

DATE: November 6, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04992

## DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

### APPEARANCES

#### FOR GOVERNMENT

Braden Murphy, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

The Applicant received inpatient treatment in 1991, and was diagnosed as suffering from "alcohol dependence." Despite this diagnosis, the Applicant consumed alcohol to the point of intoxication, as evidenced by five subsequent alcohol related arrests. He has not consumed the intoxicant since completing inpatient treatment in 2004. However, there is no evidence of a "favorable prognosis," as required by the last mitigating condition. Furthermore, his past criminal conduct is fairly recent, in light of his 16 arrests spanning a period from 1982~2004. He was also less than candid when he executed his March 2004 Security Clearance Application (SCA). In November of 2004, when given an opportunity to clarify his answers to his SCA, the Applicant refused to cooperate. Mitigation is not shown. Clearance is denied.

### STATEMENT OF THE CASE

On October 27, 2005, 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on December 23, 2005.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 18, 2006. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on September 1, 2006, and Applicant's response (Response) was received on September 27, 2006. The case was received by the undersigned for resolution on October 4, 2006. The issues raised here are whether the Applicant's Alcohol Consumption, Criminal Conduct, and Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations, with minor exceptions, except for

subparagraph 1.k., as he denies he continues to consume alcohol.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 42 years of age, and is employed by a defense contractor who 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

1.a.~1.k. The Applicant "began consuming alcohol at the age of fifteen," about 1979 (Item 19 at page 1). His drink of choice was beer (*Id*). In November of 1989, the Applicant was arrested, in part, for, and found guilty of, Driving While Intoxicated (DWI) (Item 11). As part of his sentence, he was ordered to complete a DWI school (*Id*). In March of 1990, the Applicant was again arrested, in part, for, and found guilty of, DWI (Item 12). As part of his sentence, he was ordered to attend alcohol counseling (*Id*).

In April of 1991, the Applicant was arrested, in part, for Disorderly Conduct (Item 16). He "was under the influence of alcohol at the time of . . . arrest" (Item 6 at page 1). In July of 1991, the Applicant received inpatient treatment, and was diagnosed, in part, as suffering from "alcohol dependence" (Items 18 and 19). He was discharged "with a fair prognosis" (Item 19 at page 2). However, in March of 1992, the Applicant was arrested, in part, for, and pled nolo contendere to, Consuming Alcohol. Five months later, in August of 1992, the Applicant was again arrested for, and pled nolo contendere to, Consuming Alcohol. The Applicant's next alcohol related arrest did not occur until seven years later in November of 1999. He was arrested, in part, for, and found guilty of, Refusal to Submit to a Chemical Test. The Applicant was again ordered to attend alcohol counseling.

In February of 2003, the Applicant arrested, in part, for, and found guilty of, Driving Under the Influence of Liquor, and Refusal to Submit to a Chemical Test (Item 20 at page 3). The Applicant's last alcohol related arrest occurred in August of 2004, when the Applicant was arrested for DWI. While the outcome of this arrest is unclear, the Applicant did attend inpatient treatment in August~September of 2004; and has not consumed alcohol since his release from inpatient treatment (Response at page 2).

### Guideline J - Criminal Conduct

2.a.~2.1. In May of 1982, the Applicant was arrested and charged with three counts of Assault with a Dangerous Weapon, a felony (Items 8, 9 and 20 at page 3). He subsequently pled nolo contendere to two amended counts of Simple Assault (*Id*). In August of 1986, the Applicant was arrested for Possession of Narcotics-Cocaine (Item 20 at page 3). The outcome of this arrest is unclear. In August of 1989, the Applicant was arrested for, and subsequently pled nolo contendere to Domestic Assault. He was placed on probation for one year. In November of 1989, and in March of 1990, the Applicant was arrested for alcohol related incidents, as noted in Paragraph 1, above. In November of 1990, the Applicant was arrested, in part, for Reckless Driving (Item 14). He was subsequently found guilty of Unsafe Movement (*Id*).

