., 1.e., 1.g., 2. and 2.a. The government offered 11 documents, which were admitted without objection as Government Exhibits (GE) 1 through 11. The Applicant offered three documents, which were admitted without objection as Applicant Exhibits (AE) A through C. DOHA received the transcript on May 11, 2004.

**FINDINGS OF FACT**

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 43-year-old unmarried man, who lives with his girlfriend, girlfriend's 14-year-old daughter, and their one-year-old son. Applicant provides total support for his girlfriend's daughter and their son.

Applicant is employed as an electrical engineering assistant for a defense contractor. He has been with the same employer since August 1982, approximately 23 years as a technical specialist. He seeks to renew his security clearance as a requirement for employment. He has held a secret security clearance since September 1982.

On September 28, 1980, Applicant was charged with underage drinking and leaving the scene of an accident. He paid a fine for both charges.

On April 22, 1981, Applicant was arrested and charged for being under the influence of alcohol or drugs. The charges were amended to disorderly conduct and he paid a fine.

In July 1983, Applicant was cited for disorderly conduct after he had been drinking.

On June 30, 1984, Applicant was cited for disorderly conduct. Applicant advised the reporting officer that he was "drunk." GE 11.

On October 14, 1985, Applicant was arrested and charged for driving under the influence. The case was nolle processed. GE 10.

On April 8, 1989, Applicant was cited for disorderly conduct and public drunkenness. He pled guilty to both offenses and paid a fine. GE 9.

In October 1989, Applicant was arrested for public drunkenness in lieu of driving under the influence. He paid a fine as a result of this incident.

On April 30, 1991, the police responded to a domestic disturbance involving Applicant and his girlfriend. Applicant and his girlfriend had been drinking. Applicant was neither arrested nor charged as a result of this incident. GE 8, GE 2.

On September 6, 1993, Applicant was arrested for driving while intoxicated. Applicant pled guilty and was sentenced to undergo imprisonment for not less than 48 hours nor more than 12 months to perform litter pickup, to pay costs of prosecution and a fine of \$300.00, to obtain an alcohol evaluation and treatment if recommended, and attend safe driving school. GE 6, GE 2.

On December 5, 1996, Applicant was arrested for simple assault and harassment during a domestic disturbance involving his girlfriend. All of the subjects involved were intoxicated. The charges were dismissed based on the victim's failure to appear. GE 5, GE 2.

On October 16, 1999, Applicant was arrested on a military installation and charged with disorderly conduct, harassment, resisting arrest, and terroristic threats. On January 6, 2000, he was found guilty of resisting arrest and ordered to pay a fine and special assessment totaling \$1010.00. Applicant was intoxicated when arrested. GE 4, GE 2.

During the 1980s, Applicant drank heavily on weekends and occasionally during the week. Alcohol was involved in all of the incidents discussed above. From 1995 to 2002, Applicant drank primarily on weekends, and occasionally during the week, limiting his drinking to beer or wine supplemented with occasional hard liquor. From 2002 to 2004, Applicant primarily drank beer on weekends.

Since January 11, 2004, Applicant has abstained from drinking completely. He realized the adverse impact alcohol was having on his life. This realization came after a heated argument with his father. Additionally, the responsibility of becoming a father weighed on him causing him to modify his lifestyle.

Upon the advice of counsel, Applicant consulted a health care professional after his October 1999 incident, discussed above. He "went in for a couple sessions." Applicant has not been diagnosed as an alcoholic or as alcohol dependent.

Applicant has a superb work record. His supervisor testified, "[Applicant's] work is viewed very highly in the company. He is ranked as one of the top two people in the company . . . in his particular peer group." Tr. 22. A former supervisor testified Applicant was "one of the best technicians" he ever worked with. Tr. 36.

Applicant's girlfriend testified to his good character, his being a model parent to their one-year-old son and stepdaughter, and verified he has not had a drink since January 2004. She further confirmed that before he quit drinking, his drinking was moderate and limited to weekends.

Applicant submitted three exhibits attesting to his honesty, work ethic and overall good character. AE A through C.

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure (2) of the Directive sets forth personnel 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.

## CONCLUSIONS

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

In the SOR, DOHA alleged Applicant had a number of alcohol-related incidents (¶¶ 1.a. through 1.o.) to include six arrests and five incidents not resulting in an arrest. Three alcohol-related SOR allegations (¶¶ 1.c., 1.e., 1.g.) were withdrawn by the government.

*The Concern:* 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 its case in part by Applicant's admissions and evidence submitted for each of the remaining allegations contained in the SOR. There is no doubt that Applicant's use of alcohol has caused him considerable problems in the past. The 1980s were a particularly troublesome time for him with a total of seven alcohol-related incidents followed by four alcohol-related incidents in the 1990s. Fortunately, none of the reported alcohol-related incidents or conduct carried over to Applicant's work place. Applicant has held a clearance since 1982 and renewed it in 1992. Such conduct gives rise to Alcohol Consumption Disqualifying Condition (AC DC) ¶ E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*); and AC DC ¶ E2.A8.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*).

Applicant began tapering his drinking down starting in 1995 until he finally stopped drinking in January 2004. There is no evidence in the record to suggest Applicant is an alcoholic or alcohol dependent. Applicant's past problems with alcohol appear to be behind him. Weighing heavy on his mind are his new responsibilities at home and the jeopardy his conduct has placed him with his employer.

Applicant has demonstrated that he has been a dedicated employee for 23 years without any security violations. He has not had any alcohol-related incidents at work and is a valued and trust employee. He is a homeowner, in a steady relationship, and a new father and stepfather. Applicant's turnaround behavior triggered Alcohol Consumption Mitigating Condition (AC MC) ¶ E2.A7.1.3.2. *(The problem occurred a number of years ago and there is no indication of a recent problem)* and AC MC ¶ E2.A7.1.3.3. *(Positive changes in behavior supportive of sobriety)*.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶ 1 and ¶¶ 1.a. and 1.b., 1.d., 1.f., and 1.h. through 1.o. ¶¶ 1.c., 1.e., 1.g., 2. and 2.a. were withdraw by the government.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Withdrawn

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Withdrawn

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Withdrawn

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Paragraph 2. Guideline E: WITHDRAWN

Subparagraph 2.a.: Withdrawn

### **DECISION**

In light of all of 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. Clearance is granted.

**Robert J. Tuider**

## **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.