

DATE: March 28, 1997

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In Re:

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SSN: -----

Applicant for security clearance

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ISCR Case No. 96-0583

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**Appearances**

**FOR THE GOVERNMENT**

Earl C. Hill, Esq.

Department Counsel

**FOR THE APPLICANT**

Jon C. Stevenson, Esq.

**STATEMENT OF CASE**

On August 16, 1996, the Department of 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 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 September 27, 1996.

The case was received by the undersigned on November 18, 1996. A notice of hearing was issued on December 16, 1996, and the case was heard on January 7, 1997. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on January 21, 1997.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The SOR alleges excessive consumption of alcohol (Criterion G). Applicant admitted all allegations, and his admissions shall become Findings of Fact.

Applicant is 53 years old and employed by a defense contractor. He seeks a secret level clearance. Applicant engaged in excessive consumption of alcohol from 1982 to August 1995 but there were periods of abstinence. In 1982, Applicant stopped for about 6 months after he was arrested in October 1982 for driving while under the influence of alcohol (DWI). (GE #2). Applicant's treating doctor recalled that over the last 10 years, intermittently, Applicant refrained from alcohol use for a few months. (Tr. 19; 37). Recently, Applicant has been abstinent since August 31, 1995. (GE #2).

In 1979, Applicant believed he might have a drinking problem and attended an alcohol awareness program.<sup>(1)</sup> He completed the program and thought he could maintain control over his drinking. In 1982, his drinking increased. On October 18, 1982, Applicant consumed about eight beers in the afternoon and was arrested for driving while under the influence of alcohol (DWI). He was found guilty of DWI and his license was suspended for 18 months. As a result of the alcohol-related offense, Applicant stopped drinking for about seven or eight months and attended Alcoholics Anonymous (AA) for approximately six months. (Tr. 104). He resumed drinking because he thought he could keep his consumption under control.<sup>(2)</sup>

From August 18 to September 7, 1987, Applicant received inpatient treatment for alcohol dependence, continuous.<sup>(3)</sup> Dr. A also diagnosed Applicant as alcohol dependent. (Tr. 30). During the course of treatment, Applicant still exhibited denial because he did not embrace concept of powerlessness over alcohol, and blamed his drinking on other problems. (GE #4). His wife was very active in his treatment. At discharge, Applicant's fair prognosis was based on his level of awareness of what he necessary to maintain continued sobriety. The discharge recommendations were to attend as many Alcoholics Anonymous (AA) meetings as possible, and pursue aftercare.

During his employment between 1988 and 1993, he was unable to report to work because of alcoholic binges, and was required to attend alcohol counseling. Applicant was terminated by his previous employer on August 31, 1995 because of an alcoholic binge which rendered him unable to conduct business. (GE #6).

Applicant received counseling from Dr. A from 1992 to January 1996.<sup>(4)</sup>

Applicant also received treatment from another doctor from August 5, 1995 to January 1996 for chronic alcoholism.<sup>(5)</sup>

Dr. A has consulted with Applicant once a week almost every week for the past 17 months. (Tr. 19). Dr. A provided a good prognosis based on Applicant's 17 month participation in group therapy once a week. (Tr. 27). Although Applicant manifested the same symptoms of alcohol dependence just before treatment in 1987 as he did when he began group therapy at the end of August 1995, his aftercare then was not as comprehensive then as it has been since August 31, 1995. (Tr. 30; 49). The primary difference is the presence of Applicant's sponsor, and Applicant's regular and frequent attendance in AA.

Mr. B, Applicant's sponsor for 17 months (Tr. 61), who has been in recovery since 1978, has known Applicant through AA for the past 3 years. (Tr. 53). Since Applicant began group therapy treatment in August 1995, Mr. B has observed Applicant more concerned about others than he had been before group therapy. (Tr. 58).<sup>(6)</sup> Applicant has reached the maintenance Steps (Steps 10, 11 and 12, that help a person maintain daily sobriety) of the 12 Step Program. (Tr. 66).<sup>(7)</sup> Applicant's future, according to Mr. A, is positive because he has complied with the recovery process outlined in the Book of AA.<sup>(8)</sup>

Mrs. C, Applicant's wife, has been married to him for 28 years and has lived with him the entire time except for 3 months in 1993 when they unofficially separated because of his drinking. (Tr. 77). Applicant's first real effort of abstinence was after the treatment in 1987 when he abstained for a number of months while participating in AA. He was not happy and gradually reduced his attendance in AA after the first 2 months. (Tr. 70). He began drinking again, less than a year after the 1987 treatment. (Tr. 71). However, Applicant has consumed no alcohol since the end of August 1995. Mrs. C would be able to tell because Applicant's demeanor changes after he has been drinking. Not only the manner of his speech but also the subject matter of his speech changes. (Tr. 72). He becomes more relaxed. (Tr. 73). Applicant never had a sponsor before (Tr. 75) and the fact he is helping others means he is really committed to his therapy and AA. (Tr. 76). Mrs. C will not put up with Applicant's drinking anymore. (Tr. 76).

Applicant started attending Dr. A's group therapy twice a day in early September 1995 because of withdrawal and to blunt the urge to drink. (Tr. 94). He started the medication because Dr. A had observed positive results in the past using the medication. (Tr. 94). After the medication had been in Applicant's body for a few days, Applicant lost his desire to drink as well as his thought process about drinking. (Tr. 97).

When Applicant began AA in September 1995, he was attending AA approximately 6 times a week. In his latest recovery attempt, Step 1 had new meaning and Applicant has recently made amends under Step 9 by contacting 2 former employers (subparagraphs 1e and 1f of the SOR) and discussing his alcohol-related activity leading to alcohol counseling and termination. (Tr. 99-100). He still attends AA often because the participation helps him with the small problems of daily living. (Tr. 102).

