

DATE: December 31, 1996

In RE:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 95-0705

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny, Esq.

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FOR THE APPLICANT

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STATEMENT OF CASE

On September 20, 1995, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under Criterion m and Criterion i of 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 clearance should be denied or revoked. The SOR is attached.

Applicant filed his Answer to the SOR on December 7, 1995.

The case was received by the undersigned on January 26, 1996. A notice of hearing was issued on March 12, 1996, and the case was heard on April 4, 1996. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and 6 witnesses. The transcript was received on April 16, 1996.

FINDINGS OF FACT

The SOR alleges alcohol abuse and acts of poor judgment. Applicant admitted all the alcohol abuse allegations but generally believed his alcohol abuse was work-related. His suicide threat on September 12, 1994 was not serious. I have reviewed the transcript, evaluated witness credibility and examined the exhibits. The Finding of Facts are:

Applicant is 62 years old and employed as a ----- by a defense contractor. He seeks a secret clearance.

Applicant's habitual use of alcohol is clearly substantiated by his sworn statements (Exhibits 2 and 3) and the medical

records. (Exhibits 5 through 8). He abused alcohol on a regular basis from 1992 to a short time before his admission to the inpatient treatment center on July 22, 1994. He was discharged from the treatment center on August 19, 1994. A recommendation was made in the counselor discharge summary that Applicant attend a continuing care mens' group and Alcoholics Anonymous (AA) meetings. Applicant's contact with the mens' group and AA was very abbreviated. (Tr. 158-159).

Applicant received treatment on September 12 and 13, 1994 for alcohol dependence and having made suicidal threats. Although Applicant stated in his Answer and in Government Exhibit 3 he was not serious and/or was joking when he made the threat, Applicant nonetheless made the threat. [\(1\)](#)

On September 12, 1994 and September 13, 1994, Applicant received an evaluation and was diagnosed as alcohol dependent. [\(2\)](#)

Applicant received inpatient treatment from September 13, 1994 to September 23, 1994 for chronic and continuous alcohol abuse. He contacted the employee assistance organization and AA as directed in his aftercare recommendations. (Tr. 175).

Applicant was evaluated from October 11, 1994 to November 2, 1994, by the employee assistance program for an alcohol dependence condition. [\(3\)](#)

Because there is no evidence indicating Applicant used or abused alcohol between August 19, 1994 and February 1995, a finding for Applicant is warranted under subparagraph 1f of the SOR. [\(4\)](#)

Applicant's character evidence from friends and coworkers provides a character profile of a credible and reliable person with rare abilities. Colleagues believe he concentrates much better since his treatment in July, August and September 1994. Another recovering alcoholic has watched Applicant maintain weekly attendance at AA meetings since February 1996 and believes he will continue to take part in the AA experience in the future to maintain a strong recovery course.

When Applicant resumed counseling with the employee assistance director in September 1995, he appeared much stronger than when he decided to embark on his own recovery in November 1994. (Tr. 25). He had reduced his work responsibilities and resumed participation in AA at the director's request. (Tr. 26). He has participated in AA twice a week since September 1995 and has consulted with the director every other week. (Tr. 28). Because of Applicant's honesty in consultation, the director is confident his only relapse was in February 1995. (Tr. 29). With Applicant's relapse prevention skills of: (1) identifying the precipitators of his alcohol use; (2) involvement in physical activities; and, (3) finding a sponsor, the director considers Applicant's overall prognosis is good. (Tr. 30, 31).

A recovering alcoholic of 39 years became Applicant's sponsor in December 1995 and has counseled him for the past 3 months. They meet twice a week at meetings and talk by telephone about twice a week. His sponsor has watched Applicant open up and grow in these meetings (Tr. 67) and firmly believes Applicant will maintain his recovery in the fellowship of AA. The sponsor's 39 years in recovery has made him skillful in predicting when a recovering alcoholic will return to drinking, He has discovered no sign leading him to conclude Applicant is consuming alcohol. (Tr. 69). [\(5\)](#) He considers Applicant has an excellent prognosis with the help of AA. (Tr. 78).

