

DATE: December 27, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-17474

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

Pamela C. Benson, Esq., Department Counsel

#### **FOR APPLICANT**

Charles W. Mahan, Esq.

### **SYNOPSIS**

Applicant is 41 years old and married with two children. He has a Ph.D. in chemistry. He has a history of drug and alcohol dependence. After his family intervened in 2004, he entered an in-patient and out-patient treatment program. He attends AA thrice weekly. Applicant mitigated his alcohol consumption and drug involvement security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 18, 2006, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline H (Drug Involvement) of the Directive. Applicant answered the SOR in writing on June 15, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on July 20, 2006. On August 29, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government moved to amend subparagraphs 1.a. and 1.c. of the SOR to replace the date originally printed as 1979 with 1984. Without objection from the Applicant, I granted the motion. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 6, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to all the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 41 years old, married and has two children. He graduated from college in 1987, and received his Ph.D. in

chemistry in 1994. Until he obtained his current job about a year ago, he worked at several universities as a post-doctoral fellow. He works for a defense contractor as a computational chemist. He is working very well in that job. (Tr. 13, 34, 37, 39, 52-57, 66; Exhibits 1, D-F)

Applicant started drinking alcohol, usually beer, at 13 years old in 1979. He also started smoking marijuana at the same time. He smoked marijuana almost daily from 1984 until May 27, 2004. In college Applicant binge drank twice a week on average. His drinking was twice a week after 1994 when he got his Ph.D., though not binge drinking. Until the last decade when he started drinking alone more often, he drank with other people. From 1994 until May 27, 2004 he consumed four to eight beers daily. He started using cocaine in 1984 during college and used it every few months until 2000. He never sold any drugs. He usually bought marijuana and received the cocaine from friends. (Tr. 14, 38-44; Exhibits 1, 2)

On May 27, 2004, Applicant's wife and sister arranged an intervention to confront Applicant about his drug and alcohol use. He was unhappy about his usage, but could not stop on his own. His wife, who had been attending Al-Anon for 18 months because of the stresses in their marriage brought on by his substance abuse, contacted their insurance company about payment options for alcohol and drug treatment, and arranged the entire process. Applicant, when confronted by his family about his drug and alcohol usage, agreed to enter treatment. He attended a 21-day in-patient treatment and rehabilitation program. Although reluctant at first, Applicant changed his attitude and committed himself to full participation in the program. The program discharged him on June 15, 2004, with a final diagnosis of alcohol dependence and cannabis dependence. His prognosis is guarded, according to the discharge report. Aftercare was recommended, including attending thrice weekly Alcoholics Anonymous (AA) participation, working on family relationships, obtaining full-time employment,, continuing with individual therapy, obtaining an AA sponsor, and remaining alcohol and drug free. Applicant was also advised to continue working AA Steps 3 through 12. Applicant continues to attend AA thrice weekly still, and is convinced AA works for him. He will attend AA for the rest of his life. He does not intend to use alcohol or drugs again, and does not associate with people who do. (Tr. 14-36, 44-51, 60, 66-81; Exhibits 1, 2, A-C)

Applicant attended 10 weeks of aftercare and successfully completed the program. He has a sponsor who testified that Applicant had a significant occurrence in his life with the intervention and treatment, and he does not believe Applicant will return to his prior alcohol and drug use. The sponsor sees Applicant at two AA meetings weekly, and knows from their weekly conversations Applicant attends a third meeting. Applicant has worked all 12 steps of AA, and finds the first step (his life has become unmanageable and he is powerless over alcohol and drugs) most meaningful for him. He works Steps 11 (increase conscious contact with God) and 12 (bring the message to other people) daily. He is an AA sponsor for one person. (Tr. 48, 51, 63, 83-87; Exhibits A-C)

Applicant's wife verified the changed attitude Applicant has toward their marriage and family after the in-patient and aftercare treatment programs, and attendance at marital counseling as recommended. The misery and unhappiness he experienced before the intervention is gone. (Tr. 66-81)

