

DATE: July 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08494

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

Thomas M. Abbott, Attorney At Law

McKenna, Long & Aldridge

### **SYNOPSIS**

The Applicant's history of alcohol abuse, beginning in college and continuing until at least May 2004, includes two alcohol related arrests, a treatment program following a relapse, and a diagnosis of Alcohol Dependence that has not been mitigated by sufficient evidence of reform and rehabilitation. His intentional falsifications on his security application concerning his arrest history and alcohol treatment have also not been mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 19, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 8, 2004. A notice of hearing was issued on December 10, 2004, scheduling the hearing for January 10, 2005. At the hearing the Government presented four exhibits. The Applicant presented twelve exhibits and testified on his own behalf. The official transcript (Tr.) was received on January 24, 2005.

### **FINDINGS OF FACT**

The Applicant is 43 years old and has a Masters Degree in Engineering Management. He is employed by a defense contractor as an Operations Analyst, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant is an admitted alcoholic. He began consuming alcohol in the early 1980's, while attending a University with a reputation for excessive drinking. He consumed most of the alcohol on weekends, usually about twelve alcoholic beverages with his fraternity brothers. He would also have a couple of beers during the week. In 1985, he graduated from college and moved back in with his parents. His drinking decreased for a time. In 1987, he moved out of his parents' home and his drinking increased to about a case of beer a week. In either 1987 or 1989, the Applicant was charged with Driving While Intoxicated. He was found guilty and sentenced to probation. Following this arrest, he continued to consume alcohol to excess. In 1997, his mother was diagnosed with Parkinson's disease and he started drinking more. From 1997 to November 2000, the Applicant consumed between six to twelve beers per night. On the weekends he might have drank less. During this period, it was not uncommon for him to operate his vehicle while legally intoxicated. Much of the Applicant's drinking during this period he attributes to his depression over his mother's condition.

The Applicant continued to abuse alcohol to excess until he was arrested on November 17, 2000, and charged with Count I, Operating Vehicle While Intoxicated-Alcohol (Blood Alcohol Concentration of .226) and Count II, Failure to Yield to Approaching Vehicle When Making a Left Turn. He pled guilty to Count I, and received a suspended imposition of sentence, was placed on two years probation, ordered to pay \$136.50 in court costs and ordered to complete 80 hours of community service along with being ordered to provide restitution. He pled guilty to Count II and was fined \$100.00 plus \$51.50 in court costs. He received inpatient treatment from November 19, 2000 to November 22, 2000 for a condition diagnosed in part as Alcohol Dependence. This treatment was followed by outpatient treatment from November 24, 2000 to December 1, 2000, that included Alcohol Anonymous (AA) meetings. The Applicant stopped attending the meetings shortly after his treatment because he did not feel that he wanted to ever drink again. He did not drink alcohol at all for a year and a half after this arrest.

In the spring 2002, the Applicant injured his back and began consuming alcohol again. In March 2003, he met with a special agent from the Defense Security Service (DSS) which brought to light the fact that his excessive alcohol abuse was problematic. The Applicant told the agent during the interview that it is likely that in the future he would continue to consume alcohol even knowing that he has been diagnosed with alcoholism. (*See Government Exhibit 2*).

On May 27, 2004, after receiving the SOR, the Applicant quit drinking altogether. He testified that he went to his supervisor who directed him to the company's Employee Assistance Program for help with his disease. The Applicant joined AA, started working the program, got a sponsor, and has friends and church to rely on. He testified that with the support of his management, AA and friends, he has been able to stay sober so far.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated November 26, 2002. Question 24, of the application asked the Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs. (*See Government Exhibit 1*). The Applicant answered, "YES," and listed his arrest of November 2000. The Applicant failed to list his arrest for Driving While Intoxicated in 1987/1989. The Applicant testified that he did not intentionally omit this arrest, but thought that it was off of his record. (Tr. pp. 36-37). However, in his statement to DSS dated March 4, 2003, he stated that he thought that only listing one of the DWI's would look better than listing both of them. (*See Government Exhibit 2*).