In March of 1991, the Applicant was arrested for, and charged with, a Breach of the Peace (Item 15). The outcome of this arrest is unclear. In April of 1991, in March of 1992, and in August of 1992, the Applicant was arrested for alcohol related incidents, as noted in Paragraph 1, above. In September of 1999, the Applicant was arrested and charged with Domestic Assault with a Dangerous Weapon, a felony, and with Assault with a Dangerous Weapon, also a felony. He subsequently pled nolo contendere to two amended counts of Simple Assault. In November of 1999, the Applicant was arrested for an alcohol related incident, as noted in Paragraph 1., above.

In July of 2001, the Applicant was arrested for, and subsequently pled nolo contendere to, Domestic Simple Assault (Item 20 at page 3). As part of his sentence, he was placed on probation for one year. In October of 2002, the Applicant was arrested for, and subsequently pled nolo contendere to, Simple Assault and Battery (Item 20 at page 3). As part of his sentence, he was again placed on probation for one year. Finally, in February of 2003, and in August of 2004, the Applicant was arrested for alcohol related incidents, as noted in Paragraph 1, above.

### Guideline E - Personal Conduct

3.a. In answer to question 22 on his March 2004 Security SCA, the Applicant admittedly failed to disclose that he was charged with firearm offenses in May of 1982, and again in September of 1999, as noted in Paragraph 2, above (Item 4 at page 5). This is a wilful falsification.

3.b. and 3.d. In answer to question 24 on his March 2004 SCA, the Applicant disclosed his most recent alcohol related offense, which occurred in February of 2003, but failed to disclose his other six alcohol and drug related arrests (Item 4 at page 5). The Applicant avers that he "couldn't remember all of them" (Response at page 3). However, in November of 2004, when given an opportunity to clarify his answers to his SCA, the Applicant refused to cooperate. I find this also to be a wilful falsification.

3.c. and 3.d. In answer to question 26 on his March 2004 SCA, the Applicant disclosed his October 2002 arrest for Simple Assault and Battery, but failed to disclose his Domestic Simple Assault arrest in July of 2001 (Item at pages 5~6). The Applicant avers that he "couldn't remember" (Response at page 3). Again, in November of 2004, when given an opportunity to clarify his answers to his SCA, the Applicant refused to cooperate. I find this to be a wilful falsification.

### **POLICIES**

Enclosure 2 and Section E.2.2. 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 its case under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption) and Guideline J (Criminal 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.

Personal Conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. 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.

## CONCLUSIONS

Considering first the Applicant's admitted Alcohol Consumption, it is evidenced by numerous alcohol related convictions spanning the period from 1989 to 2004, and by his diagnosis of "alcohol dependence" in 1991. The first and third disqualifying conditions under Alcohol Consumption are therefore applicable as his arrests were "alcohol-related incident[s] away from work, such as driving while under the influence . . .," and there is a "[d]iagnosis by a credentialed medical professional . . . of alcohol abuse or alcohol dependence." The last disqualifying condition is also applicable, as the Applicant consumed alcohol for an additional 13 years after this diagnosis and inpatient treatment. I can find no countervailing mitigating conditions. Although the Applicant is to be commended for his current sobriety, there is no "favorable prognosis" as required by the last mitigating condition. Guideline G is found against the Applicant.

Considering next the Applicant's Criminal Conduct, he has 16 arrests spanning the period from 1982~2004. As such, the second disqualifying condition is clearly applicable, as he has a history of "multiple lesser offenses." Again, I can find no countervailing mitigating conditions, as the Applicant's "criminal behavior" is "recent," when viewed in light of his extensive criminal record. Guideline J is also found against the Applicant.

Finally, as to the Applicant's Personal Conduct, he was clearly less than candid with the Government when he executed his March 2004 SCA. The second Disqualifying Condition is therefore applicable as there is a "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness . . ." No Mitigating Conditions are applicable. In November of 2004, when given an opportunity to clarify his answers to his SCA, the Applicant refused to cooperate. Guideline E is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption, Criminal Conduct and Personal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, G and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E, G and J.

## 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. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.

Paragraph 2: 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. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against 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