

DATE: December 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09468

## DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

### APPEARANCES

#### FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant failed to mitigate security concerns resulting from falsifications he made about alcohol-related arrests and subsequent alcohol treatment on his security clearance application. Additionally, Applicant's continuing use of alcohol and his pattern of criminal conduct related to his excessive use of alcohol raise serious concerns about his security worthiness. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 13, 2005, under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on June 27, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on August 11, 2005. The FORM contained documents identified as Items 1 through 9. By letter dated September 16, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM September 26, 2005. He did not submit any information within the required time period. On November 28, 2005, the case was assigned to me for a decision.

### FINDINGS OF FACT

The SOR contains five allegations of disqualifying conduct charged under Guideline G, Alcohol Consumption, five allegations charged under Guideline E, Personal Conduct, and two allegations charged under Guideline J, Criminal Conduct. In his answer to the SOR, Applicant admitted all twelve allegations. Applicant's admissions are incorporated as findings of fact.

Applicant is 45 years old and employed as an electrical engineer by a government contractor. He is unmarried. (Item 4.)

Applicant says he is a social drinker. (Item 3 at 3.) When Applicant was approximately 16 years old, his father died. Soon thereafter Applicant began to drink alcohol heavily. He also used marijuana. (Item 8 at 84, 100.)<sup>(3)</sup> Applicant consumed alcohol, at times to excess and to the point of intoxication, from 1978 to at least July 2004. (Item 7.)

Applicant was arrested in September 1980 and charged with (1) Driving While Intoxicated (DWI) and (2) Failure to Drive in One Lane. He was found guilty of the reduced charge of Speeding for Count 1 after attending a program identified as P.A.C.T. Count (2) was suspended and he was fined \$112.00. (Item 8 at 100.)

Applicant's mother died when he was 22 years old. At about the time of his mother's death, Applicant used cocaine and "mushrooms." (Item 8 at 84.)

At the age of 23, Applicant was working as a bartender part-time and was self-employed part-time in a pool-cleaning business. (Item 8 at 100.) He lived in a group household consisting of a medical doctor who was a psychiatrist, a 33-year-old woman, and himself. (Item 8 at 80, 96.)<sup>(4)</sup>

On the evening of October 16, 1983, Applicant, a male friend, and Applicant's 33-year old female roommate, went bowling from approximately 8:30 pm to 11:30 pm. They drank three pitchers of beer while they bowled. The trio left the bowling alley in search of other friends. The male friend drove his car. Applicant and his roommate traveled in Applicant's truck. Applicant perceived an oncoming car in his travel lane, swerved, and lost control of his vehicle. The truck rolled over. Applicant's roommate was ejected from the truck and killed. A blood alcohol test confirmed Applicant was intoxicated at the time of the accident. (Item 8 at 97.)

Applicant was indicted in February 1984 and charged with Manslaughter, a class 3 felony (Count 1) and Endangerment, a class 6 felony (Count 2). The parents of the deceased woman did not favor a punitive sentence for Applicant, but proposed he receive counseling for his alcohol problem. (Item 8 at 97; Pre-sentence Investigation at 4.) The charges were amended to two counts of Endangerment. Applicant pled no contest to the charges. He was sentenced to three years of probation, ordered to work 300 hours in a work order program, and to pay restitution of \$2,323.00. (Item 8 at 59-65.) The terms of Applicant's probation required him to participate in any alcohol rehabilitative program ordered by his probation officer and to abstain completely from drinking alcoholic beverages. (Item 8 at 46.)

In 1992 Applicant was arrested and charged with Driving While Intoxicated. He was found guilty of a reduced charge of Reckless Driving and was ordered to attend four weekend classes on alcohol abuse. (Item 7.)

Applicant was arrested in June 2001 and charged with Driving Under the Influence. He was found guilty, ordered to serve one day in jail, to pay a fine of \$423, to attend 36 hours of alcohol education classes and to attend Alcoholics Anonymous meetings. (Item 7.)