The same questionnaire, at Question 30 asked the Applicant if in the last seven years has his use of alcoholic beverages resulted in any alcohol-related treatment or counseling. The Applicant answered, "NO". (*See Government Exhibit 1*). This was a false answer. The Applicant explained that since he had listed the information in response to an earlier question on the application, he did not have to duplicate the response by answering a later question truthfully. He stated that he believed that the reference in the application that states, "Do not repeat information reported in EPSQ Module 19, Section 21 from the SF-86" to mean that. (Tr. p. 44). However, in his statement to DSS, he stated that he decided not list his alcohol treatment because he wanted to minimize the impact of the counseling and the DWI. (*See Government*

Exhibit 2).

Based upon the evidence presented, I find that the Applicant deliberately falsified his security clearance application when he sought to conceal his complete alcohol related arrest history by only listing his most recent arrest for DWI in 2000 in response to question 24, and he sought to conceal his treatment for alcoholism in response to question 30.

Paragraph 4 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant's deliberate falsifications on his security clearance application, discussed above, are a violation of Title 18 of the United States Code, Section 1001, a felony.

#### Mitigation.

Declarations from supervisors, coworkers, friends and colleagues of the Applicant who are aware of alcohol problem, attest to his responsible nature. He is a hard worker who is methodical and pays great attention to detail. He is a person of strong morals and integrity. They find him to be very reliable and trustworthy. (See Applicant's Exhibits B, I, J, K and L).

The performance evaluations of the Applicant for 2002 through 2004 indicate that he either met expectations or exceeded expectation in every category. (See Applicant's Exhibit C). Certificates of recognition reflect the Applicant's outstanding efforts on the job and his dedication to the projects he is assigned. (See Applicant's Exhibit D, E, G and H).

The Applicant also received an award in 1996 from his employer for one year of perfect attendance. (See Applicant's Exhibit F).

### **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

#### Guideline G (Alcohol Consumption)

##### Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

##### Condition that could mitigate security concerns:

None.

#### Guideline E (Personal Conduct)

##### Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

##### Conditions that could mitigate security concerns:

None.

### Guideline J (Criminal Conduct)

#### Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

#### Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved

in alcohol abuse, dishonesty and criminal conduct that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G); dishonesty (Guideline E) and criminal conduct (Guideline J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines G, E and J of the SOR.

The Applicant's history of excessive alcohol abuse began in 1980, and continued over a period of twenty four years, until at least May 2004. He is an admitted alcoholic, and was formally diagnosed by competent medical authority as such. He has tried to abstain from the use of alcohol and was successful for a period of a year and a half before returning to alcohol consumption in the spring 2002. Realizing that his security clearance and his job were in jeopardy, after receiving the SOR, he quit drinking again in May 2004. He is commended for his most recent efforts to turn his life around and live a sober lifestyle. He has taken the first step. He has surrounded himself with a strong support mechanism to help him maintain a sober lifestyle. He is regularly attending AA meetings, working the steps of AA and he has a sponsor. This time, he has been sober for about eight months. Given his twenty four year past history of alcohol abuse, more time is needed in rehabilitation to ensure that he will not return to his old ways. Under Alcohol Consumption, Disqualifying Conditions *(1) alcohol-related incidents away from work, such as driving under the influence . . . (3) Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence and (4) habitual or binge consumption of alcohol to the point of impaired judgement* apply. None of the mitigating factors set forth in the Directive apply. Therefore, sufficient rehabilitation and mitigation has not been shown. Accordingly, Guideline G is found against the Applicant.

In response to questions 24 and 30 on his security clearance application, the Applicant deliberately falsified his security clearance application. There is no reasonable excuse as to why he did not tell the truth about his arrest history and his alcohol treatment, other than the fact that he wanted to minimize his alcohol problem. It is obvious that he intentionally concealed this information from the Government, hoping to minimize the seriousness of the matter. In doing so, he has violated Title 18 of the United States Codes, Section 1001 which is a felony. Consequently, his dishonesty with the Government concerning this matter is unacceptable. Under Personal Conduct, Disqualifying Condition *(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. Under Criminal Conduct, Disqualifying Conditions *(1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged and (2) A single serious crime or multiple lesser offenses* apply. None of the mitigating factors set forth in the Directive under Guidelines E or J apply.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines E (Personal Conduct) and J (Criminal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g. : Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge