

DATE: June 29, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-09097

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

John D. Morgan, Esq.

### **SYNOPSIS**

Applicant is a self-described alcoholic who abused alcohol for more than 25 years. In August 2002, he blacked out at the wheel of his automobile while highly intoxicated and crashed into another car, injuring its occupants. Since that incident, he has abstained from alcohol, successfully completed intensive counseling, and has been an active participant in Alcoholic's Anonymous. His dedication to sobriety coupled with the favorable prognosis from his counselor mitigates the alcohol consumption security concern. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. 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). The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G for alcohol consumption and Guideline J for criminal conduct. Applicant answered the SOR on August 18, 2005, and requested a hearing.

The case was assigned to me on December 19, 2005. A notice of hearing was issued on February 13, 2006, scheduling the hearing for March 15, 2006. The hearing was held as scheduled. During the hearing, 18 government exhibits, four Applicant exhibits, and the testimony of five Applicant witnesses were received. The transcript (Tr.) was received on March 23, 2006.

### **FINDINGS OF FACT**

I have incorporated all of Applicant's admissions to the SOR into the findings of fact with one minor exception. At the hearing, he testified that he quit drinking alcohol in August 2002 as opposed to November 2002, as stated in his admissions. His hearing testimony is consistent with his recollection during a counselor's intake interview in February 2003 (Ex. 13, Counseling records, dated February 27, 2003, at 29). I find that he quit drinking alcohol in August 2002,

as opposed to November 2002.

Applicant is a 46-year-old married man with one adult child. He is a high school graduate and has earned some college credits over the years. He is a veteran of the U.S. Navy where he served from 1978 to 2001, retiring as a chief petty officer. While in the Navy, he earned several awards and honors including three Navy Commendation Medals and two Navy Achievement Medals (Tr. at 43). Also, he was recognized two years consecutively as the Sailor of the Year in the early 1990s (Tr. at 41). He has held a security clearance since 1992.

Currently, Applicant develops training materials for the Navy. His supervisor, who has worked with him professionally for more than 20 years, characterizes him as "a person of great integrity and a very reliable and diligent worker" (Ex. B, Reference letter, dated August 17, 2005).

Applicant consumed alcohol with varying degrees of intensity for 26 years, beginning as a teenager in 1976. His use was moderate when he first began drinking. By 1980, it began to gradually increase. By 1982, he was drinking 7 to 10 12-ounce bottles of beer per day. His increased alcohol consumption resulted in several alcohol-related arrests. In 1980, he was arrested and convicted of driving under the influence (DUI). The court fined him, and ordered him to complete an alcohol-education course. In 1982, he was arrested and convicted again for DUI. He was again fined and ordered to complete an alcohol-education course. Also, the court suspended his driver's license for one year.

Applicant's third DUI led to more comprehensive court intervention. Specifically, the court deferred prosecution for five years under the condition that he abstain from alcohol and be evaluated for alcoholism. A therapist evaluated Applicant and recommended he attend six weeks of inpatient treatment in addition to six months of outpatient counseling. Also, he recommended that Applicant abstain from alcohol and attend weekly Alcoholics Anonymous (AA) classes (Ex. 17, Therapist's treatment records, dated June 28, 1984, at 2). Later, after completing the inpatient treatment in August 1984, a credentialed medical professional diagnosed him with chronic alcoholism, reiterated the therapist's recommendations, and prescribed Antabuse, a medication to minimize his urge to drink alcohol, for one year (Ex. 15, Inpatient admission/disposition record, dated August 21, 1984, at 1).

Applicant's compliance with the treatment plan led to a dismissal of the DUI charge (Ex. 4, Signed, sworn statement, dated October 23, 2003, at 5). However, he relapsed shortly thereafter. Although he never drank as much as he did before the 1984 arrest, he demonstrated a fluctuating pattern of short periods of abstinence followed by long relapses. In 1988, his Navy command discovered he was still drinking and ordered him to abstain (Ex. 18, Administrative Remarks, dated April 16, 1992). Four years later, the command issued a memo to Applicant formally warning him that continued failure to abstain from alcohol could jeopardize his career (*Id.*).

