

DATE: March 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-07757

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Diagnosed as alcohol dependent in 2000, Applicant continued to consume alcohol in excessive quantity until early September 2002. After being advised by his primary physician that continued alcohol consumption presented a serious risk to his health, Applicant ceased all consumption and developed positive ways to cope with stress. He has a favorable prognosis by a licensed psychologist, who assessed his alcohol dependence as being in sustained, full remission as of November 2003. Clearance is granted.

**STATEMENT OF CASE**

On September 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Alcohol Consumption (Guideline G).

On September 19, 2003, Applicant filed his response to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 22, 2003, and pursuant to notice of that date, a hearing was scheduled for November 18, 2003. At the hearing held as scheduled, the Government's case consisted of two exhibits and the testimony of a Defense Security Service (DSS) agent who interviewed Applicant in 2000. Applicant testified on his behalf and submitted one exhibit. A transcript of the hearing was received November 28, 2003.

**FINDINGS OF FACT**

The SOR allegations concern Alcohol Consumption (Guideline G) based on an alcohol abuse history that includes treatment for alcohol dependency and consumption thereafter. Applicant admitted the allegations, but indicated he had stopped drinking on September 2, 2002, on the advice of his physician. His admissions are incorporated as findings of

fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 56-year-old controller for a defense contractor. He has been employed in that capacity since his hire in late December 1998 after two years of self-employment. From January 1986 to December 1996, Applicant worked as the director of finance and administration for another federal contractor. Applicant seeks a top secret security clearance for his present position.

Applicant has a long involvement with alcohol that reached abusive levels in the 1990s. In the late 1960s, he consumed beer recreationally during high school and college, generally three or four beers per occasion at parties on weekends. Married in August 1969, Applicant graduated from college with a B.S. degree the following June. His consumption of alcohol gradually increased thereafter to three to five beers most evenings.

In 1984, Applicant was introduced to wine during a ten-day business trip to the Middle East. During his 40s, his drinking increased to up to as many as eight drinks of beer and/or wine on most nights. In his late 40s, his consumption of hard liquor increased. Concerned about his consumption level, Applicant quit drinking for 10 months in 1995 and attended six or seven Alcoholics Anonymous (AA) meetings before quitting because he derived little personal benefit from the meetings. After consuming some alcohol at a holiday party with his spouse in late 1995, Applicant resumed drinking hard liquor at home, or a couple of glasses of wine with dinner followed by two or three beers later in the evenings. Social drinking outside of his residence was limited to three or four beers or glasses of wine once or twice per month. Applicant managed abstinence during Lent each year only to return to drinking seven or eight drinks four or five nights per week.

In 1998, Applicant quit drinking during the work week when he found out his daughter was pregnant with his grandchild. He managed to abstain completely from alcohol during Lent 1999, but resumed nightly drinking that April. After an unsuccessful attempt to again limit his consumption to weekends in Fall 1999, Applicant sought counseling through a local counseling center in January 2000. During his second session, he was advised by his therapist, a staff psychologist, that his primary problem was alcohol dependence. At that point, Applicant realized that alcohol was more than just a negative habit in his lifestyle that he was going to have to deal with eventually. Applicant attended between seven and ten counseling sessions until about May 2000 when he stopped because he felt the therapist was not being aggressive enough in her therapeutic approach.<sup>(2)</sup>

From 2000 to early September 2002, Applicant continued to consume alcohol at a rate of eight to ten drinks per night, three to five nights per week. In September 2002, Applicant's primary physician advised him he had to stop drinking for health reasons. Applicant has not consumed any alcohol since, although he currently has alcohol in his residence (hard liquor purchased for the 2002 holidays that had not been opened, beer in his refrigerator enjoyed by his sons, wine for his spouse who likes to have a glass with dinner). He denies having had any cravings to drink the alcohol.

Instead of turning to alcohol to relax, Applicant works out at a gym five or six days per week. He also belongs to a rowing club and owns a road bike. Applicant has no intent to drink alcohol in the future because of the potential risk it could cause to his health since he suffers from high blood pressure and has a pacemaker.

In late October 2003, Applicant sought an alcohol evaluation at the counseling center he attended in 2000. The clinical director, a licensed psychologist with an APA certificate of proficiency in the treatment of alcohol and other psychoactive substance abuse disorders, interviewed Applicant and his brother (the latter by telephone) and administered a substance abuse screening inventory. In November 2003, she diagnosed Applicant's condition as alcohol dependence, sustained full remission.<sup>(3)</sup> In her professional opinion, Applicant is a good candidate to maintain his sobriety.

