

DATE: November 30, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07851

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esquire, Department Counsel

**FOR APPLICANT**

David P. Price, Esquire

**SYNOPSIS**

Applicant was diagnosed as alcohol dependent in 2002. Thereafter, his attempts at recovery were uneven and included a brief use of marijuana in early 2002 as a substitute for alcohol. However, he has been drug and alcohol free since September 2004, due in large measure to his commitment to and active participation in Alcoholics Anonymous (AA). He has mitigated the security concerns about alcohol consumption and illegal drug use. Clearance is granted.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On September 23, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline G (alcohol consumption) and Guideline H (illegal drugs).<sup>(2)</sup> Applicant timely responded to the SOR, admitted (with explanation) all of the allegations therein, and he requested a hearing.

The case was assigned to me on July 18, 2005, and I convened a hearing on August 17, 2005. The parties appeared as scheduled and the government presented three exhibits, which were admitted without objection. Applicant also submitted three exhibits admitted without objection (AE A - C), testified in his own behalf, and presented the testimony of three other witnesses. DOHA received the transcript (Tr) on August 25, 2005.

**FINDINGS OF FACT**

Applicant's admissions in his Answer are entered as facts. After a thorough review of the pleadings, transcript, and exhibits, I also find the following:

Applicant is a 50-year-old senior engineering technician for a major defense contractor working in support of a Navy shipyard. He has been employed by the contractor since 1980, after serving six years, mostly at sea, as a fire control

technician in the U.S. Navy. He is highly-regarded by his supervisor and by his co-workers as extremely reliable and accomplished in his field of expertise. He has held a security clearance since 1980.

Applicant has been married twice. His first marriage, from 1975 until 1977, ended in divorce. He married his current wife in 1978. They have an adult son, who is married and has a child of his own, and a 12-year-old daughter adopted as an infant in 1993.

Applicant grew up in a broken home, and was raised by his mother until about age 15. He then lived with his father until joining the Navy out of high school. As a teenager, Applicant would hang around with an older cousin and his friends and began using alcohol in 1970, at about age 16. He also began using marijuana with varying frequency from about 1974 until 1983.

Applicant's drug use while in the Navy and for a short time thereafter was sporadic at best; however, his drinking rarely abated while he was not at sea. Before entering the Navy, he drank on average about six beers and some hard liquor each weekend. While in the Navy, and after his discharge, until about 1999 or 2000, he drank about three to six beers in a sitting, about two to three times weekly. Thereafter, his drinking increased to the point he was consuming at least three to six beers daily as well as at least one shot of liquor each night along with his beer. Between 1999 and 2003, Applicant also experienced blackouts due to drinking.

In 1980, Applicant was charged and convicted with driving under the influence of alcohol (DUI) after he was involved in a car accident. He had consumed a bottle of wine before getting behind the wheel. This was his only alcohol- or drug-related arrest, and has his use of alcohol or drugs impacted his standing at work. The effects of his alcohol abuse have, however, been felt at home. Applicant would come home after work and drink until he fell asleep each night. The effect of his conduct was that he was only minimally involved with his wife and children. In October 2001, Applicant's wife threatened to leave him if he did not do something about his drinking.

From December 2001 until April 2002, Applicant received individual counseling from a clinical substance abuse counselor (CSAC). During that period, he was supposed to abstain from alcohol but slipped three times, consuming a pint of hard liquor on each occasion. In early 2002, as he was trying to stop drinking, Applicant tried substituting marijuana for alcohol. Between January and May, he bought a small amount of marijuana and smoked it on at least six occasions. He stopped when he realized it was not helping alleviate his craving for alcohol. The counselor recommended, and, at the behest of his employer, Applicant eventually agreed to enter an intensive outpatient program (IOP) to further his recovery. Applicant completed the IOP in November 2002. As of February 2003, Applicant's counselor rated his prognosis for recovery as "good," and reported he was compliant and honest during his treatment. (3)

During his treatment, Applicant was diagnosed with cannabis abuse and as alcohol dependent, as well as suffering from depression and anxiety disorders. He was prescribed medications for his depression and anxiety, and told to abstain from drugs and alcohol. He was also advised to become engaged in a structured support program such as AA. Applicant did not drink from April 2002 until January 2003.

After his treatment, as often happens in recovery, Applicant felt he could still engage in moderate social drinking. Applicant stopped drinking completely in September 2004, around the time he received the SOR. While he had been attending AA since his IOP, since September 2004, he has been an active, committed participant in AA. His sponsor, who has over 20 years sobriety and experience with AA, recognized between nine months and a year before the hearing a change for the better in Applicant's approach to his recovery. He described Applicant's recovery as "ahead of the curve" in terms of insight into his disease and in his pace of recovery. (4) Applicant attends at least three group AA meetings each week, helps in the organization of those meetings, is actively working the 12 steps of recovery, and meets with his sponsor individually at least twice weekly.

In anticipation of the hearing, the CSAC who counseled Applicant during his IOP met with Applicant to provide a more current assessment of his recovery. The CSAC reported Applicant is motivated to continue his recovery through abstinence from alcohol and drugs, and to continue working the 12-step program.

Applicant and his wife in fact separated in late 2001, but waited until he had begun his treatment. They are still

separated and do not intend to reunite or divorce, because, ironically, their relationship is better now than when they were together. Applicant sees his wife and daughter, and his son and his family several times a week on his way to AA meetings, which are held near where his family lives. Applicant's wife and son also testified about what they perceived as a clear and positive change in Applicant's personality due entirely to the fact he no longer drinks. He has become closer to his son and daughter, and is active in the care of his grandchild.

