

DATE: March 16, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-26924

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita O'Brien, Esq., Department Counsel

#### **FOR APPLICANT**

William L. Enyart, Esq.

### **SYNOPSIS**

Applicant is 47 years old and a retired E6 from the Air Force. She has been employed by a defense contractor since 2001, and held a top secret security clearance. Applicant had a work related alcohol incident in 1984/1985, where she was hungover for work. In 1990, Applicant totaled her car and was injured after she had been drinking. In 2003, Applicant was convicted of driving under the influence of alcohol and disturbing the peace. Applicant was violent, belligerent and out of control during this incident. She kicked police officers, screamed, and yelled obscenities and threats. Applicant had to be subdued with spray. Applicant continues to typically consume 1-4 drinks at a time, 3-4 times a week and feels she does not need to change her pattern of alcohol use. Applicant has failed to mitigate the security concerns caused by alcohol consumption. Clearance is denied.

### **STATEMENT OF CASE**

On June 3, 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. <sup>(1)</sup> 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 June 15, 2004, and requested a hearing. In her SOR response, Applicant admitted all the allegations contained in the SOR, and provided explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on January 6, 2005. A notice of hearing was issued on February 1, 2005, scheduling the hearing for February 25, 2005. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record. The Applicant testified, on her own behalf, and one witness also testified for the Applicant. Applicant submitted five exhibits that were marked as Applicant's Exhibits (AE) A-E and were admitted into the record. The transcript was received on March 8, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 47 years old and retired with an honorable discharge from the Air Force in 2001 after twenty years of service. She held the rank of E6 upon retirement. Since retirement she has worked for a defense contractor as a lead analyst and received excellent performance evaluations.

Applicant held a secret and later a top secret security clearance while on active duty. Applicant continued to hold a top secret security clearance while being employed with the defense contractor until it was revoked.

Applicant started drinking at the legal age limit when she was 18 years old and has consumed alcohol since then. Applicant has consumed alcohol at times to excess and to the point of intoxication from at least June 1990 until at least November 2003.

In about 1984 or 1985, while on active duty with the Air Force, Applicant arrived for duty with a hangover. Applicant was approximately 27 years old at the time. In lieu of receiving disciplinary action, Applicant was given the option of enrolling in an alcohol related program, which she did and completed. Applicant did not believe she was hung over.

On July 8, 1990 Applicant had been drinking and got in her car to leave a club on base and go home. Applicant failed to negotiate a turn in the road and her car went off the road. Applicant sustained minor injuries in the accident and her car was totaled. Applicant was arrested and charged with driving under the influence of alcohol (DUI) and driving with a blood alcohol content of .08 or greater. Applicant pled guilty to driving with a blood alcohol content of .08 or greater and the DUI was dismissed. Applicant was placed on three years unsupervised probation. Applicant paid approximately \$800.00 in fines. Applicant was approximately 33 years old at the time of this incident.

On July 26, 2003 Applicant was attending a local town's street festival. Applicant was drinking during the day. Applicant attempted to exit a parking area through an entrance and was stopped by the police. Applicant became extremely belligerent, uncooperative and violent. Applicant shouted obscenities at the police, and fought with them and resisted them. Applicant failed the field sobriety test. Applicant refused to take an alcohol breath test. Applicant continued to fight with the police officers when they attempted to arrest her and put her in their police vehicle. Applicant kicked the cage in the vehicle numerous times and continued her violent actions when she reached the police station. Applicant kicked the police officer's desk, and rolled around on the floor screaming obscenities at the police. Applicant had to be subdued with spray. She continued through the whole process yelling and screaming obscenities. When information was requested from her to complete the report she provided obscene and outlandish statements. Applicant stated she was an arsonist. Applicant stated she had killed a notorious public figure and that she killed or wanted to kill the President of the United States. Applicant does not believe she was "legally" intoxicated when these events occurred. Applicant was approximately 45 years old at the time of this incident.

Applicant was charged with DUI, Battery/Cause Bodily Harm, Resisting a Peace Officer/Correction Employee and unlicensed driving. On October 1, 2003, Applicant pled guilty and was convicted of DUI and was sentenced to two years court supervision, an \$800.00 fine, and attendance at alcohol education/awareness classes. The judgment was withheld pending successful completion of the two years court supervision. Applicant also pled guilty to an amended charge of Disorderly Conduct and was fined \$200.00. The judgment was withheld pending six months court supervision. The remaining charges were dismissed. Applicant's court supervision expires in October 2005.

Applicant continues to drink alcohol 3-4 times a week and have 1-4 alcohol drinks on average.(GE 2) Applicant typically will stop on the way home from work for drinks to relax and socialize at a local club.(GE 2) Applicant does not believe she needs to change her drinking pattern or behavior.(GE 2) Applicant completed a twelve hour early intervention training program that was a requirement of her sentence. She was accessed by a licensed alcohol and drug counselor as a social drinker and had no substance dependence symptoms nor any substance abuse symptoms.

Applicant's testimony at the hearing was often evasive, vague, and not credible.

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

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> 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>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</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>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</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

Based on all the evidence, Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*), and AC DC E2.A7.1.2.2 (*Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*) apply in this case. Applicant has two DUI incidents and a disturbing the peace conviction, in addition to a job related alcohol incident, where it was determined she was hung-over. The disturbing the peace conviction is a reduced charge, but the facts remain that she assaulted police officers and was uncontrollably violent, to the point she had to be subdued by spray.

I have considered all the Alcohol Consumption Mitigating Conditions (AC MC) and specifically considered AC MC E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*), and conclude they do not apply in this case.

Applicant had three alcohol related incidents in 1984/1985, 1990 and 2003. Applicant does not believe she was hungover when her supervisor offered her the option to attend an alcohol awareness class vice face disciplinary action. In 1990, Applicant totaled her car and was injured after she had been drinking and driving. In 2003, Applicant did not believe she was "legally" intoxicated, but admits she was drinking. In this incident, she was totally out of control, combative, belligerent and violent. Despite attending alcohol awareness classes in 1984/1985 and again in 2003, she continues to

believe that she is in control of her drinking habits. Although she has been assessed as being a social drinker, it is obvious that she exercises questionable judgment when she is consuming alcohol. Based on the last incident, it is also obvious that she had difficulty controlling her impulses and became violent which can also be attributed to her alcohol consumption. It is a serious concern that Applicant had two opportunities, one in 1984/1985 and again in 1990, to gain an awareness of the serious consequences that her drinking has on her life, and yet she continued to drink and drive. In addition, despite the serious incident that arose in 2003 and her outlandish conduct, Applicant continues to drink 3-4 times a week, and consume between 1-4 drinks at a local club on her way home from work.

Applicant remains on court supervision for her 2003 offenses until October 2005. Considering her status, it is too recent to determine if alcohol continues to be a problem in Applicant's life and if she has made any positive changes in her life with regards to alcohol. Based on the seriousness of her criminal activity in 2003, her behavior surrounding the offenses, and her two previous alcohol related offenses, I conclude Applicant has exercised questionable judgment regarding her use of alcohol. Applicant was 27, 33 and 45 years old when these offenses occurred. Despite her presumed maturity she failed to act responsibly when consuming alcohol.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case and the credibility of the Applicant. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by her alcohol consumption. Accordingly, Guideline G, pertaining to alcohol consumption 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 Alcohol Consumption (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

Subparagraph 1.e. 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, ¶ E3.1.14.

4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

7. *Egan*, 484 U.S. at 531.

8. *Id.*

9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

10. Executive Order 10865 § 7.