

DATE: December 8, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-07491

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina R. Redd, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 43-year-old employee of a defense contractor, who has successfully held a security clearance for about 25 years. He has a history of excessive alcohol consumption, including alcohol-related offenses away from work in 1992 and 2001. However, the incidents occurred a number for years ago, and there is no indication of recent problems with alcohol. Applicant mitigated the security concerns arising from his alcohol consumption. 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 under Executive Order 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 (the "Directive"). On September 30, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on November 23, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on October 12, 2005. The government introduced Exhibits 1 through 8. Applicant provided Exhibits A through E, and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on October 28, 2005.

**FINDINGS OF FACT**

Applicant admitted the factual allegations in the SOR, with explanations. Applicant's Answer to SOR, dated November 23, 2004. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the

evidence in the record, I make the following additional findings of fact.

Applicant is 43 years old. Ex. 1 at 1. He seeks a security clearance to work as an electromagnetic lab technician for a defense contractor. Tr. at 41.

Applicant was born in June 1962. Ex. 1 at 1. He began drinking alcohol when he was about 16 years old, by consuming small amounts of beer with his high school friends. Ex. 2 at 2.

Applicant joined the U.S. Air Force in April 1981, when he was 18 years old. Ex. 1 at 6; Tr. at 22. After basic training, he attended technical training school, where his regular consumption of alcohol increased to drinking between four and six beers at a sitting, about once a week. Ex. 2 at 3. Applicant's first assignment was in the U.S., and he was stationed there between about 1981 and 1984. In February 1982, Applicant married another active-duty service member, and they had a daughter born in May 1983. Ex. 1 at 5.

In 1984, Applicant and his family were reassigned to a military installation in the Philippines. Applicant worked an unusual shift-three days on and three days off-with a group of single service men. This encouraged frequent socializing with his co-workers; Applicant began drinking alcohol three to four times a week, five to six beers at a time. Ex. 2 at 3. Applicant's second child was born in 1986. Ex. 1 at 5. During this time, Applicant and his wife experienced marital difficulties, and she contacted the First Sergeant of their unit and complained about Applicant's drinking habits. Tr. at 24. According to Applicant, the First Sergeant strongly recommended that he enroll as an inpatient in the Alcohol Rehabilitation Center (ARC), suggesting that failure to do so could adversely impact his desire to re-enlist the following year. Tr. at 24. Applicant enrolled in the program. Applicant embellished the amount of his alcohol consumption in order to meet and fulfill the requirements of the program. Tr. at 25, 26. Applicant successfully completed the ARC. Ex. 2 at 3; Tr. at 24. Applicant recalls being diagnosed as an alcohol abuser. Tr. at 41. He abstained from alcohol for about two years after completing the ARC. Ex. 2 at 3.

Applicant resumed drinking alcohol in about 1989, while the family was still stationed in the Philippines. Ex. 2 at 3. He believes job stress motivated him to drink again. Tr. at 26-27. Applicant gradually returned to drinking about three to four times a week, five to six beers at a time. Ex. 2 at 3.

In 1990, Applicant and his family were reassigned to a base in the United States. Applicant's alcohol consumption slowed to about two or three times a month, five or six beers at a time. *Id.*

In 1992, Applicant was assigned to Iceland, without his family. *Id.* The base had a club very near his barracks, and he began drinking alcohol two to three times a week, six or seven beers at a time. *Id.* In May 1992, while drinking in the club, Applicant got into a verbal altercation with another patron. Ex. 2 at 2. As Applicant began to leave, a knife in his back pocket became stuck in the slats of his chair. *Id.* He pulled it out to free himself from the chair. Witnesses saw the knife, thought he pulled it because of the altercation, and reported it. The security police apprehended Applicant outside the club and found the knife. *Id.* In about June 1992, Applicant's commander gave him nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815, for being drunk and disorderly. Tr. at 46.

