

Date: November 13, 1996

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0520

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT R. GALES**

**APPEARANCES**

**FOR THE GOVERNMENT FOR THE APPLICANT**

William S. Fields, Esquire

Department Counsel

*Pro se*

**STATEMENT OF CASE**

On July 26, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated 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, issued a Statement of Reasons (SOR) to ----- (Applicant), which detailed reasons 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 granted, continued, denied, or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

In a sworn written statement, notarized August 22, 1996, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on August 26, 1996. A complete copy of the file of relevant material (FORM)(1) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so. The case was initially assigned to Administrative Judge John G. Metz, Junior, on October 29, 1996, but due to caseload considerations, was reassigned to, and received by, this Administrative Judge on October 30, 1996.

**FINDINGS OF FACT**

Applicant has admitted all of the factual allegations pertaining to alcohol consumption under Criterion G (subparagraphs 1.a. through 1.d.). Those admissions are hereby incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:<sup>(2)</sup>

Applicant is a thirty-three year old male employed by a defense contractor, and he is seeking to obtain a SECRET security clearance. He had previously been granted a security clearance, but, in December 1993, because of his perceived alcohol abuse, it was administratively terminated to preclude access to classified information.<sup>(3)</sup>

Applicant has been a long-term alcohol abuser, and is a self-described "alcoholic."<sup>(4)</sup> He initially commenced using alcohol in 1980, when he was about seventeen years of age. From 1980, and continuing until 1988, his alcohol consumption was unremarkable, and consisted of about two or three beers at a time, up to two nights per week. In 1988, and continuing until 1991, Applicant consumed six beers at a time, up to four nights per week. His consumption frequency increased again in 1991, and continuing until December 1993, he consumed between six and twelve beers at a time, on a nightly basis, plus up to two mixed drinks during lunch, on a daily basis.<sup>(5)</sup> From January 1994, and continuing until February 1995, Applicant's consumption of alcohol diminished dramatically.<sup>(6)</sup> From March 1995, and continuing until April 1996, his consumption of alcohol increased to the point where he was consuming up to four beers or an unspecified quantity of wine per week in what he characterized as social situations, such as relaxing or having dinner. In addition, Applicant consumed a wine cooler<sup>(7)</sup> on at least three occasions.

As a result of his alcohol abuse, Applicant has experienced insomnia, anxiety, tremors, sweaty palms, blackouts, and an enlarged liver.<sup>(8)</sup>

Applicant was previously employed by another contractor, and during the period from November 1992 until December 1993, he was observed, and reported, by at least three co-workers and the facility security officer, as having alcohol on his breath, while at work, on several occasions. In addition, he shook to the point of almost not being able to write; his face was very red, and sweating; he frequently made trips to his automobile during the day; and his attendance was a problem, as he frequently called in sick on Mondays and Fridays.<sup>(9)</sup> In November 1993, Applicant approached his supervisor and informed him that he had a drinking problem, and asked for several days off to address the problem.

Eventually, as a consequence of his conversation with his supervisor, and the observations of the facility security officer, his security clearance was administratively terminated.

Applicant received employer-mandated outpatient alcohol treatment<sup>(10)</sup> at a local hospital addiction treatment program from January 28, 1994 until April 15, 1994. The program, three two-hour sessions per week, for seven weeks, consisted of lectures, discussions, self-analysis, and self-responsibility in the "treatment of alcoholism."<sup>(11)</sup> In addition, attendance at three Alcoholics Anonymous (AA) meetings per week was required. Abstinence was mandatory.<sup>(12)</sup>

After "successfully" completing the outpatient phase of the treatment program, Applicant was enrolled in the aftercare program, commencing on April 18, 1994. The original schedule called for him to: (1) maintain abstinence; (2) attend five AA meetings per week; and (3) attend two aftercare sessions per week, for fifteen weeks. He failed to comply with the attendance requirements, and attended only three aftercare sessions out of the required thirty. On May 25, 1994, citing a significant number of absences from both the program itself, and AA, Applicant was terminated from the aftercare program.<sup>(13)</sup> On September 22, 1994, he was reinstated into the aftercare program. However, by November 30, 1994, it was noted that he did not appear to be following his recovery plan.

On January 25, 1995, Applicant underwent a routine breathalyzer test. The results of the test indicated the presence of .02 percent alcohol. When confronted with the test results, Applicant acknowledged having consumed "cough syrup," despite the continuing requirement for abstinence. He subsequently agreed to enter a relapse prevention program, and signed a contract to do so on February 3, 1995. Among other provisions therein, the contract stated that Applicant agreed to: (1) abstain from alcohol and all "non-alcoholic beverages" and "alcohol bearing medications;" (2) attend five AA meetings per week; and (3) undergo a breath/urine analysis at any time. Less than one week later, Applicant dropped out of the group. He never returned.

