

DATE: June 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-15516

## DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

### APPEARANCES

#### FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

#### FOR APPLICANT

*Pro se*

### SYNOPSIS

Applicant is a 23-year-old structural welder seeking employment with a defense contractor. From 2000 through 2004, he was arrested or cited for several alcohol-related misdemeanors, including underage drinking, carrying alcohol, property damage, and criminal trespass. Although his criminal conduct from age 17 to 21 may be attributable to youthful indiscretion, one year of abstinence does not mitigate alcohol consumption security concerns. Clearance is denied.

### STATEMENT OF THE CASE

On March 16, 2005, Applicant applied for a security clearance and signed a Security Clearance Application (SF 86). On January 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons, under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption), 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 Applicant, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

In a notarized statement, dated February 10, 2006, Applicant responded to the SOR by admitting five of the seven allegations raised under Guideline J and both the allegations under Guideline G. He also elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on March 23, 2006. A complete copy of the file of relevant material (FORM) <sup>(1)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by May 10, 2006. Applicant chose not to respond to the FORM. The case was assigned to me on June 14, 2006.

## FINDINGS OF FACT

Applicant's answers to the allegations in the SOR are incorporated herein. After a thorough and careful review of the evidence and exhibits, I make the following additional findings of fact:

Applicant is a 23-year-old site structural welder seeking employment with a defense contractor. His employment with this defense contractor is contingent upon his eligibility for access to a sensitive assignment requiring a security clearance. Applicant is unmarried and currently resides with his parents. He received a high school diploma and a certificate of completion from a career center in mid-2002.

From age 17 to age 21, Applicant consumed alcohol, at times to excess and to the point of intoxication. At a height of 5'9" and weighing approximately 170 pounds, he has been known to consume up to 18 beers on a weekend. The first alcohol-related incident cited in the SOR occurred on October 8, 2000, shortly before he turned 18 years old. He was arrested at a party and charged with Property Damage and Possession/Consumption of Liquor by Minor. He pled guilty to the latter charge, was fined \$200, placed on supervision for six months, and ordered to complete 20 hours of community service. [\(2\)](#)

The SOR alleges that Applicant was arrested in a specific city on March 26, 2001, and on March 24, 2002, and charged with Possession of Liquor by Minor. Applicant denied these allegations and showed that the county clerk's record of his arrests does not include these two incidents. [\(3\)](#) In its FORM, the government recognized the discrepancy and offered a copy of that county's sheriff's office arrest record, indicating that arrests were made on these two dates, but not in the city cited in the SOR. [\(4\)](#) The government states, however, that the county cited is the same county which incorporates the city noted in the 2001 allegation, and alleges that "a look at a map confirms that" the town in which Applicant was arrested in 2002 is "just outside" the city originally cited. [\(5\)](#) Applicant did not object to this assertion or provide contrary evidence prior to the closing of the record.

On March 25, 2002, a bench warrant was issued against Applicant for failure to complete the community service requirement previously ordered as part of the disposition of the October 8, 2002, Consumption/Possession of Liquor by Minor charge. He was consequently sentenced to six days in jail, but apparently was only required to spend one night incarcerated. [\(6\)](#)

Cited on June 15, 2003, and charged with Transportation/Carry Alcohol as a Passenger, Applicant was fined \$150 and placed on supervision for six months. Prior to the end of this period of supervision, on September 21, 2003, he consumed approximately three alcoholic beverages prior to performing acts which resulted in his being arrested and charged with Property Damage and Disturbing the Peace. The Property Damage charge was ultimately amended to Criminal Trespass, and the matter was dismissed on December 10, 2003. His last alcohol-related arrest occurred on April 11, 2004, a few months after Applicant turned 21. On that date, he was charged with Transportation/Carry Alcohol as a Passenger, and fined \$75. [\(7\)](#)

Applicant characterizes his drinking and his arrests as past "bad decisions," [\(8\)](#) attributable to his age and immaturity. Recognizing that such behavior is detrimental to his adult career, he notes that "[s]ince the investigation [he] quit consuming alcohol to show [he is] willing to make small sacrifices to achieve goals in life." His use of alcohol ceased sometime around May 2005. [\(9\)](#)