Applicant goes out drinking with friends at least two nights a week, and sometimes three times a week. (Item 7.) He does not consider his use of alcohol to be a problem. (Item 3.)

Applicant completed and submitted electronically an EPSQ version of a security clearance application (SF-86) on June 25, 2001. (Item 9.) He also completed a SF-86, signed it on November 8, 2002, and submitted it on November 13, 2002. (Items 4 and 5.) Question 24 on the SF-86 asks if an applicant has ever been charged with or convicted of any offense related to alcohol or drugs. In his response to Question 24 on the SF-86 he completed June 25, 2001, Applicant replied "no" and failed to list his alcohol-related arrests in 1980, 1984, 1992, and 2001. On the signed SF-86 he submitted on November 13, 2002, he replied "yes" and listed one offense, which he identified as DUI (driving under the influence of alcohol) on June 18, 2001. (Item 5.) Applicant did not list his 1980, 1984, or 1992 alcohol-related arrests. On July 2, 2004, in a signed, sworn statement to a special agent of the Defense Security Service, Applicant admitted his alcohol-related arrests in 1984, 1992, and 2001. In his response to the SOR, Applicant admitted his 1980 alcohol-related arrest. He did not list all of his alcohol-related arrests on his SF-86 because he was embarrassed to do so. (Item 3, at 3.)

Question 30 on the SF-86 reads as follows: "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" Applicant answered "no" to Question 30 on the SF-86 he submitted electronically on June 26, 2001, and he did not list the alcohol

counseling he was ordered to attend after his alcohol-related arrest on June 16, 2001. (Item 9.) However, it is not clear from the record whether Applicant had received his sentence at the time he completed his SF-86 on June 26, 2001 and knew of the counseling he was ordered to undertake. Applicant also answered "no" to Question 30 when he completed and signed his SF-86 in November 2002.

Question 21 on the SF-86 asks if an Applicant has ever been charged with or convicted of a felony offense. In his response to Question 21 on the June 26, 2001, version of the SF-86, Applicant answered "yes" and listed his felony endangerment arrest and conviction resulting from the fatal accident he was involved in October 1983. In his response to Question 21 on the November 13, 2002 version of his SF-86, Applicant answered "yes" and listed his DUI conviction of June 2001. He did not list his felony arrest and conviction in the fatal automobile accident in October 1983 on the SF-86 he completed and certified on about November 13, 2002.

Applicant's four alcohol-related arrests resulted from operating a motor vehicle while under the influence of alcohol. He deliberately falsified his answers to Questions 24, 30, and 21 on his June 26, 2001 SF-86 and his November 13, 2002 SF-86.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

### CONCLUSIONS

#### **Guideline G - Alcohol Consumption**

In the SOR DOHA alleged Applicant consumed alcohol, at times to the point of intoxication, from approximately 1978 to at least July 2004 (¶ 1.a.); that in September 1980, he was arrested and charged with (1) Driving While Intoxicated and (2) Failure to Drive in One Lane, and that he was found guilty of a reduced charge of (1) Speeding, paid a fine of \$112.00, and Count (2) was suspended (¶1.b.); that in about February 1984 he was indicted on charges of (1) manslaughter, a felony, and (2) Endangerment, a felony, resulting from an accident that occurred while he was driving

while intoxicated, and the charges were amended to two counts of Endangerment, to which he pled no contest, was sentenced to three years of probation, ordered to work 300 hours in a work order program, and to pay restitution of \$2,323.00 (¶ 1.c.); that he was arrested in March 1992 and charged with Driving While Intoxicated, found guilty of a reduced charge of Reckless Driving, and ordered to attend four weekend classes on alcohol abuse (¶ 1.d.); and that he was arrested in June 2001 and charged with Driving Under the Influence, found guilty, incarcerated for one day, fined \$423.00, and ordered to attend 36 hours of alcohol education classes and five Alcoholics Anonymous meetings (¶ 1.e.)

