

DATE: January 5, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08028

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn Trowbridge, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 47-year-old engineer employed by a defense contractor since 1982 and has held a security clearance since that time. He was diagnosed in 1996 by a medical professional as alcohol dependent, completed an inpatient treatment program, was advised to continue aftercare, and abstain from alcohol consumption. In 1998, Applicant resumed drinking alcohol. Applicant intends to continue to consume alcohol. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 16, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption. Applicant submitted a response to the SOR, dated May 18, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on November 29, 2004. A notice of hearing was issued on November 29, 2004, scheduling the hearing for December 15, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. The Applicant objected to the allegations in the SOR and objected to the substantive opinions and diagnoses in the documents, i.e., he disagreed with what the documents said. The objections were overruled and they were admitted into the record. The government also asked that official notice be taken of two exhibits that provided background on the treatment and assessment facilities that Applicant attended. I took official notice as requested, without objection by Applicant. Applicant testified, on his own behalf and did not submit any exhibits. The transcript was received on January 4, 2005.

### **FINDINGS OF FACT**

Applicant is a 47-year-old engineer employed by a defense contractor since 1982. He has held a security clearance since

that time. He was married in 1982, divorced in 1999, and is the father of two daughters.

Applicant began consuming alcohol socially in 1978. In the early 1990's Applicant's alcohol consumption increased as did his marital difficulties. In 1996, Applicant admitted to abusing alcohol for twenty years and increasing his drinking during the past ten years. He admitted to drinking a 6-pack of beer and 7-8 shots of hard liquor each night. Applicant's minimizes the amount of alcohol he used to drink when asked about it now. Applicant's wife threatened to divorce him if he did not seek alcohol treatment. Applicant entered an inpatient alcohol treatment program in July 1996. He admitted to the doctor that his drinking was significantly interfering with all functions and in all areas of his life. Applicant experienced tremors and blackouts. He had tried to control his drinking in the past, with little success and admitted that in the last ten years he could maybe go one day without alcohol, but not two. Applicant was diagnosed by two credentialed medical professionals as alcohol dependent. One doctor determined Applicant was in denial. Applicant was advised to completely abstain from alcohol consumption. Applicant was prescribed medication for anxiety related to his addiction and went through an inpatient detoxification program. Applicant successfully completed the treatment program, but still craved alcohol and although he did not see the need for intensive follow-up treatment, he did attend group therapy for approximately six months. It was recommended that Applicant participate in aftercare. Applicant attended 3 Alcoholic Anonymous (AA) meetings. Applicant did not participate in any other aftercare upon completion of the group therapy. Applicant abstained from alcohol consumption for approximately one year after his diagnosis and treatment and then resumed drinking in approximately February 1998. Applicant held a security clearance while in alcohol treatment. He did not advise his employer or his security manager that he was an inpatient being treated for alcohol dependence.

Applicant drank in excess in the past. He occasionally attends happy hour and only has two drinks. Applicant continues to drink alcohol. The last time Applicant was intoxicated was three months prior to his hearing. Applicant alcohol consumption contributed to his divorce.

Applicant was diagnosed in November 2003, by a certified counselor, as having a "high probability of having a substance dependence disorder" and profiled as "definite alcoholic." Applicant drank alcohol the night before he was to attend his alcohol assessment. When asked if he thought it was poor judgment to consume alcohol the night before his alcohol assessment test, he responded "no, because I didn't feel like I was drinking alcohol. I felt like I was having a beverage with my dinner." Applicant was aware, as far back as October 2002, that the government was concerned about Applicant's alcohol history and he did not make any changes in his pattern of consumption. Applicant's family has a history of alcoholism, two uncles, two brothers and a sister are alcoholic. Applicant believes the diagnosis in 1996 that he is alcohol dependent is accurate. He does not believe the diagnosis in 2003 that he is alcohol dependent is accurate. Applicant does not plan to stop drinking.

## 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. 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. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case.

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>(2)</sup> The government has the burden of proving controverted facts. <sup>(3)</sup> The burden of proof is something less than a preponderance of evidence, <sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof. <sup>(5)</sup> Substantial evidence is more than a scintilla, but less than a

preponderance of the evidence.<sup>(6)</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>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</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.

## **CONCLUSIONS**

Under Guideline G, alcohol consumption is a security concern 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was diagnosed by a credentialed medical professional, (a medical doctor) as alcohol dependent in 1996. He resumed drinking alcohol in 1998. Applicant continues to drink alcohol and does not intend to alter his pattern. DC 3: *Diagnosis by a credential medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, and DC 6: *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credential medical professional and following completion of an alcohol rehabilitation program*, apply in this case

Applicant's statements and testimony regarding the amount of his alcohol consumption are inconsistent and minimize how much alcohol he previously admitted to using. Applicant's testimony was often evasive. Applicant denies he has a drinking problem, denies he is an alcoholic, denies he is alcohol dependent, and denies he is in denial.

I have considered all the mitigating conditions in this case and find none apply. Applicant's alcohol assessment test in 2003, states it is highly probable he is alcohol dependent and an alcoholic. Despite being aware, as far back as October 2002, that his security clearance was in jeopardy and his drinking was problematic, Applicant did not make any changes regarding his alcohol consumption. He continues to drink, including the night before his alcohol assessment. Applicant did not see this as an issue as, he was merely "having a beverage" with his dinner. Applicant's lack of judgment in this regard is a serious concern. He is adamant that alcohol is not an issue and he will continue to drink, in spite of his alcohol dependence diagnosis, and the high probability he is an alcoholic, Applicant refuses to accept it or alter his drinking.

I have considered Applicant's appearance and demeanor while testifying. I have considered the "whole person" in evaluating Appellant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence available in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Appellant has failed to mitigate the security concerns caused by his alcohol consumption. Guideline G 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. 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

### **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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.