The cofounder and vice chairman of the company described the serious financial problems of the company in 1992. The pressures from shareholders to improve the financial picture of the company after losing a large contract in 1992, and the pressure to reduce the workforce had a negative impact on Applicant. (Tr. 113). The company vice chairman found Applicant able to concentrate better after he returned from treatment in 1994. The vice chairman smelled the odor of alcohol on Applicant in early 1995 around the same time the company was encountering serious problems with another contract that was losing money. In May 1995, the board of directors of the company decided to change management and Applicant was transferred to a position demanding less day-to-day responsibility. (Tr. 118). There has been no evidence of alcohol use by Applicant since May 1995. The vice chairman was worried about the lack of after care upon discharge in August 1995, but is confident the presence of after care will increase the likelihood that Applicant will be able to maintain his recovery. (Tr. 120).

Applicant attributed the relapses in September 1994 and February 1995 to adverse business conditions and the lack of a structured support system. (Tr. 181). (6) ost of his support system was in place by April 1995 when he was consulting his family physician. (Tr. 181). Applicant displayed his one year chip for being abstinent from alcohol for one year. He resumed AA in September 1995 and presently attends 3 times a week. (Tr. 184).

Applicant's company, which won a prestigious security award in 1989 (Tr. 90), has never had a security violation and Applicant has been very cooperative with the Government about security matters. Pursuant to security regulations, Applicant correctly filed an adverse information report in September 1994 when he was hospitalized for evaluation. (Tr. 94).

## **POLICIES**

Enclosure 2 of the Directive set forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Alcohol Abuse**

#### **Factors Against Clearance:**

1. Habitual or episodic consumption of alcohol to the point of intoxication or impairment.
2. Alcohol-related incidents...
3. Deterioration of the individual's health...due to alcohol use or abuse.
9. Failure to cooperate in or successfully complete a prescribed regimen of an alcohol abuse rehabilitation program.

#### **Factors for Clearance:**

3b. Successful completion of an alcohol rehabilitation program and total abstinence for 2 years when there has been a diagnosis by competent medical authority as an alcoholic, alcoholic dependent, or chronic abuser of alcohol.

### **Poor Judgment**

There are no supplemental factors for poor judgment, however, a individual's conduct under other criteria may also constitute poor judgment, unreliability and untrustworthiness under Criterion i.

### **General Policy Factors**

The facts and circumstances of every case must be evaluated under the general policy factors at Paragraph 3, page 7 of the Directive to determine the chances for recurrence in the future. The nature and seriousness of the conduct, the frequency of the conduct, the applicant's age, the motivation for the conduct, the existence of rehabilitation, and the probability of recurrence, are the general policy factors.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful

consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Criterion m ( alcohol abuse), and Criterion i (acts of omission or commission indicative of poor judgment, unreliability and untrustworthiness) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

## **CONCLUSIONS**

The Government has established its case under Criterion m and Criterion i. Applicant's alcohol abuse follows the course of most alcoholics. He engaged in serious alcohol abuse from 1992 to July 1994, after a long history of habitual use of alcohol with one incident of clear abuse in 1982 when he passed out after consuming too much alcohol. The only real anomaly in Applicant's history of abuse is that he has no official alcohol-related incidents, i.e., driving while under the influence of alcohol, assault, or public intoxication. Applicant's alcohol abuse reached a point in 1992 where he began to deny or minimize the full scope of the abuse. Exhibits 5, 6, 7 and 8 provide several classic examples, like resistance to aftercare, that demonstrate denial and minimization during the course of treatment.

Mitigating Factor 3b calls for successful completion of a rehabilitation program. The record demonstrates Applicant successfully completed all elements of the inpatient and outpatient phases of treatment at the first inpatient center. Even though his participation with the men's group and AA was relatively short, he did comply with the terms of aftercare. The event that dilutes the success of his treatment (and demonstrates poor judgment) is his consumption of a bottle of wine within one month of his discharge on August 19, 1994.

Applicant successfully completed all portions of the inpatient phase at the second treatment center. However, he did not complete the aftercare recommendations, which were to participate in AA and maintain treatment at the employee assistance program. The wine consumption on September 12, 1994, coupled with the failure to establish immediate and strong ties with AA and the employee assistance program after discharge on September 23, 1994, and the fact Applicant has not been totally abstinent from alcohol for 2 years, raises residual doubts about Applicant's case in rehabilitation.