Security concerns under Disqualifying Condition (DC) E2.A7.1.2.1. (5) and DC E2.A7.1.2.5. (6) are raised by Applicant's admissions and the record evidence. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. The record shows, and Applicant admits, that he was arrested four times between 1980 and 2001 for alcohol-related incidents away from work, thus raising a concern under DC E2.A7.1.2.1. of Guideline G.

Applicant admits he consumed alcohol at times to excess and to the point of intoxication from 1978 to at least July 2004. His habitual consumption of alcohol to the point of impaired judgment raises concerns under DC E2.A7.1.2.5.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (Mitigating Condition (MC) E2.A7.1.3.1.), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. (MC E2.A7.1.3.4.) Since the record evidence does not indicate Applicant has received a diagnosis of alcohol abuse or alcohol dependence, MC E2.A7.1.3.4. is inapplicable.

Applicant's episodic heavy drinking in the past indicates a lifestyle and pattern of behavior. He continues to use alcohol despite four arrests for behavior related to his excessive use of alcohol and two court-ordered alcohol education programs. He denies that alcohol is a problem in his life, but does not provide evidence of positive changes in behavior supportive of the responsible use of alcohol. I conclude that MC E2.A7.1.3.1., MC E2.A7.1.3.2., and MC E2.A7.1.3.3. do not apply to Applicant's case. (7) The Guideline G allegations in the SOR are concluded against the Applicant.

### **Guideline E, Personal Conduct**

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, by falsifying material facts in his responses to Questions 24, 30, and 21 on two versions of the SF-86 that he submitted electronically. DOHA alleged that on a SF-86 submitted electronically on June 26, 2001, Applicant answered "no" to Question 24. DOHA further alleged that when Applicant electronically submitted a SF-86 on November 13, 2002, signed and certified on November 8, 2002, he admitted and listed only one alcohol-related offense in his response to Question 24 when he knew he had been charged with three additional alcohol-related offenses which he did not list. (¶ 2.a.; ¶ 2.c.) DOHA also alleged Applicant falsified his response to Question 30 on both the June 26, 2001 and November 13, 2002 versions of his SF-86 by deliberately failing to list the alcohol counseling ordered by the court when he was found guilty of Driving While Intoxicated in June 2001. (¶ 2.b.; ¶ 2.d.) DOHA also alleged Applicant falsified material facts in his response to Question 21 on the SF-86 he completed and certified on November 13, 2002. Question 21 asks an applicant whether he or she has ever been charged with or convicted of any felony offenses. An affirmative response by the applicant requires that he or she list the dates and nature of the felony offenses and the subsequent adjudication of them. When he completed and signed his SF-86 in November 2002, Applicant answered Question 21 in the affirmative and listed his DUI conviction in June 2001. (Items 4 and 5.) He did not list his felony conviction for Endangerment in February 1984. (¶ 2.e.) (8)

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR , the Government has established its case. Applicant's failure to answer Questions 24, 30, and 21 completely, truthfully, and correctly raises a security concern under Disqualifying Condition (DC) E2.A8.1.2.2. of Guideline E. In his answer to the SOR, Applicant admitted deliberately concealing information about his four alcohol-related arrests because he considered them embarrassing. Applicant's embarrassment could make him vulnerable to coercion and blackmail. (DC E2.A5.1.2.4.) His conduct raises additional concerns under DC E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his past conduct suggests that, under some circumstances, he may put his interests before those of the Government. The ability to be truthful goes to the essence of an individual's security worthiness. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. Jul.10, 2000).

Mitigating condition (MC) E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsifications were isolated, not recent, and if the Applicant subsequently provided the correct information voluntarily. (MC E2.A5.1.3.2.) While Applicant supplied the correct information when questioned by a special agent of the Defense Investigative Service in July 2004, approximately 20 months had passed since he had completed and certified his SF-86 in November 2002. Applicant's falsifications were not isolated incidents and they are recent. Accordingly, allegations in subparagraphs 2.a. through 2.e. of the SOR are concluded against the Applicant.