## 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. 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>(10)</sup> The government has the burden of proving controverted facts.<sup>(11)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(12)</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>(13)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(14)</sup>

No one has a right to a security clearance<sup>(15)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(16)</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>(17)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(18)</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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline G - Alcohol Consumption.** *The Concern:* Excessive alcohol consumption often leads to the exercise of questionable judgement, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.<sup>(19)</sup>

**Guideline J - Criminal Conduct.** *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.<sup>(20)</sup>

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

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has shown that Applicant has been arrested, charged, or cited for several incidents involving alcohol. Two of those incidents, however, are denied by Applicant. Specifically, he denied the incidents allegedly occurring in a particular city on March 26, 2001, and March 24, 2002, as noted in the SOR as allegations 1.b. and 1.c. Department Counsel subsequently submitted with the FORM a record from the county sheriff's office that substantiates that arrests were made on those dates, but not in the jurisdictional location alleged in the SOR. Consequently, two of the seven allegations were flawed and Applicant was technically correct in his two denials. In the absence of a motion to amend the SOR by the government, I find SOR allegations 1.b. and 1.c. in Applicant's favor.

### ***Criminal Conduct:***

Notwithstanding the favorable ruling regarding allegations 1.b. and 1.c., there remains the alcohol-related incidents that occurred in October 2000 and the related bench warrant in March 2002, two arrests in 2003, and the final citation of April 2004. Based on these events, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*[a]llegations or admission of criminal conduct, regardless of whether the person was formally charged*) and (*[a] single serious crime or multiple lesser offenses*) apply.

The incidents at issue are multiple and occurred as recently as 2004. Therefore, neither CC MC E2.A10.1.3.1 (*[t]he criminal behavior was not recent*) nor CC MC E2.A6.1.3.2 (*[t]he crime was an isolated incident*) applies. Moreover,

Applicant fully admits these incidents occurred and makes no excuse other than citing to his youth and bad judgment. Therefore, neither CC MC E2.A10.1.3.3 (*[t]he person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) nor CC MC E2.A10.1.3.4 (*[t]he person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) applies. Furthermore, based on admitted facts, CC MC E2.A10.1.3.6 (*[a]cquittal*) does not apply.

In light of his record, Applicant clearly needed to make some form of adjustment to his consumption of alcohol. He states that he gave up drinking alcohol one year ago in order to achieve his life goals. This is a wise decision which should serve him well as an adult. He similarly points to his recent maturity and describes his past conduct of underage drinking, carrying alcohol as a passenger, property damage, and criminal trespass as the result of youth and bad judgment. Given the fact that the incidents at issue occurred between the ages of 17 and 21, and given his recent efforts to improve himself, eschew alcohol, and pursue a career goal, CC MC E2.A10.1.3.6 (*[t]here is clear evidence of successful rehabilitation*) applies.

Although serious, Applicant's criminal conduct mostly consists of juvenile activities conducted by a teen, then a 20- to 21-year old, on the brink of adulthood. The alcohol-related crimes were relatively minor misdemeanors, non-violent, and did not involve the operation of a motor vehicle, factors that weigh heavily in his favor. In view of all these considerations, as well as his contrition and his expression of his future goals, Applicant has mitigated the security concerns arising from his criminal conduct.

### ***Alcohol Consumption***

The same incidents giving rise to Guideline J, as well as his concession that he consumed alcohol in excess and to the point of intoxication on a number of times between 2000 and 2004, give rise to Guideline G, Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*[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*).<sup>(21)</sup> This concern is particularly true, given his height, weight, and age, and his admission that he has, on several occasions, consumed at least 18 beers over a weekend. With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.

Applicant admits to his abuse of alcohol and to the majority of alcohol-related incidents cited in the SOR. Taken together, for the years 2000 and 2002 through 2004, Applicant was annually arrested or cited for alcohol-related incidents,<sup>(22)</sup> and he continued drinking until May 2005. Therefore, neither Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1. (*[t]he alcohol-related incidents do not indicate a pattern*) nor AC MC E2.A7.1.3.2 (*[t]he problem occurred a number of years ago and there is no indication of a recent problem*) applies.

In his response to the SOR, Applicant unequivocally stated that he has not consumed alcohol since the commencement of the investigative process, stressing that it is a small sacrifice to make in order to pursue his life goals. He cites to his past behavior as the result of youthful indiscretion and immaturity. Given his track record and his relative youth, this is a wise decision demonstrating mature reasoning. Although this new found maturity has only been in practice one year and follows approximately five years of drinking, the majority of which was under the legal age for alcohol consumption, it is an important first step in at least moderating his alcohol consumption to an appropriately professional level. Therefore, AC MC E2.A7.1.3.3 (*[p]ositive changes in behavior supportive of sobriety*) applies.

To avoid being charged with alcohol-related incidents in the future, Applicant has simply quit consuming alcoholic beverages. He has not, however, received a diagnosis concerning his alcohol consumption or solicited any support to help him in his cessation, should such support be needed. Therefore, AC MC E2.A7.1.3.4 (*[f]ollowing 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 licenses clinical social worker who is a staff member of a recognized alcohol treatment program*) does not apply.

Despite positive changes in his behavior with regard to alcohol, his cessation of alcohol abuse is far too recent to

mitigate security concerns. While his commitment to avoid future criminal conduct is more easily assured, given its characterization as largely puerile, Applicant's abuse of alcohol has never been assessed. While it may be, at his young age, a habit easy to quit or to moderate as he faces the working world, one year of sobriety alone is insufficient to demonstrate the judgment and reliability Guideline G demands. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. Here, Applicant did not introduce any documentation that he has received any counseling, treatment, or support with regard to his drinking, nor did he submit any insightful recommendations as to his conduct or character. Based only on his representation that he has been alcohol-free for little more than one year, Applicant has been unable to mitigate security concerns arising from his alcohol consumption.

I have considered both the record evidence and Applicant in light of the "whole person" concept. He is a young man who, at age 23, has matured considerably and is attempting to overcome his youthful excesses and start a career. Although his criminal conduct can be attributed to immaturity, his alcohol abuse is harder to gauge. Without more than a claim of current sobriety, the risk of relapse to immoderate alcohol abuse remains. Perhaps with a longer period of sobriety or moderation, or through professional diagnosis or some form of support, security concerns might be allayed. Based on the written record as presented, however, questions are left unanswered and alcohol consumption security concerns remain. Consequently, clearance is denied.

### **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 J (Criminal Conduct): 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

Paragraph 1. Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. The government submitted six items in support of its contentions.

2. Applicant admits to this allegation, noted in the SOR as allegation 1.a.
3. Applicant's Response to the SOR, dated February 10, 2006, attachment (Clerk of Court record, dated January 27, 2006).
4. Item 6 (Arrest Record, County Sheriff's Office, dated March 20, 2006), regarding SOR allegations 1.b. and 1.c.
5. FORM, dated March 23, 2006, at 4. Department Counsel did not, however, proffer a map to substantiate this assertion.
6. Applicant admits to this allegation, noted in the SOR as 1.d, but notes that he was only incarcerated for one day. Item 5 (Prescreening Supplemental Project Questionnaire, signed March 16, 2005) at 3.
7. Applicant admits to these three allegations, noted in the SOR as 1.e., 1.f., and 1.g., respectively.
8. Item 3 (Applicant's Response to the SOR, dated February 10, 2006) at 2.
9. In the comments concluding his February 2006 answer to the SOR, Applicant claims he has not had alcohol since the investigative process began. He does not state a specific date. In his concession that he has consumed alcohol to excess, however, he noted that his alcohol consumption continued only through May 2005. Item 3, *supra*, footnote 6, at 2.
10. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
11. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
12. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
14. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
15. *Egan*, 484 U.S. 518, at 531.
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.
19. Directive, Enclosure 2, ¶ E2.A7.1.1.
20. Directive, Enclosure 2, ¶ E2.A10.1.1.
21. Department Counsel similarly urges application of AC DC E2.A7.1.2.5 (*[h]abitual or binge consumption of alcohol to the point of impaired judgment*). Inasmuch as the facts do not clearly demonstrate that this condition applies, and given the ultimate disposition of the case, I do not find that AC DC E2.A7.1.2.5 applies.
22. Although the incidents cited in SOR allegations 1.b. and 1.c. are found in Applicant's favor on a pleading-based technicality, the arrests were made and were similarly alcohol-related, adding to the pattern of alcohol consumption.