The alcohol consumption in September 1994 is extenuated to some degree by the poor business condition of the company. Applicant was encountering pressures from outside and inside the company for a substantial period of time. Had he been given more specific guidance in after care following his first treatment, he may have been better able to deal with the situation. Even though he consumed a rather large amount of alcohol on the one occasion in September 1994, there were no more slips until February 1995 when Applicant consumed only a couple of glasses of wine.

While Applicant's initial resistance to embrace AA represents his lack of understanding of the seriousness of his illness and also represents poor judgment, Applicant did seek out his doctor for consultation on a number of occasions between the fall of 1994 and March 1996. Apparently, the sessions had a positive effect because Applicant has only 2 slips between August 19, 1994 and April 4, 1996. In addition to resuming participation in AA in September 1995 and finding a sponsor in December 1995, Applicant exercised good judgment by re-establishing contact with the employee assistance program in September 1995 and providing more anchors to his external support system.

The importance of a corporate reorganization in May 1995, which removed Applicant from the day-to-day operation of the company, cannot be ignored. The employee assistance director believes that Applicant's removal has eliminated the cause of Applicant's past alcohol abuse and use since 1992, and will dramatically increase the chances for Applicant's long-range sobriety. Given the management change and Applicant's participation in aftercare, the company vice chairman is confident Applicant will be able to maintain long term sobriety.

Even though Applicant has not been abstinent for two years, he has only two isolated drinking incidents since September 1994. Furthermore, his present support system, consisting of AA, the employee assistance program, the vice chairman and his wife, is strong enough (1) to dispel the negative inferences raised by his past alcohol abuse and (2) to conclude with complete confidence there will be no recurrence in the future.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2: FOR THE APPLICANT.

Factual support and reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

### **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.

Paul J. Mason

Administrative Judge

1. Applicant had consumed approximately a bottle of wine earlier because he was depressed about the financial health of his company. Applicant's perplexing response to an appropriate question concerning Applicant's gun being in plain view in his car, clearly raises legitimate questions about his state of mind on September 12, 1994. Given the surrounding circumstances described by Applicant leading to his involuntary transportation to the hospital, I find the alcohol was the primary reason why Applicant said he was going to blow his brains out.
2. Having weighed and balanced his wife's testimonial disagreements about the contents of Exhibit #8 (Tr. 135-136, 144) individually and together with the other medical reports, and Applicant's testimony, the weight to be given her testimony is reduced because of her relationship to Applicant and her justifiable concern in the outcome of the case. In addition, it extremely difficult to identify a logical or sensible explanation why the clinician or counselor would want to exaggerate or fabricate the history or any other portion of Applicant's medical records, particularly because Exhibits #5, #6, and #7, which were generated at different times, bear a persuasive similarity to #8 in terms of history of the alcohol problem and resistance to follow up treatment.
3. Applicant was still in serious denial on November 2, 1994 when he decided not to continue with any other kind of support system and maintain abstinence and/or his recovery by himself. (Tr. 24, 25). Applicant's general incompatibility with AA (Tr. 18) because there were too many smokers (Tr. 136), or that he did not want to reveal ongoing problems at work (Tr. 176), manifests additional evidence of denial during the November 1994 time-frame.

4. Applicant's Exhibit A provides some evidence relating to Applicant's efforts to maintain abstinence. However, besides administering some blood tests, there is no way to determine what therapy the doctor provided in assisting Applicant's recovery efforts given the doctor's experience in "...counseling many recovering alcoholics."
5. The sponsor said, "His [alcoholic's] head would be down, he would not want to talk to me, he wouldn't be calling me on the phone. He'd be making excuses for missing our luncheon date. He'd be late to meetings, he wouldn't be staying around to chitchat afterwards, and I can say that, you know, from watching alcoholics for 39 years."
6. In September 1994, after consuming the bottle of wine, Applicant used good judgment and checked into a hotel because he did not want to drive after he had been drinking. (Tr. 166).