

DATE: April 25, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-05775

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. Mackinnon, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 60 years old and has worked for a federal contractor since 1998. He retired from the Navy in 1991, with the rank of E-8. Applicant has three DUI convictions, in 1982, 1990 and 2002. Applicant has attended four alcohol treatment/counseling/rehabilitation programs. Applicant admitted in 1982 that he is an alcoholic. Applicant continues to drink alcohol. Applicant has failed to mitigate the security concerns regarding Guideline G, alcohol consumption. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, for alcohol consumption.

In a sworn statement, dated May 7, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record, in lieu of a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR and provided explanations to mitigate the security concerns. Department Counsel submitted the government's case on August 5, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on August 6, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and did not provide any additional material. The case was originally assigned to another judge, but due to case load considerations, it was reassigned to me on March 25, 2005.

### **FINDINGS OF FACT**

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

Applicant is 60 years old and has worked for a federal contractor since 1998 as a property management specialist. Applicant is married with grown children. Applicant retired from the Navy in 1991 with the rank of E-8. Applicant held a secret security clearance in 1965, but there was insufficient information to determine how long he held it.

Applicant started drinking alcohol when he was 16 years old and by the time he was 19, he was drinking regularly.<sup>(2)</sup> Applicant consumed alcohol, at times to excess and to the point of intoxication and occasional blackouts, from approximately 1964 to at least 2003. Applicant was arrested on October 22, 1982, and charged with driving under the influence (DUI). Applicant was found guilty, fined, had his driver's license suspended, and was ordered to attend Navy Alcohol Rehabilitation.

Applicant received treatment from approximately November 9, 1982 to December 22, 1982. Applicant was 37 years old when he entered treatment. During his treatment, Applicant admitted he had blackouts and that he had developed a 12-24 beers-per-day tolerance.<sup>(3)</sup> At that time, Applicant had unsuccessfully attempted to stop drinking several times.<sup>(4)</sup> Applicant had marital problems associated with his drinking.<sup>(5)</sup> Applicant was hospitalized for 43 days during his alcohol treatment, was given antabuse and regularly attended Alcoholics Anonymous.<sup>(6)</sup> In 1982, Applicant admitted he was an alcoholic, but minimized the extent of his problem. He was also diagnosed by the treatment facility as being in the middle stages of alcoholism.<sup>(7)</sup>

The rehabilitation program documented that any degree of drinking by a person suffering from the disease of alcoholism should be considered a relapse of the disease.<sup>(8)</sup> Applicant was diagnosed as alcohol dependent and his prognosis after completing the treatment was fair.<sup>(9)</sup>

Applicant received treatment from about May 23, 1988 to January 24, 1989, at a naval hospital psychology clinic, for a condition diagnosed, in part, as alcoholism.

Applicant was arrested on June 28, 1990, and charged with driving under the influence, a second offense. He was found guilty and sentenced to six months in jail, with five months and 29 days suspended. He also received one year of unsupervised probation, a fine of approximately \$294.00, ordered to attend the state's alcohol and substance abuse program, and his driver's license was suspended for three years. Applicant was 45 years old at the time he was arrested.

Applicant was arrested on September 14, 2002, when he was 57 years old, and charged with driving under the influence. He was found guilty and sentenced to 60 days in jail, with 55 days suspended, and fined approximately \$502.00. Applicant's driver's license was suspended for one year, but he was granted a restricted license contingent upon him attending an alcohol safety action program. Applicant received alcohol related treatment or counseling from about October 15, 2002 to May 15, 2003.

Applicant continues to drink alcohol and denies he has a drinking problem. Applicant claims that since his first DUI he has now matured, and his last DUI was "just a stupid mistake."<sup>(10)</sup> Applicant claims he has no intention of ever drinking and driving again.<sup>(11)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition

or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. <sup>(12)</sup> The government has the burden of proving controverted facts. <sup>(13)</sup> The burden of proof is something less than a preponderance of evidence. <sup>(14)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. <sup>(15)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(16)</sup>

No one has a right to a security clearance <sup>(17)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>(18)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. <sup>(19)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. <sup>(20)</sup> 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist because 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G.

Based on all the evidence, 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*) applies in this case. Applicant has three DUI convictions in a 20 year span.

I have considered all the mitigating conditions and specifically considered Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol related incidents do not indicate a pattern*), 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*), and conclude none apply.

In 1982, while in treatment due to his first DUI, Applicant admitted he is an alcoholic. Applicant continued to drink for twenty years, and was convicted of two more DUIs. Applicant attended four different alcohol treatment/rehabilitation/counseling/awareness programs over the past 20 years. The first program Applicant attended was as an inpatient for 43 days. Two of the other programs were each for seven months, and the fourth program was for an indeterminate amount of time. It is a serious concern that Applicant had four opportunities to gain an awareness of the serious consequences that his drinking had and continues to have on his life, and yet he continued to drink and drive.

Applicant was convicted of DUI at the ages of 37, 45 and 57, hardly an indication of youthful experimentation or inexperience with alcohol. Applicant failed to act responsibly when consuming alcohol. Applicant continues to drink and has an established pattern of drinking. Although Applicant claims he will not drink and drive again, his past behavior and the fact he continues to drink, raise serious questions about his ability to follow through on this claim. The

alcohol consumption concern is not just that Applicant may drink and drive, but that he becoming intoxicated makes him less reliable and increases the risk of disclosure of classified information due to carelessness.

I conclude Applicant has exercised questionable judgment regarding his use of alcohol. Applicant admitted he is an alcoholic back in 1982, and there is minimal evidence to support he has made positive changes in his behavior to indicate he is attempting sobriety. Applicant continues to minimize the impact alcohol has on his life. Applicant's characterization of his last DUI as "just a stupid mistake," is further evidence that he does not recognize the impact alcohol has on his judgement. All of the above factors raise serious doubts as to Applicant's judgment and ability to make good choices.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by his alcohol consumption. Accordingly, Guideline G, pertaining to alcohol consumption is decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### Paragraph 1 Alcohol Consumption (Guideline G) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. 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 Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Item 8.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* Insufficient information was provided regarding the specific credentials of the counselor who made the diagnosis.
8. *Id.*
9. *Id.*
10. Item 5.
11. *Id.*
12. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
13. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
17. *Egan*, 484 U.S. at 531.
18. *Id.*
19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
20. Executive Order 10865 § 7.