

DATE: November 30, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08851

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jeff A. Nagel, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a long history of excessive alcohol consumption between about 1999 and 2004. He participated in numerous alcohol treatment programs between about 2001 and 2004, but resumed drinking alcohol to excess. Medical authorities diagnosed Applicant as being alcohol dependent on several occasions. In March 2004, Applicant drove a motor vehicle under the influence of alcohol and was arrested, charged, and convicted of the offense. Thereafter, he successfully completed additional alcohol treatment programs. Applicant failed to mitigate the security concerns arising from his alcohol consumption. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 3, 2004, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), 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 (the "Directive"). On May 31, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on June 29, 2005. He elected to have the matter decided without a hearing.

Department counsel submitted the government's case in a File of Relevant Material (FORM) dated August 6, 2005. On September 1, 2005, department counsel provided a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant submitted a response, including a statement and several attachments, which were received by the government on September 19, 2005, without objection. The case was assigned to me on October 11, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations in the SOR. Applicant's Answer to SOR, dated June 29, 2005. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 52 years old. Item 1 at 1. He seeks a security clearance to work for a defense contractor as a software engineer. *Id.* at 2. He has held a security clearance since 1982. Item 1 at 7. At times, Applicant has held high-level security clearances. *Id.*

Applicant's family has a history of alcohol problems. Item 6 at 1. Both of Applicant's brothers attend Alcoholics Anonymous (AA), and one of Applicant's sisters died from causes related to alcohol. *Id.*

In about 1999, several friends and relatives of Applicant passed away, contributing to Applicant's depression. He began drinking alcohol heavily to "self-medicate" his feelings of depression. *Id.* He sometimes drank about one-half of a bottle of alcohol per day for four or five days at a time. *Id.* After about 2001, he began drinking between about two and six glasses of wine each day. *Id.* at 2. Applicant received treatment from about October 2001 to September 2002 for a condition diagnosed, in part, as Alcohol Dependency. Applicant's Answer to SOR, *supra*, at ¶ 1.b.

Over the Labor Day weekend in 2002, Applicant experienced a total physical collapse. Item 6 at 2. He felt unable to move and slept the entire weekend. He consulted a psychiatrist between about September and October 2002, and was prescribed medication for his depression. *Id.* at 3. His physician diagnosed Applicant's condition as Alcohol Abuse, in part. Applicant's Answer to SOR, *supra*, at ¶ 1.c.

In November 2002 Applicant sought out and received treatment from a physician specializing in patients with a "dual diagnosis," such as depression and substance abuse problems. Applicant's physician diagnosed his condition, in part, as Alcohol Dependency. Answer to SOR, *supra*, at ¶ 1.e. On the physician's recommendation, Applicant was hospitalized for four days for detoxification. Applicant's Answer to SOR, *supra*, at ¶ 1.f. Thereafter he participated in a 10-day group therapy program and a 20-day intensive outpatient program. *Id.* at 4-5. In about February 2003, while attending the intensive outpatient program, Applicant began consuming alcohol again. He had about two drinks of hard liquor after work each day for a period of about two weeks. Item 6 at 5.

After completing the programs, Applicant continued to see the physician about once every two months, continuing through November 2003. Item 6 at 4. He also attended AA meetings twice a week between December 2002 and July 2003. *Id.* at 5.

In June 2003, Applicant began seeing a counselor specializing in marriage, family, and relationship issues. Item 6 at 6. He saw this counselor about once a week for about an hour. *Id.*

In September 2003, Applicant began drinking alcohol again. Item 6 at 6. He consumed between two and four drinks of hard liquor after work each day for about two weeks. *Id.* Upon the recommendation of Applicant's wife, his treating physician hospitalized him for the second time. *Id.* Applicant was hospitalized for four days for detoxification. Applicant's Answer to SOR, *supra*, at ¶ 1.g. He believes work-related stress caused his relapse. *Id.* at 7.

Applicant notified his employer's security office of his hospitalizations. Item 6 at 6. In October 2003, upon receiving notice of the second hospitalization, Applicant's employer suspended his special access. *Id.*; Item 7.

After that time, Applicant continued to consume alcohol sporadically, averaging about one drink of alcohol once or twice a week. Item 6 at 7.

In March 2004, Applicant was arrested and charged with driving under the influence of alcohol. Applicant's Answer to SOR, *supra*, at ¶ 1.i. Thereafter, Applicant voluntarily checked himself into an alcohol treatment center. Applicant's Response to FORM, *supra*, at 1. He successfully completed the 30-day inpatient treatment program. *Id.* at 2. In June 2004, Applicant completed a court-ordered 45-day residential treatment program. *Id.* at 2, 3.

Applicant also sought out and received treatment from a licensed clinical social worker specializing in "dual diagnosis"

patients. *Id.* Applicant asserts he hit "rock bottom" when he was arrested for drunk driving. He claims his latest course of treatment enabled him to recognize the importance of sobriety and gave him the tools to maintain a sober lifestyle.

Applicant's co-workers and supervisors praise his skill and hard work. Applicant's Answer to FORM, *supra*, at 7, 8. They indicate Applicant showed no sign of alcohol-related problems while at work. *Id.*

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline G, Alcohol Consumption. 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. Directive, ¶ E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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 the following factors: (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 individual'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 or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

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

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a]lcohol-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." The evidence establishes one instance in March 2004 where Applicant committed an alcohol-related driving offense away from work. I conclude this potentially disqualifying condition applies.

Under the Directive, ¶ E2.A7.1.2.3, it may be disqualifying where the evidence shows a "[d]iagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence." The available evidence demonstrates credentialed medical professionals have diagnosed Applicant as alcohol dependent on several occasions. This potentially disqualifying condition applies.

Paragraph E2.A7.1.2.6 of the Directive provides that it may be disqualifying where the evidence shows "[c]onsumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program." The term "alcoholism" has been replaced by the term "alcohol dependence." See *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR)* at 213; National Institute on Alcohol Abuse and Alcoholism, No. 30, PH 359, October 1995, at 2. Physicians diagnosed Applicant as alcohol dependent on several occasions, and Appellant completed alcohol treatment programs in 2002 and 2003. Nonetheless, Applicant continued to consume alcohol, at times to excess, after completing the programs. This potentially disqualifying condition applies.

The security concerns arising from Applicant's alcohol consumption can be mitigated under certain circumstances. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." The evidence reveals only one alcohol-related incident-driving under the influence of alcohol in March 2004. This single incident does not indicate a pattern of incidents, therefore this potentially mitigating condition applies.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." Applicant's pattern of alcohol consumption continued for many years, up to 2004. His alcohol-related problems are recent, therefore this potentially mitigating condition does not apply.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following his alcohol-related incident in 2004, Applicant attended an inpatient treatment program and a court-ordered residential program. He gained increased awareness of the dangers of excessive alcohol consumption and learned methods to control his desire to drink. I find this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating factors, as well as the "whole person" concept. Applicant engaged in a regular pattern of excessive alcohol consumption for many years, including periods during and following treatment programs. He has made considerable progress in managing his problems with alcohol-his success in the most recent alcohol rehabilitation program is very encouraging. Unfortunately, Applicant has gone through treatment programs in the past, only to revert to excessive drinking shortly thereafter. At this time, Applicant has not remained alcohol free long enough to demonstrate good prospects for the future. I conclude Applicant has not mitigated the security concerns arising from his lengthy history of problems arising from his alcohol consumption.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR 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

Subparagraph 1.i: 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.

Michael J. Breslin

Administrative Judge