After receiving the nonjudicial punishment, the military required Applicant to attend alcohol counseling. Tr. at 30. He entered a program run by the Navy, and attended half-day sessions three times a week for about six weeks. *Id.* Applicant was uncertain of the qualifications of those running the program. *Id.* Thereafter, he stopped drinking alcohol for seven years. *Id.*

In January 1993, Applicant was reassigned to a military installation in the U.S. Other than a three-month tour in the Middle East, Applicant served there until his retirement. Ex. 1 at 3.

In August 1999, Applicant learned his wife was diagnosed with cancer. Ex. 1 at 3. He drank heavily that same night. *Id.* Applicant did not continue drinking alcohol on a regular basis because he had to care for his wife, but drank occasionally at social functions. *Id.*

Applicant's wife passed away in May 2000. Ex. 2 at 1. Applicant was left to care for three teenage children. Tr. at 17. He began drinking daily, averaging about 20 beers every two or three days. Ex. 2 at 3. Applicant's pattern of heavy

drinking continued for about nine months. Tr. at 34.

On an evening in April 2001, after drinking alcohol at home, Applicant decided to visit a local bar. Ex. 2 at 1. He had several more drinks at the bar, and left after 11:00 p.m. *Id.* While driving home, he stopped to let a train pass and fell asleep at the wheel. *Id.*; Ex. 3 at 1-2. A police officer found him, woke him, administered a field sobriety test, and took him to the police station. Tr. at 34. Applicant's blood-alcohol level was about .146 %. Ex. 2 at 1; Tr. at 36. Applicant promptly reported the matter to his supervisors and, ultimately, to the security office. Ex. 7 at 2. The security officer reported the matter to the Defense Security Service, initiating the investigation that led to this action.

The state charged Applicant with driving under the influence. Applicant pled *nolo contendere*, and the court found him guilty of the offense. Tr. at 36; Ex. 4 at 1. He was sentenced to 50 hours of community service and 12 months of supervised probation, was assessed over \$1,000.00 in fines and court costs, had his driver's license suspended, and was ordered to attend a DUI Level 1 class, a Victim's Awareness class, and an HIV Awareness class. Ex. 4 at 2. Applicant completed the requirements of his sentence, and was able to get his probation terminated six months early. Ex. 2 at 2; Ex. 5; Ex. 6.

Applicant attended the court-ordered counseling for about 12 weeks, between July and October 2001. Ex. 2 at 2. He had one individual counseling session to prepare a treatment plan, then went to group sessions once a week. *Id.* The sessions consisted of watching dated videotapes. Tr. at 36. Applicant did not find the sessions very useful. Tr. at 49. He also attended several sessions of Alcoholics Anonymous (AA), but did not continue to attend beyond the required sessions. Tr. at 50. He abstained from alcohol after the DUI and during the program, as required, for over one year. Tr. at 36-37, 48. He does not currently attend any alcohol treatment program. Tr. at 37-38.

Applicant attends grief counseling to help him deal with the loss of his wife. Tr. at 38. The counseling is not focused on alcohol consumption, but deals with related subjects and underlying issues that might prompt an individual to drink alcohol to cope with a problem. *Id.* at 51. The grief counseling program provides Applicant with a support system; i.e., someone to turn to for help if problems arise. Applicant met and later married his grief counselor. Tr. at 38, 52.

Applicant supports two of his three children, and is a father for his second wife's daughter. Tr. at 18. He works two jobs in order to maintain two households; the couple plans to sell one house and move into the other. Tr. at 39.

Applicant resumed drinking alcohol because he liked the taste and the way it made him feel. Ex. 2 at 3-4; Tr. at 39. In a sworn statement written in December 2002, he indicated he drank between four and six beers on the average of two to four times each week. Ex. 2 at 3-4. He denied ever having done anything under the influence of alcohol that could provide a basis for blackmail, and stated alcohol consumption had never affected his duty performance, finances, or health. *Id.* at 4. At the hearing in October 2005, Applicant indicated he drinks alcohol on the average about two or three times a month, by having a few beers on a weekend. Tr. at 37. He drinks beer while attending automobile races with friends on one or two occasions each year. Tr. at 37, 38. Applicant does not feel that he has a problem with alcohol that is as severe as his history might suggest. Tr. at 40.