### **Guideline J - Criminal Conduct**

In the SOR, DOHA alleged that Applicant's admitted history of excessive alcohol consumption and four alcohol-related arrests and convictions, specified in allegations ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.e. under Guideline G, constituted a history or pattern of criminal activity under Guideline J of the Directive. (¶ 3.a.) DOHA also alleged that Applicant's falsifications on his SF-86, alleged in ¶¶ 2.a., 2.b., 2.c., 2.d., and 2.e. under Guideline E of the SOR, were deliberate and intentional pursuant 18 U.S.C. § 1001 and constituted criminal conduct under Guideline J of the Directive. (¶ 3.b.)

The security concern under Guideline J is that an individual's history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's admitted deliberate falsifications on his SF-86 and his admitted history of excessive use of alcohol and four alcohol-related arrests and convictions raise security concerns under Guideline J Disqualifying Conditions (DC) E2.A10.1.2.1 and E2.A10.1.2.2. [\(10\)](#)

Several mitigating conditions might be applicable in Applicant's case. Applicant's most recent alcohol-related conviction occurred in 2001, four years ago; thus, his arrests for alcohol-related criminal acts are not recent. However, Applicant's alcohol-related arrests were not isolated events but manifest a pattern of criminal conduct. Additionally, in his interview with the special agent of the Defense Security Service and in his answer to the SOR, Applicant acknowledged he continues to drink alcohol. So, while Mitigating Condition (MC) E2.A10.1.3.1. of Guideline J applies in mitigation to Applicant's disqualifying conduct under Guideline G, MC E2.A10.1.3.2. of the Guideline does not. Since Applicant failed to present clear evidence of successful rehabilitation, MC E2.A10.1.3.6. is also inapplicable in mitigation.

Applicant's admitted deliberate falsifications regarding his disqualifying conduct under Guideline G also raise security concerns under DC E.2 A10.1.2.1 and DC E2.A10.1.2.2. Since Applicant's deliberate falsifications were recent and numerous, MC E2.A10.1.3.1. and MC E2.A10.1.3.2. of Guideline J are inapplicable. Similarly, since Applicant provided no clear evidence of successful rehabilitation, MC E2.A10.1.3.6. does not apply. Accordingly, the Guideline J allegations in the SOR are concluded against the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the

favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not mitigated the security concerns raised by the allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2.: Guideline E.: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3.: Guideline J.: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Item 8 consists of 111 pages, numbered 62-173. For consistency and ease of citation, I have renumbered the pages from 1 to 111.



4. In a letter dated August 9, 1984, a licensed social worker also identified herself as a house mate of Applicant's. (Item 8, at 90.)

5. ¶ E2.A7.1.2.1. under Guideline G, Alcohol Consumption identifies "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" as conduct that could raise a security concern and disqualify one from a grant of a security clearance.

6. ¶ E2.A7.1.2.5. under Guideline G identifies "habitual or binge consumption of alcohol to the point of impaired judgment" as conduct that could raise a security concern and disqualifying condition.

7. In ISCR Case No. 02-15358 at 4 (July 22, 2003), DOHA's Appeal Board stated that the record evidence in a case supported a conclusion that episodic abuse of alcohol raised security concerns under Guideline G. The Appeal Board also stated: "Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs in the absence of a diagnosis of alcoholism or alcohol dependence. Nothing in the Directive precludes consideration of the security significance of episodic alcohol abuse that falls short of habitual or binge drinking. Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs during off-duty hours."

8. When Applicant completed his SF-86 in about June 26, 2001, he answered "yes" and listed his conviction on two charges of Endangerment in February 1984. [\(9\)](#)

9. Applicant identified the date of the offense as October 1982, while in fact the offense occurred in October 1983.

10. DC E2.A10.1.2.1 of Guideline J reads: "Allegations or admissions of criminal conduct, regardless of whether the person was formally charged." DC E2.A10.1.2.2 of Guideline J reads: "A single serious crime or multiple lesser offenses."