Applicant has failed or refused to abstain, and has continued to use alcohol. Sometimes he has "relapsed into consumption," and on occasion, "consumed more than was advisable."<sup>(14)</sup>

Applicant served on active military service from June 1973 until at least 1988. The record is silent as to when he commenced his employment with his present employer.

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors). An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision -- an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered to make a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

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:

**[Alcohol Consumption - Criterion G]: 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:**

- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (3) diagnosis by a credentialed medical professional<sup>(15)</sup> of alcohol abuse or alcohol dependence;
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;
- (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 security concerns include:**

None apply.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

### CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion G, the Government has established its case. While Applicant has acknowledged that he is an "alcoholic;" and he has been treated for alcoholism by "credentialed medical professionals;" and is seemingly afflicted with the physical legacy of alcohol abuse, including insomnia, anxiety, tremors, sweaty palms, blackouts, and an enlarged liver, his appreciation for, and understanding of, his chronic condition, is nil.

Moreover, he should be considered a rehabilitation failure, having repeatedly violated the conditions of his aftercare program. He failed to comply with the attendance requirements; refused to remain abstinent from all alcohol and "non-alcoholic beverages," as well as "alcohol bearing medications;" and dropped out of the program. Equally significant is his continued consumption of beer, wine, and wine coolers.

Applicant should have first become aware of the problems associated with excessive alcohol consumption when he was confronted by his facility security officer, and had his security clearance terminated. At the very least, he should have been "scared straight" from alcohol to abstinence. It did not work.

He should have become motivated to follow the recommendations of the credentialed medical professionals and the program requirements to which he had agreed. He was not. Instead, his was a superficial presence in the rehabilitation program, marred by poor attendance, non-participation, unabated consumption of alcohol, and relapse. And apparently nothing has changed, for Applicant continues to ignore those professional mandates; remains untreated; consumes alcohol; and denies continued abuse. He simply does not understand the magnitude of the problem -- a problem which already has had a direct negative impact on his job performance and the loss of his security clearance.

Under the circumstances, I believe that an appropriate period of abstinence, of at least twelve months, as set forth in the adjudicative guidelines, should be required to demonstrate the truly successful completion of a transformation from long-term alcohol abuser to an abstinent, or possibly even a sober, person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, I am not comfortably confident that Applicant's alcohol abuse is a thing of the past, or that it will not recur. To the contrary, there is no current abstinence, or

even a clear continuing sobriety.

Applicant's motivation is poor, his abstinence is nonexistent, and his sobriety is suspect. I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive, I believe that Applicant has failed to mitigate or overcome the Government's case. The alternative leaves me with grave questions and doubts as to Applicant's continued security suitability. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the 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 Applicant.

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Robert R. Gales

Chief Administrative Judge

1. The Government submitted seven items in support of its contentions.
2. Applicant has been afforded several opportunities, over a multi-year period, to furnish detailed scenarios of his alcohol abuse history, and in doing so, his stories have been inconsistent. In evaluating the sometimes conflicting evidence before me, I have chosen to give greater credibility, and hence, greater weight, to admissions made by him to health care professionals, during treatment, rather than to individuals involved in the investigation or adjudication process. Accordingly, in reconstructing his alcohol abuse history, I have created a mosaic of his various admissions, along with other evidence, and I find this mosaic to represent the actual facts.
3. *See*, Item 5, at 2.
4. *See*, Item 3, at 1.
5. A Diagnostic Summary from one of Applicant's treatment programs, described below, dated February 9, 1994, refers to his *daily* consumption of twelve beers. *See*, Item 7, at 44.
6. Applicant claimed that his consumption during the entire period was only one or two beers, but the Diagnostic Summary referred to above indicates that the *daily* rate of consumption, at least until February 9, 1994, was two beers.

7. As part of one of his alcohol treatment and rehabilitation programs, on January 26, 1994, Applicant signed and acknowledged a notice regarding beverages labeled "non-alcoholic." *See*, Item 7, at 80. That notice, read, in part, as follows:

Beverages labeled "non-alcoholic" are not a safe alternative for those who must abstain from alcohol/drugs. These so-called "non-alcoholic" beverages (wine, near beer and malt beverages) contain .5 (½ of 1 percent) alcohol by volume.

Please be advised that intake of these so-called "non-alcoholic" beverages will be considered a relapse.

8. *See*, Item 7, at 33 and 43.

9. *See*, Item 5, at 1.

10. The diagnostic impression pertaining to Applicant's condition has been identified by the credentialed medical professionals, in part, as "alcohol" (Item 7, at 17); "excessive . . . drinking" (Item 7, at 25); and "alcoholism" (Item 7, at 43).

11. *See*, Item 7, at 1.

12. *See*, Item 3, at 1.

13. *See*, Item 7, at 3.

14. *See*, Item 3, at 1.

15. "Credentialed medical professional" is defined as a licensed physician, licensed clinical psychologist, or board certified psychiatrist