

DATE: April 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10553

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant did not wilfully falsify his Security Clearance Application (SCA). He is an admitted alcoholic, however, and has been diagnosed as such. His alcoholism is also evidenced by five alcohol related arrests. Although he is in an aftercare program, attends Alcoholics Anonymous (AA) on a regular basis, and has a favorable prognosis, he has only eight months of sobriety; and as such, it is too soon to say his alcoholism is not of present security significance. Clearance is denied.

**STATEMENT OF THE CASE**

On November 18, 2003, 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 the 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about December 2, 2003.

The case was received by the undersigned on February 2, 2004. A notice of hearing was issued on February 24, 2004, and the case was heard on March 9, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on March 17, 2004. The issues raised here are whether the Applicant's Alcohol Consumption and related alleged Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of the allegations, except he denies he continues to consume alcohol, subparagraph 1.h., and he denies he wilfully falsified his SCA, subparagraph 2.a.]

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 39 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

1.a.~1. i. And 2.b. The Applicant is an admitted alcoholic, who consumed alcohol, at times to excess, the point of intoxication and blackouts, from about 1986 until he last alcohol related incident in April of 2003 (Transcript (TR) at page 26 line 23 to page 27 line 11, at page 30 line 14 to page 32 line 5, and at page 58 line 3 to page 59 line 10). He was diagnosed as being "alcohol dependent" in June of 2003, and last consumed the intoxicant in August of 2003 (*id* and Applicant's Exhibits (AppXs) E, G and H).

In December of 1986, the Applicant was arrested and subsequently charged with Driving Under the Influence (DUI) (TR at page 24 line 8 to page 25 line 4, at page 37 line 24 to page 38 line 4, and Government Exhibit (GX) 7). He had consumed 7~8 beers prior to this arrest (*id*). In March of 1987, the Applicant was arrested, in part, for DUI (TR at page 25 line 5 to page 27 line 11, at page 38 lines 5~15, at page 42 lines 12~23, and GX 6). He does not remember the particulars that led to his arrest, as he suffered from an alcohol induced blackout (*id*).

In 1993, the Applicant was administratively discharged from active duty with the United States Navy, in part, due to his alcohol abuse (TR at page 27 line 12 to page 28 line 7, at page 40 lines 12~18, and at page 42 lines 6~11). In September of 1997, the Applicant was arrested, in part, for DUI (TR at page 28 line 8 to page 29 line 5, and at page 42 line 24 to page 49 line 1). He subsequently pled guilty to Resisting or Obstructing Officers (*id*). He had consumed alcohol prior to this arrest (*ibid*). In August of 1999, the Applicant was arrested and subsequently pled guilty to DUI (TR at page 29 lines 6~20, and at page 49 line 2 to page 54 line 1). He had consumed 6~8 beers prior to this arrest (*id*).

In April of 2003, the Applicant was arrested and subsequently pled guilty to DUI (TR at page 29 line 21 to page 30 line 8, at page 56 line 9 to page 58 line 2, and at page 59 line 23 to page 60 line 1). He had consumed 18~20 beers prior to this arrest (*id*). After his most recent arrest, the Applicant voluntarily entered himself into an aftercare program (TR at page 30 at lines 9~12). He attends AA on a regular basis, intends no future consumption of alcohol, and has a favorable prognosis from a credentialed medical professional (TR at page 61 line 18 to page 63 line 4, and GX H).

### Personal Conduct

2.a. In answering question 24 on his January 2002 SCA, the Applicant disclosed his, at that time, two most recent alcohol related charges, the ones occurring in 1997 and 1999 (GX 1 at page 6). He did not list his two oldest charges, the one occurring in 1986 and 1987 (*id*). The Applicant misread the question, and thought that, as with questions 19, 20, 25, 26 and 27, he only had to disclose those alcohol related charges occurring in the last seven years (TR at page 32 line 8 to page 33 line 14, and at page 55 line 7 to page 56 line 8). He had previously disclosed his two oldest alcohol related charges on his January 1995 SCA (*id*).

### Mitigation

The Applicant's two supervisors and a co-worker have only laudatory comments as to the Applicant (AppXs I-K). In particular, two note that he is a changed man since entering his aftercare program (AppXs I and J).

## **POLICIES**

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

a. Nature, extent, and seriousness of the conduct and surrounding circumstances.

- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## CONCLUSIONS

Considering first the Applicant's consumption of alcohol, he has a history of alcohol abuse as evidenced by five alcohol related arrests. The first disqualifying condition is therefore applicable, as there are "[a]lcohol related incidents away from work, such as driving while under the influence . . ." The third disqualifying condition is also applicable, as there is a "[d]iagnosis by a credentialed medical professional . . . of alcohol abuse or alcohol dependence." I find no mitigating conditions applicable here, for although the Applicant, following his diagnosis, has satisfied many of the requirements of the last mitigating condition; he has not "abstained from alcohol for a period of at least 12 months." Although the Applicant appears to be on the road to sobriety with eight months of abstinence, it is too soon to say that his long history of abusive consumption is not of present security significance. Guideline G is found against the Applicant.

As to the Applicant's alleged falsification of his SCA, I can find none. He misread the posited question, but did not intend to keep information from the Government. The information he failed to disclose on his 2002 SCA, was, in fact, disclosed on his 1995 SCA. As there was no wilful falsification, Guideline E is found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus not met the mitigating conditions of Guideline G and of Section E2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines G.

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. For the Applicant.
- i. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

**DECISION**

In light 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 the Applicant.

Richard A. Cefola

Administrative Judge