Applicant continued to struggle. By January 2001, it began to adversely affect his relationship with his family. Consequently, he voluntarily saw his family physician who prescribed medication to minimize his urge to drink alcohol (Ex. 4 at 6). Approximately one year later, however, he stopped taking the medication and resumed drinking.

On August 5, 2002, Applicant went on a drinking binge at two bars, consuming several shots of liquor and multiple beers. While driving home, he blacked out and collided with another vehicle, seriously injuring its driver (Ex. 4 at 1). On March 4, 2003, he pled guilty to the charge of vehicular assault (Ex. 11, Court records, dated March 4, 2003, at 1). Two months later, the court sentenced him to three months of electronic home detention and ordered him to undergo substance abuse evaluation and treatment. Also, the court fined him approximately \$1,000 (Ex. 10, Court record of judgment and sentence, dated May 5, 2003, at 6).

By the time the court ordered Applicant into a treatment program, he had already been attending one voluntarily for six months. On February 20, 2003, the clinic director, a licensed social worker, evaluated him and concluded he was alcohol dependent (Ex. A, Counseling record summary, dated March 27, 2006, at 2). By June 2003, Applicant successfully completed the treatment program. Characterizing him as "stable, smart, and motivated" (*Id.* at 2), the clinic director concluded that his long-term prognosis was excellent. In August 2005, his family physician, a credentialed medical professional, evaluated him, confirmed that he had been sober for more than two years, and concluded that his condition was stable (Ex. D, Physician's evaluation summary, dated August 17, 2005).

One of Applicant's aftercare requirements was to attend AA meetings. For the first two years after the accident,

Applicant attended them on a daily basis (Tr. at 40). Currently, he attends once weekly. Also, he is a leader in the AA community who frequently chairs meetings and organizes AA social events. To obtain the broadest possible variety of perspectives, he attends meetings at three different chapters (Tr. at 45). He also attends meetings when he is out of town on business travel.

Applicant testified at the hearing that his frequent relapses over the years were triggered by his refusal to accept that he was alcohol dependent (Tr. at 35). His acceptance of the problem did not occur until he regained consciousness after blacking out at the wheel of his automobile and heard the screaming of the occupants of the automobile he had hit (Tr. at 36). He has not drunk alcohol for nearly four years and has no intention of drinking alcohol again.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions. 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.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. 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.

The following adjudicative guidelines are raised:

**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.

**Guideline J - A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

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

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest" (*See Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2*). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR.

### **Alcohol Consumption**

Applicant's past inability to control his alcohol consumption led to four alcohol-related arrests, jeopardized his career, and threatened his marriage. He has been evaluated by therapists and diagnosed by credentialed medical professionals with alcohol dependence. 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*), AC DC E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*), and AC DC E2.A7.1.2.6 (*Consumption of alcohol subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*), apply.

Applicant has not drunk alcohol in nearly four years. He successfully completed an alcohol- treatment program, and received a favorable prognosis from both his doctor and a social worker who was the clinic director of the program where he received treatment. Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*), and AC MC E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), apply.

Applicant has been sober for four years. Although he relapsed in the past, the concern that he may relapse again is outweighed by his persuasive, introspective testimony regarding his acceptance of the problem, and his demonstrated dedication to overcoming it. I was equally impressed with his character witnesses. Upon considering these factors, along with the whole person concept, I conclude he has mitigated the Alcohol Consumption security concern.

### **Criminal Conduct**

Applicant's alcohol-related arrests generate criminal conduct concerns under Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). The most recent offense occurred nearly four years ago, and Applicant has been successfully managing his alcohol problem, the cause of the offenses. Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.1 (*The criminal behavior was not recent*), and CC C E2.A10.1.3.4 (*The factors leading to the violation are not likely to recur*), and CC MC E2.A10.1.3.6 (*There is clear*

*evidence of successful rehabilitation*), apply. Applying these mitigating conditions along with the whole person concept, I conclude Applicant has mitigated the Criminal Conduct security concern.

### **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-Guideline G: For Applicant

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Paragraph 2-Guideline J: For Applicant

Subparagraph 1.a: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry

Administrative Judge