A closet drinker when he drank, Applicant has not informed his spouse of 35 years that he was diagnosed as alcohol dependent as he is not certain how she would deal with it and he does not want to burden her. Applicant's brother, a recovering alcoholic who quit drinking ten years ago, was unaware Applicant had any problem with alcohol until late October/early November 2003 when he was questioned by the psychologist in her recent evaluation of Applicant's alcohol problem.

Applicant has never been arrested for any alcohol-related offense, and he has had no adverse incidents at work related to alcohol.

## **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.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

### **Alcohol Consumption**

E2.A7.1.1. 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.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;

E2.A7.1.3.4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a

recognized alcohol treatment program.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline G, Alcohol Consumption:

A closet drinker who consumed alcohol primarily at his residence, Applicant is a diagnosed alcoholic who has no record of alcohol-related incidents away from work or at work. The absence of any work-related impairment does not negate the security risk posed by off duty abusive drinking, as the protection of classified information is a 24-hour-per-day responsibility. Although Applicant maintained total abstinence from alcohol for ten months in 1995, and for about forty-days each Spring thereafter, he always returned to drinking. An inability to limit his consumption of alcohol to weekends in Fall 1999 led him to seek counseling in early 2000 where he was diagnosed as alcohol dependent. Seven to ten counseling sessions made little impact, as he continued to drink to September 2002 three to five days per week in excessive quantity (eight to ten drinks per day). Under the adjudicative guidelines pertinent to alcohol consumption, disqualifying condition E.2.A7.1.2.2., *Diagnosis by a credentialed medical professional (e.g., . . . clinical psychologist) of alcohol abuse or alcohol dependence*, applies to an evaluation of Applicant's suitability for access. While the credentials of the counselor who diagnosed Applicant in 2000 are not of record, the diagnosis of alcohol dependence was confirmed recently by the director of the counseling program, a licensed psychologist proficient in the treatment of alcohol disorders. <sup>(4)</sup>

Applicant presents as mitigating the cessation of all consumption since September 2002, with an increase in physical fitness activities that do not involve alcohol and other stress reducing hobbies like woodworking. His sustained abstinence for some thirteen months is accompanied by a genuine commitment to maintain sobriety because of the risk alcohol now poses to his personal health. Mitigating condition (MC) E2.A7.1.3.3., *Positive changes in behavior supportive of sobriety*, applies in his favor. However, the Directive sets forth very specific requirements to mitigate alcohol dependence, a medical condition characterized by cognitive, behavioral, and physiological symptoms in which total and permanent abstinence from alcohol is required for the individual's recovery. As set forth in E2.A7.1.3.4., the individual must successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or similar organization, abstain from alcohol for at least 12 months, and receive a favorable prognosis from a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Applicant terminated his counseling in 2000 prematurely, and he attended only six or seven AA meetings. His failure to satisfy MC E2.A7.1.3.4. does not mandate an adverse outcome, although he bears a heavy burden to prove sufficient reform without the rehabilitation program and support group components.

Although AA works for many, not everyone finds it helpful. When interviewed by the psychologist in the course of her recent evaluation of Applicant, Applicant's younger brother described Applicant as "a closed mouth person [who] doesn't talk much about his feelings or thoughts." Whereas the AA fellowship is based largely on sharing one's recovery with others, it would not seem to be a good fit for Applicant. The licensed psychologist who evaluated Applicant in October/November 2003 indicated that Applicant's ability to quit drinking without assistance is not an uncommon method of achieving sobriety. In her professional opinion, Applicant's alcohol dependence is in sustained, full remission, and he is not likely to return to alcohol to reduce stress as he has found other means to relax. Applicant's brother, apparently a recovering alcoholic with AA experience, had not witnessed any inappropriate behavior on Applicant's part that would have led him to believe alcohol was an issue for Applicant. Since Applicant was a closet drinker, this does not invalidate the diagnosis of dependency, but it does show Applicant had some control even when he was drinking, which augurs favorably for his continued abstinence. While the Government is correct in noting that Applicant managed to remain abstinent in the past for significant periods only to return to drinking, Applicant's attitude toward alcohol has changed since he was confronted directly with the risks to his health should he continue to consume. Subparagraphs 1.a. and 1.b. are resolved in Applicant's favor as there is little likelihood, if any, of Applicant abusing alcohol in the future.

## FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: 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. Clearance is granted.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Applicant testified the therapist did not treat him as much for alcohol dependency as she did for other issues, which was frustrating to him. (Tr. 63-64).
3. According to the *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition*, the specifier sustained full remission is used if none of the criteria for dependence or abuse have been met at any time during a period of 12 months or longer.
4. Disqualifying condition E2.A7.1.2.6., *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*, is not pertinent, as although Applicant continued to drink after a qualifying alcohol diagnosis, he has not completed a rehabilitation program.