Applicant met with an experienced addictions counselor three times over a five week period in the summer of 2006. He was referred to him by a hospital outpatient program manager. The counselor saw no need for formal counseling because Applicant continues in AA, has a very good recovery program in operation, and has been sober for the past two years. He found Applicant to be candid and honest in his comments and discussion about his past abuses. This counselor is a licensed independent chemical dependency counselor, an internationally certified alcohol and drug counselor, and a licensed social worker under his state's law. (Tr. 88-95; Exhibits B and C)

Applicant is highly regarded by his scientific peers for his professional work in a complicated scientific field, and his work ethic. Applicant is efficient, organized, has a high level of self direction, diplomatic, and easy with whom to work. They have not seen any relapse of his past alcohol and drug problems in his work performance. (Exhibits D-F)

## 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 the national interest to do so." *See* Exec. Or. 10865, *Safeguarding Classified Information with 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." *See* ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See* ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. *See* ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline G: Alcohol Consumption: *The Concern: 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. E2.A7.1.1*

Guideline H: Drug Involvement: *The Concern. Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or*

*occupational functioning, increasing the risk of an unauthorized disclosure of classified information. E2.A8.1.1*

## CONCLUSIONS

Alcohol Consumption: Disqualifying Condition (DC) 3 (Diagnosis by a credentialed medical professional, a physician, of alcohol dependence. E2.A7.1.2.3) applies. Applicant's diagnosis after his 2004 in-patient treatment was alcohol dependence. A physician signed the discharge diagnosis. Applicant admitted he had an alcohol consumption problem since 1979.

Two mitigating conditions (MC) are applicable: (1) MC 3 (Positive changes in behavior supportive of sobriety. E2.A7.1.3.3), and (2) MC 4 (Following diagnosis of 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. E2.A7.1.3.4). Applicant successfully completed the inpatient and aftercare programs. He has participated continuously in AA since his inpatient program, and is now a sponsor of another alcohol dependent person. He has been sober for two years, attended marital counseling with his wife who has seen positive changes in Applicant's relationships with her and their children, and has a favorable prognosis from a hospital outpatient program and a state licensed social worker, who is also a chemical dependency counselor. Applicant adheres to his recovery and sobriety program, and states he is very happy and comfortable with them, and his new way of life.

Drug Involvement: DC 1 (Any drug abuse. E2.A8.1.2.1), DC 2 (Illegal drug possession, including purchase. E2.A8.1.2.2), and DC 3 (Diagnosis by a credentialed medical professional, a physician, of drug dependence. E2.A8.1.2.3) apply. Applicant used marijuana since 1979, and cocaine every other month on average from 1984 to 2000. His discharge diagnosis from the 2004 inpatient treatment program found a cannabis dependence.

MC 3 (A demonstrated intent not to abuse drugs in the future. E2.A8.1.3.3), and MC 4 (Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional. E2.A8.1.3.4) apply. Applicant expressed his firm intention not to use drugs in the future. He completed all treatment recommendations, attends AA weekly to support his sobriety, and has abstained from using drugs for two years. The discharge prognosis was favorable if Applicant followed all the recommendations, which he has done. The diagnosis is supported by the subsequent professional consultations set forth in Exhibits B and C.

Whole Person Concept: Applicant is a person who has an alcohol and drug problem now under control.. He was immature when he started drinking and using marijuana at 13. Through the intervention by his wife and family members, he has fully recognized he has a problem and needs to control and resolve it. He successfully completed all programs to which he was referred, and maintains his sobriety through extensive AA involvement. It is not likely that he will repeat his past behavior after the commitment and realizations he has undergone since May 27, 2004. He has done all that anyone could do to rid himself of the alcohol and drug problems. Applicant is very well educated and works in a complicated scientific job. He has the support of his family and friends for his recovery. The whole person that Applicant is now, clearly is a person who recognizes his past problems and has taken active steps to resolve them and improve himself.

Applicant is very credible and persuasive in his testimony about his past alcohol and drug abuse problems. He convinced me he is sincere about adhering to the sober lifestyle, and making his marriage work successfully. His wife was very credible and convincing in her persuasiveness about their past life together and the changes she sees in Applicant.

Applicant's current AA sponsor and former counselor testified favorably for Applicant, and I found them credible and persuasive. The letters of recommendation from other professionals for Applicant were persuasive on his work quality and ethics. Therefore, I conclude the alcohol consumption and drug involvement security concerns for Applicant.

## FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

### **DECISION**

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).