

DATE: November 8, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08671

## **ECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Lynette Andresen, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 46-year-old aircraft engine technician employed by a defense contractor. Applicant's employer forwarded an unfavorable report on Applicant to the Defense Industrial Security Clearance Office based on Applicant's arrest for driving under the influence of alcohol. Before any action could be taken on this incident, Applicant had two more arrests for alcohol related driving incidents and was treated in a medical facility alcohol treatment program. When interviewed about the first incident by a Defense Security Service Special Agent, Applicant did not reveal the additional incidents. Clearance denied.

### **STATEMENT OF THE CASE**

On May 5, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on May 12, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on May 21, 2004. He admitted to the allegations under Guideline G but denied the allegation under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on July 27, 2004. Applicant received a complete file of relevant material (FORM) on August 3, 2004 and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due September 2, 2004. As of October 21, 2004, he had not responded. The case was assigned to me on November 1, 2004.

### **FINDINGS OF FACT**

Applicant is a 46-year-old aircraft engine technician employed by a defense contractor. Applicant was granted a security clearance in 1985 when he started working with the defense contractor and it was updated in 1992. He was previously granted a security clearance in 1977 when he was in the Army. His employer forwarded to the Defense Industrial Security Clearance office (DISCO) on August 1, 2002, an adverse report on Applicant concerning an arrest in February 2002 for driving under the influence of alcohol. The subsequent investigation by the Defense Security Service (DSS) revealed a number of other alcohol related incidents. Applicant was interviewed by a special agent of the DSS concerning these additional incidents twice in early 2003.

Applicant admitted to consuming alcohol to the point of intoxication at various times from 1976 to at least February 2003. He admitted an arrest for driving under the influence of alcohol in April 1976. He admitted an arrest for being a minor in possession of alcohol and possession of marijuana in July 1976. He admitted an arrest for driving under the influence of alcohol in February 2002 and being sentenced to confinement and a fine. He admitted an arrest in July 2002 for driving on a suspended license and driving under the influence of alcohol and again being sentenced to confinement and a fine. He admitted an arrest in November 2002 for an alcohol related reckless operation of a vehicle offense and being sentenced to confinement, a fine, restricted driving privileges, an interlocking device being placed on his vehicle for two years, and to undergo alcohol treatment. (FORM, Item 3). He reported these incidents to his employer.

Applicant entered and completed a driver's intervention program in April 2002 as a result of his February 2002 arrest. He was treated by licenced medical clinicians from November 2002 to January 2003 at a medical treatment facility alcohol program and diagnosed with alcohol dependence. He was recommended to attend alcoholics anonymous and additional aftercare meetings. Applicant admits to continuing to drink alcohol after the diagnosis of alcohol dependence and while under care for alcohol dependence.

As a result of the adverse report from his employer, Applicant was interviewed by a DSS special agent on February 12, 2003. Applicant was questioned about "...a DUI Arrest that occurred on February 9, 2002. He has also questioned me and I have provided details of my use of intoxicants." (FORM, Item 6, page 1). In that interview, Applicant did not mention the July 2002 arrest for DUI or the November 2002 arrest for Reckless Operation of a vehicle or the treatment for alcohol dependence from November 2002 to January 23, 2003. Applicant was again interviewed by the DSS special agent on February 19, 2003 and he discussed the July and November incidents. (FORM, Item 5). He did not discuss this information with the special agent on February 12 because he believed since he reported the incidents to his employer another adverse report would be sent by the employer. In the February 12 statement, Applicant indicates he was still drinking. In the February 19 statement, Applicant stated he had not had a drink since November 29, 2003.

## 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 judgement, 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶¶ E2.2.2.

## CONCLUSIONS

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

Applicant's incidents with alcohol brings his conduct under Guideline G of the Directive. Under Guideline G (Alcohol Consumption (AC)), a security concern exists because excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increased risk of unauthorized disclosure of classified information due to carelessness. Directive ¶ E2.A7.1.1.

Applicant's alcohol abuse brings the matter within Alcohol Consumption Disqualifying Conditions (AC DC) Directive ¶ E2.A7.1.2.1. (*alcohol-related incidents away from work, such as driving while under the influence...or other criminal incidents related to alcohol use*); and 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*). Applicant admits to three offenses of driving while intoxicated in 2002 and being diagnosed and treated for alcohol dependence by a licensed clinical social worker. I conclude the alcohol consumption disqualifying conditions have been established.

The Alcohol Consumption mitigating conditions (AC MC) that may be relevant to Applicant are Directive ¶ E2.A7.1.3.1. (*alcohol-related incidents do not indicate a pattern*); Directive ¶ E2.A7.1.3.2. (*problem occurred a number of years ago and there is no indication of a recent problem*); Directive ¶ E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*); and Directive ¶ E2.A7.1.3.4. (*successful completion of alcohol treatment program, participates in Alcohol Anonymous or similar organization, has abstained from alcohol for at least 12 months, and received a favorable prognosis from a recognized alcohol treatment program*). Applicant has a pattern of alcohol related incidents, the 3 incidents of driving while intoxicated in 2002, two after his employer reported his unfavorable actions to the DSS. These actions are recent and he presented no information of a change in behavior supportive of sobriety. In fact, Applicant in his February 19, 2003 statement to the DSS special agent stated he would continue to remain alcohol free for only the remainder of his after care program. While Applicant successfully completed an alcohol treatment program, he is still in the after care program and he presents no information of a favorable prognosis. I conclude that Applicant has not established any of the mitigating conditions under Guideline G.

Applicant's inaccurate answers to the DSS special agent in the February 12, 2003 interview brings his conduct under

Guideline E of the Directive. Under Guideline E (Personal Conduct (PC)), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor, dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5,1.1.

Applicant's responses to the DSS special agent brings this matter within Personal Conduct Disqualifying Condition (PC DC) Directive ¶ E2.A5.1.2.3. (*deliberately providing false or misleading information concerning relevant and material matters to an investigator,...in connection with a personnel security or trustworthiness determination*). Applicant was interviewed by a DSS special agent on February 12, 2003 concerning a February 2002 DUI arrest and "...details of my use of intoxicants." (FORM, item 6). The interview was conducted six months after a second DUI, 3 months after a third DUI, and 20 days after completing an alcohol treatment program resulting in a diagnosis of alcohol dependence. Applicant never told the agent about these arrests or his medical treatment. The incidents were relevant to his use of intoxicants. Applicant's explanation for not telling the special agent of the incidents was that the interview only concerned the February 2002 arrest and the later incidents had been self-reported to his employer. Since these incidents had a direct relationship to his use of intoxicant, it is clearly reasonable to conclude Applicant should have informed the DSS special agent of them. I conclude that Applicant deliberately misled the DSS special agent concerning relevant and material matters in connection with a personal security determination within the disqualifying condition of Guideline E.

The Personal Conduct Mitigating Condition (PC MC) that may apply in this case is Directive ¶ E2.A5.1.3.3. (*individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). While Applicant may have reported these incidents to his employer, he did not reveal them to the DSS special agent until he was re-interviewed by the special agent 7 days later and specifically asked about the incidents. I conclude that Applicant did not make a good-faith effort to provide correct information before being confronted with the facts. Applicant has not established any condition to mitigate his personal conduct.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.22 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

**DECISION**

In light of all of 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.

Thomas M. Crean

Administrative Judge