

Date: December 12, 1996

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0200

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR THE GOVERNMENT**

William S. Fields, Esq.

Matthew Malone, Esq

Department Counsel

**FOR THE APPLICANT**

Paul A. Morrison, Esq.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant dated April 23, 1996 (copy attached) which detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR alleged excessive alcohol consumption (Criterion G) detailed in paragraph 1. In a sworn written Answer, dated June 13, 1996, the Applicant responded to the allegations set forth in the SOR and elected to have his case determined after a hearing.

On July 24, 1996, the case was assigned to me to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for this Applicant. On July 29, 1996, a Notice of Hearing was issued which set the hearing for Wednesday, August 28, 1996. On August 14, 1996, his counsel entered his appearance and asked for a continuance. As Department Counsel on August 22, 1996, indicated they had no objection; subsequently, on August 26, 1996, an Amended Notice of Hearing was issued which re-set the hearing for Tuesday, October 15, 1996.

At the open hearing the Government introduced into evidence six exhibits (GE) (two over objection of Applicant's counsel) but called no witnesses. Applicant testified himself and his counsel called three other witnesses and introduced four exhibits (AE) into evidence.

At Applicant's counsel's request at the hearing on October 15, 1996, the record was left open for an additional seven days. TR 123-124. On October 22, 1996, Applicant's counsel moved to have the record remain open for an additional

seven days because of difficulties in obtaining court records he wished to submit. The government counsel had no objection to the record being left open until Close of Business (COB), Friday, October 25, 1996. Therefore, I allowed the record to remain open until COB on October 25, 1996, for the Applicant to submit additional evidence. However, on October 28, 1996, Applicant's counsel advised that the record he sought was unavailable. Consequently, the record closed on October 25, 1996. The transcript was received on October 28, 1996.

## **FINDINGS OF FACT**

The Applicant admitted the factual allegations contained in subparagraphs 1.a, 1.b, 1.c, 1.d, 1.e, 1.j. and admitted part of the allegations of 1.g, 1.h, and 1.i. of the SOR; his admissions are incorporated herein as findings of fact.

After a thorough review of the evidence in the record, I make the following additional Findings of Fact.

The 30-year old Applicant, a ----- who also ----- and has worked for a defense contractor since April 1994, is seeking a secret clearance. He earlier served in the U.S. military from January 30, 1985 to March 7, 1985 and received an medical discharge. GE 1. He previously had a clearance when he worked for a government agency for eight years. TR 76. He is married and has two children by his wife, but has been separated for three years. TR 67-68.

Applicant has consumed alcohol at times to excess and to the point of intoxication beginning in 1981 (when he was 15 years old) to October 1996. His drinking escalated in 1983 when he was 17 and drank heavily, usually daily. Then he briefly decreased his drinking to two to three beers monthly after his son's birth in 1986. GE 2 and GE 3 at 3; TR 96-98.

When he was 21 in December 1987, after he had consumed alcohol (four 12-ounce beers and four vodka drinks), he was involved in a physical altercation at his place of employment and was directed to seek counseling. In January, 1988, he was evaluated at Treatment Center #1 for a condition diagnosed as Alcohol Abuse and was referred to group counseling for alcohol abuse; but he failed to participate as he did not think it was necessary. GE 3 at 2 and GE 4 at 2; TR 64-67; 77-83.

From 1988 to December 1994, he consumed on an average of one six pack of 12-ounce beers weekly. On February 15, 1995, he intended to maintain moderation in his drinking in the future. But he denied and continues to deny he is an alcoholic or has a problem with alcohol. GE 3 at 5, TR 75. He usually drinks three beers at a sitting. TR 63-64. He last drank to excess in February 1995 at the time of the bachelor's party for his sister's wedding. [\(U\)](#) TR 62, 113-114, 119. He continues to drink, usually a six-pack a weekend, and had his last drinks two weeks before the hearing. TR 64; 107-108; 116.

He has had two alcohol-related arrests. On March 16, 1990, after he had been fishing and had drunk four 12-ounce beers: when he came home, he got into an argument with his wife and later with a police officer. He was arrested for Obstructing Justice, which was nolle after one year, and for Assault, which was dismissed. GE 2 at 11-13 and GE 6; TR 68-69; 83-86.