Applicant's duty performance has been excellent. The Laboratory Manager described him as an excellent technician who is knowledgeable and hard-working. Ex. A. His immediate manager praised his diligence, planning, and careful execution of his duties. Ex. B. Applicant's co-workers and friends commended his character, responsibility, and leadership. Ex. C; Ex. D; Ex. E.

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and

mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline G, Alcohol Consumption. 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.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a]lcohol-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." The evidence establishes two alcohol-related incidents away from work: drunk and disorderly conduct in 1992, and driving under the influence of alcohol in 2001. I conclude this potentially disqualifying condition applies.

Under ¶ E2.A7.1.2.3 of the Directive a "[d]iagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence" may be disqualifying. The available evidence indicates Applicant was given a diagnosis of "alcohol abuse" in 1986 after inpatient treatment at the ARC. Unfortunately, the available evidence does not reflect the qualifications of the individual making the diagnosis. More significantly, the diagnosis was made almost 20 years ago, greatly diminishing its value as an indicator of Applicant's current condition. I find the evidence does not support this potentially disqualifying condition.

Under the Directive, ¶ E2.A7.1.2.5, "habitual . . . consumption of alcohol to the point of impaired judgment" may be disqualifying. Applicant's admissions indicate he has engaged in a pattern of habitual, excessive drinking in the past, including while stationed overseas and following his wife's death. I conclude this potentially disqualifying condition applies.

The security concerns arising from Applicant's history of excessive alcohol consumption can be mitigated under certain circumstances. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." There were two alcohol-related incidents away from work in this case. They were separated by many years. One involved a verbal altercation in a club while the second was driving under the influence of alcohol. I conclude these alcohol-related incidents did not indicate a pattern, therefore this potentially mitigating condition applies.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." The Directive does not define the terms "a number of years ago" or "recent"; whether these conditions apply is determined by all the circumstances in each individual case. Applicant's first alcohol-related incident occurred in 1992, and Applicant's latest alcohol-related incident occurred in 2001; each could be fairly described as being "a number of years ago." Whether the evidence shows "no indication of a recent problem" is more difficult. Clearly, there have been no alcohol-related incidents at or away from work. However, in a sworn statement written in December 2002, he indicated he drank between four and six beers on the average of two to four times each week, a fairly heavy consumption of alcohol. Ex. 2 at 3-4. The available evidence at the time of the hearing indicated he drinks alcohol now, but at a more moderate level. Considering all the circumstances, I find no indication of a recent problem with alcohol.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following his alcohol-related incident in 2001, Applicant attended the court-ordered alcohol awareness program and a few AA meetings, as required. He did not find the programs particularly helpful. Applicant still drinks alcohol regularly, although not to excess. The evidence does not indicate any further alcohol-related incidents, and Applicant's evidence shows his drinking has never adversely affected his performance at work. I find this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating factors, as well as the "whole person" concept. Applicant is a mature individual with many years of excellent service to the Air Force and the United States. He has held a security clearance successfully for almost 25 years. Applicant has a history of fairly heavy alcohol consumption. When personal difficulties arose in his life, his alcohol consumption resulted in impairment of social or occupational functioning. While the off-duty alcohol-related incidents in this case did not indicate a pattern, Applicant's history of heavy drinking, even after these problems occurred, indicates poor judgment. On the other hand, Applicant has not had an alcohol-related incident since 2001. He continues to drink alcohol, in moderation. He is not attending any alcohol treatment program at present, but he participates in a grief counseling program that would provide support if needed. Finally, Applicant's supervisors and co-workers attest to his reliability and trustworthiness. I conclude Applicant has mitigated the security concerns arising from his history of problems arising from alcohol consumption.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

### **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.

Michael J. Breslin

Administrative Judge