### POLICIES

The Directive sets forth adjudicative guidelines<sup>(5)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. 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 of a conclusion for or against an Applicant. However, specific applicable 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. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline G (alcohol consumption) and Guideline H (illegal drugs).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(6)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.<sup>(7)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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>(8)</sup>

### CONCLUSIONS

The SOR alleged Applicant consumed alcohol, at times to excess and occasional blackouts, from 1970 until at least January 2003 (SOR ¶1.a); that Applicant was charged and convicted of DUI in 1980 (SOR ¶1.b); that Applicant was treated for and diagnosed with alcohol dependence from December 2001 until November 2002 (SOR ¶1.c); and that he continued to consume alcohol after he was diagnosed as alcohol dependent (SOR ¶1.d). The Applicant has admitted these allegations and the government has presented sufficient other information to support these allegations. The resulting security concern, as expressed through Guideline G, is that 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.<sup>(9)</sup> Guideline G disqualifying condition (DC) 1,<sup>(10)</sup> DC 4,<sup>(11)</sup> and DC 5<sup>(12)</sup> apply here.

By contrast, mitigating condition (MC) 3<sup>(13)</sup> and MC 4<sup>(14)</sup> apply here. As to MC 3, Applicant testified with clarity and candor about his recovery and about his commitment to doing what is necessary to maintain his abstinence from alcohol and drugs, thereby furthering his recovery. His sponsor and family members note the positive changes in his behavior and, more important, his commitment to his recovery through AA. For these same reasons, and in light of the positive comments by the CSAC about the current state of Applicant's recovery, I have applied MC 4 despite the fact that, as of the hearing, Applicant had only been completely sober for 11 months rather than the specified 12 months. While I am mindful of the specific language in MC 4, I also recognize the adjudicative factors in the Directive are not an inflexible set of rules to be rigidly applied at the expense of basic fairness and commonsense. I believe this is a case where such flexibility is justified. In light of the totality of the evidence about Applicant's recovery from alcohol dependence, I conclude he has demonstrated he has overcome his drinking problems and mitigated the resulting security concerns

about his drinking. Accordingly, I conclude Guideline G in favor of the Applicant.

The SOR alleged Applicant used and, at times purchased marijuana between 1974 and 1983, and again between January 2002 and April 2002, the latter period of use occurring while Applicant held a security clearance (SOR ¶¶2.a, 2.b, and 2.d); and that he received treatment for and was diagnosed with cannabis abuse between December 2001 and November 2002 (SOR ¶2.c). The government has produced sufficient information through its exhibits and Applicant's admissions to support these allegations. Based on these facts, Guideline H disqualifying condition (DC) 1, [\(15\)](#) DC 2, [\(16\)](#) and DC 3 [\(17\)](#) apply.

Having reviewed the Guideline H mitigating conditions, I conclude MC 1, [\(18\)](#) MC 3, [\(19\)](#) and MC 4-[\(20\)](#) apply. Applicant used marijuana for about nine years before 1983, then used it almost 20 years later during a four-month period in 2002, when he thought he could use it as a substitute for alcohol in the early stages of his recovery from alcohol dependence. He stopped using marijuana after smoking it about six times and has not used it for more than three years. Further, while his sudden return to illegal drug use, especially while he held a security clearance, is cause for concern, his successful completion of treatment in November 2002 and his commitment to sobriety through AA constitute a demonstrated intent to no longer use illegal drugs. MC 4 applies because he successfully completed the IOP, has not used marijuana subsequent to his treatment, and, as noted above, is actively engaged in positive, structured, and well-supported efforts to remain drug and alcohol free. Again, while the express language of MC 4 calls for "a favorable prognosis," I believe the totality of the available information warrants flexibility in this regard and Applicant should still benefit from MC 4. His abstinence from drugs is bound up in his recovery from alcohol dependence, and the testimony of his AA sponsor and the observations of his CSAC in February 2003 and in August 2005 indicate a strong likelihood of success. I conclude Guideline H in favor of the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. A fair and commonsense assessment [\(21\)](#) of the record before me shows Applicant no longer has a problem with excess alcohol consumption because he has gained the necessary insight into his disease and has committed to a lifestyle and daily regimen that will help ensure he does not drink again. For the same reasons, he is unlikely to use marijuana again. Accordingly, I conclude the available information is sufficient to assuage the government's doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests.

### **FORMAL FINDINGS**

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

Paragraph 1, Guideline G (Alcohol Consumption): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Paragraph 2, Guideline H (Illegal Drugs): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. At hearing, Department Counsel moved to amend the SOR (Transcript, pp. 9 - 11) as follows: (1) SOR ¶ 1.c: modify to read "...December 2001 to *November* 2002..."; (2) SOR ¶ 2.a: modify to read "a. You have *used* marijuana..."; (3) SOR ¶ 2.c: delete the specific days of the month from original, so that it reads "...December 2001 to at least November 2002..." and is consistent with the dates listed in SOR ¶ 1.c. Without objection, I granted the motion and made the necessary pen-and-ink changes to the SOR.
3. GE 3.
4. Tr., p. 43 - 44.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A7.1.1.
10. Directive, 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;
11. Directive, E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
12. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
13. Directive, E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;
14. Directive, 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.
15. Directive, E2.A8.1.2.1. Any drug abuse...;
16. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
17. Directive, E2.A8.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
18. Directive, E2.A8.1.3.1. The drug involvement was not recent;

19. Directive, E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;
20. Directive, E2.A8.1.3.4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.
21. Directive, E2.2.3.