On October 31, 1991, he was arrested for Marital Felony Rape after consumption of alcohol at a party where he had purchased two cases of beer, drank at least two beers, and got into an argument with his wife. GE 2 at 13-16 and GE 6. He plead guilty to the reduced charge of Marital Sexual Assault and was ordered to attend a thirty-day in-patient substance abuse treatment program. Subsequently, after his treatment (discussed below) all charges were dismissed on August 3, 1993. GE 1 at 12; GE 2 at 5, 16; TR 69-72; 87-90; 101-102.

The Applicant was again evaluated by Treatment Center #1 after he was referred by the court pursuant to state statute on July 8, 1992; his testing was completed on August 28, 1992, but he failed to show or call for an appointment on September 15, 1992. He was evaluated as follows:

one who tends to get in trouble because of antisocial behavior. . . . He tends to be resentful of society standards and not easily influenced by others. He is typically ambitious and energetic. . . . However, he tends to become easily bored, restless and moody. He may exercise poor judgment on occasion and be reluctant to accept responsibility for his behavior, blaming problems on others. . . .he can generally keep his antisocial behaviors under control.

GE 4 at 2. He was evaluated as minimizing his alcohol use and found to have his "highest score on a special scale for alcoholism." His most notable antisocial behavior was seen as "his tendency to abuse alcohol"; consequently, the Licensed Clinical Psychologist, a Ph.D., recommended he participate in a 30-day inpatient program as the Applicant tended to minimize his alcohol abuse. *Id.* His case coordinator, whom he saw for outpatient care from 1992 through April 1993, summarized his presenting problem as Alcohol Dependent (DSM 202.90) and after his treatment in another center found "possible partial remission" on October 18, 1993. GE 2 at 5 and GE 4 at 3.

He entered Treatment Center #2 on December 21, 1992, for a 28-day inpatient treatment program and left on January 16, 1993. GE 2 at 4; GE 5 at 1. On admittance he had acknowledged the following:

no identification as being an alcoholic. Feels he can stop anytime he wants to. He admits to the use of beer, wine, and vodka.

GE 5 at 2. The credentialed medical professionals (an M.D. who is an Addictionologist and an individual with an M.Ed., M.A., C.A.C.) in January 1993 provided a final diagnosis of 305.00, Alcohol Abuse, and found his prognosis to be "fair" as he committed to only two Alcoholics Anonymous (AA) meetings per week and had only an intellectual acceptance of chemical dependency. GE 5 at 1, 5. Following his treatment he was to attend continuing outpatient care at Treatment Center #1; he agreed to abstain from alcohol and all mood altering drugs, to continue working on anger and control, and to attend two AA meetings per week. But he did not abstain from alcohol. GE 5 at 3-5; TR 89-96. He stopped attending AA several years ago, probably in 1993. TR 99-100, 103.

Witness #1, a mechanic for a federal agency for 24 years, has known Applicant for two years and works with him in the shop. He has not seen him intoxicated and has never seen alcohol affect his job performance; he does not see him outside of work. TR 38-44.

Witness #2 is his supervisor even though Applicant works for another government subcontractor; he has known Applicant for 2 and one-half years as he previously worked for another subcontractor. He has never seen him intoxicated. He says Applicant works in the motor pool so he does not see him on a daily basis and also that he travels under the contract to other locations. Witness #2 finds him a dedicated worker with an average performance with responsibility as a mechanic for 60 vehicles. He is required to have a secret clearance under the contract. Witness #2 also knows him personally since 1989 as he is a neighbor of Applicant's parents. TR 46-51; 53-56, 58.

Seventeen co-workers submitted identical Affidavits that they have never seen Applicant intoxicated on the job and is an "invaluable friend and co-worker." AE A. He in 1995 received a Memorandum of Appreciation for his support of a training event in April 1995. AE B. He also received a Certificate of Appreciation on August 6, 1994, (AE C) and a commendation for outstanding support on November 9, 1995. AE D.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **Criterion 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.**

**Conditions that could raise a security concern and may be disqualifying include:**

(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;

(3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;

(5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

**Conditions that could mitigate include:**

None

The burden of producing evidence initially falls on the Government to establish a case which demonstrates that it is not clearly consistent with the national interest to grant or continue access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls to the Applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the Government's case, and to demonstrate that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

**CONCLUSIONS**

**Criterion G - Alcohol Consumption**

Within the context of Department of Defense Directive 5220.6, based on the evidence of record, the Government did establish a case with regard to Criterion G. With respect to his habitual or episodic use of intoxicants to excess, Applicant has a long history of alcohol abuse beginning in 1981 when he was a minor and has had three alcohol-related incidents. First, Applicant had a work-related incident in December 1987, but refused counseling even though diagnosed by Treatment Center #1 with alcohol abuse. He had an alcohol-related incident again on March 16, 1990, where he was charged with Obstructing Justice and Assault after an argument with his wife and a police officer; the charges were respectively ultimately nolleed and dismissed.

Applicant finally went to treatment as directed by the court after another alcohol-related incident with his wife on October 31, 1991, when he was arrested for arital Felony Rape after consumption of alcohol. He plead guilty to the reduced charge of Marital Sexual Assault; and after court-ordered alcohol treatment, all charges were dismissed on August 3, 1993.

Further, while he successfully completed both out-patient and in-patient alcohol treatment which I find favorable for Applicant (subparagraphs 1.g, 1.h, and 1.i.), he had only a fair prognosis based on his commitment to only two Alcoholics Anonymous (AA) meetings per week and his only having an intellectual acceptance of chemical dependency. Subsequently, he failed to comply with the recommended aftercare and did not maintain his resolve for sobriety even though he had a diagnosis of alcohol abuse in 1993. Despite recommendations for sobriety and attendance at AA, Applicant resumed his pattern of alcohol abuse: he continued to drink, at times to excess, such as at the bachelor's party before his sister's wedding in February 1995, and continues to drink regularly despite the SOR issued in April 1996 that put him on notice that his use of alcohol could put his security clearance in jeopardy. Since he has had relapses after his successful completion of the program in 1993 with only a fair prognosis, Applicant cannot now be seen as having successfully completed a treatment program.

Indeed, I remain concerned that Applicant could be a security risk as he has continued to deny his alcohol problem and has continued to drink, at times to excess, until two weeks before the October 1996, hearing despite a diagnosis by credential medical experts in January 1993 of Alcohol Abuse,. He has long since stopped attending any AA meetings as he denies he has an alcohol problem. Thus, he has failed to demonstrate for a sufficient period of time that he can maintain sobriety or avoid the use of alcohol to excess. Indeed, I question his denial of an alcohol problem when he has had diagnoses of alcohol abuse by credential medical experts, when he continues to drink on a regular basis. Yet I cannot give his own assessment great weight when he has a noted history of tending to minimize his alcohol abuse.

Consequently, he meets alcohol consumption disqualifying conditions 1, 3, and 5, *supra*.

Clearly, to mitigate he would have needed to show the following:

(2) the problem occurred a number of years ago and there is no indication of a recent problem; (3) positive changes in behavior supportive of sobriety; (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, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

While Applicant had two positive work-related witnesses and over a dozen co-worker affidavits affirming that he had not been alcohol impaired at work, as well as commendations for his work, Applicant submitted no statement or evidence of a favorable prognosis by a medical professional, nor has he met the 12 months necessary for abstinence from alcohol after a diagnosis of alcohol abuse. While he has shown evidence of positive changes in his life-style, they are for far too short a period to rely upon: he resumed his drinking after his felony charge was dismissed in August 1993 and stopped attending AA, and in February 1995 he again drank to excess. Thus, after also considering the F.3. factors and the Adjudicative Process factors, I find against him under Paragraph 1 and subparagraphs 1.a., 1.b., 1.c., 1.d, 1.e., 1.f., and 1.j.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the Adjudication Guidelines and the factors set forth under Section F.3. of the Directive, this Administrative Judge makes the following formal findings:

Paragraph 1. Criterion 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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

### **DECISION**

In light of all 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 the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. Applicant initially testified that this wedding was in 1996; when he was recalled he testified it occurred in 1994. His mother testified that the wedding was in February, 1995 (TR 119); and I accept her date as more reliable. However, I do not accept her conclusion that he does not have a drinking problem. TR 121.