Applicant reviewed GE #2 and conceded he pronounced many of the same statements about his feelings and future intentions after his treatment in 1987. However, Applicant found himself to still be in denial of the depth of his alcohol problem when he was discharged in 1987, even though his statements provided a different impression. (Tr. 116).

Applicant will keep attending AA and group therapy because life is better for him than it was 10 years ago, and because he has received a second chance and is securing the right support to sustain recovery. (Tr. 121-122).

## **POLICIES**

Enclosure 2 of the Directive sets 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:

### **Excessive Alcohol Consumption (Criterion G)**

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

1. Alcohol-related incidents away from work, such as driving while under the influence....
2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated condition, or drinking on the job.
3. Diagnosis by a credential medical professional 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.

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

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 similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

## **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 G (excessive alcohol consumption) 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 clearly established a case of excessive alcohol consumption going back to at least 1982. Applicant committed an alcohol-related offense away from work in October 1982 when he was found guilty of DWI. While the record shows no alcohol-related incidents of actual abuse of any member of his family, alcohol created discord within the family prior to Applicant's admission to inpatient treatment in 1987, and prompted his wife to order him out of their house in 1993. On two occasions between 1988 and 1993, Applicant could not report to work because of his binge drinking and was required to attend counseling to be monitored by his supervisor. In August 1995, Applicant was terminated from his job because he was unable to conduct business due to his alcohol binge.

In 1987, Applicant was diagnosed as alcohol dependent by the inpatient treating personnel as well as Dr. A. Applicant has engaged in habitual or episodic alcohol consumption since at least 1982. After his discharge from inpatient treatment in 1987, with a diagnosis of alcohol dependence in remission, Applicant started drinking again in less than a year. Applicant's serious alcohol problem was clearly underscored when he was unable to report for work on two occasions between 1988 and 1993 while working for one employer, and was terminated from another job in August 1995 when his binge drinking rendered him unable to conduct business.

Obviously, the alcohol-related incidents indicate a pattern of behavior that has occurred both on and off the job. Furthermore, the three job-related incidents indicate the severity of Applicant's drinking problem as he was unable to report for work or unable to conduct business. The alcohol incidents are a part of an alcohol problem Applicant first had difficulty controlling in 1982.

The unsuccessful efforts to stop between 1982 and 1987, the unsuccessful treatment in 1987, the failed efforts to maintain AA, together with continued drinking at excessive levels for another eight years until August 1995, definitely establishes concerns about the future chances Applicant's long range recovery. However, Applicant's present recovery effort has two essential components working together that were not working together before. Applicant has been in AA for 17 months and, he has been in group therapy for 17 months. Applicant never had a sponsor before his present recovery effort. In previous attempts of working the Steps and attending AA, Applicant stopped his AA attendance altogether because he did not want to devote the necessary time in taking the moral inventory.

Although the record is basically silent on Applicant's past recovery network (except for his family's support) before August 1995, his present network is as committed to Applicant's sobriety as Applicant is. First, I am convinced Mrs. C will continue to provide the necessary support in Applicant's ongoing recovery. Mr. B has clearly given Applicant reliable and trustworthy direction in keeping him from any slips in the past 17 months. Dr. A has clearly had a positive effect because Applicant has become consistent in therapy as demonstrated by the last 17 months. The 12 Steps have

had a positive effect because Applicant has worked Step 9 into his life by making amends with two previous employers for alcohol-related incidents.

Considering (1) Applicant's ongoing outpatient treatment once a week for the past 17 months, and his intention to outpatient therapy in the future, (2) Applicant's frequent attendance in AA either five or six times a week for the past 17 months, (3) the strong network of Mrs. C, Dr. A, and Mr. B in support of Applicant's continued recovery, and, (4) Applicant's success in incorporating the 12 Steps in his everyday life, as well as the lives of others, Applicant has satisfied his burden of showing he qualifies for a security clearance.

### **FORMAL FINDINGS**

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

Paragraph 1 (excessive alcohol consumption): 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.
- g. For the Applicant.
- h. 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 as security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. He attended about six weeks of education. (Tr. 103).
2. Between 1982 and 1987, Applicant stopped and started drinking about three or four times for periods of two or three months.
3. Applicant had been drinking daily for a week before he was admitted for inpatient treatment, and his drinking was provoking conflict with his wife and kids. (Tr. 109).
4. Dr. A's treatment actually began in 1986 at a detoxification center when the doctor saw Applicant once every other week for about three or four months; since then, Dr. A saw Applicant about once every 18 months or two years. (Tr. 18). Since August 1995, Applicant has attended Dr. A's outpatient group meetings once a week and two hours per session. When Applicant first resumed therapy with Dr. A, the two talked about what was best for Applicant and Dr. A concluded outpatient therapy would be most effective because Applicant had been through inpatient treatment before.

(Tr. 21). Dr. A also chose an alternative medication to the usual medication prescribed for abusers who were having trouble stopping alcohol consumption. (Tr. 21; 24).

5. According to the doctor's letter dated January 10, 1996 (GE #7), and addressed to an -----, Applicant was already on some kind of medication when he reestablished contact with Dr. A at the end of August 1995. Apparently, the doctor was not aware of Applicant's relapse on August 20, 1995 because there is no reference to the incident. Applicant discontinued the medication some time in January 1996.

6. Although Mr. B did not believe Applicant was drinking because he would avoid answering some questions, the questions Mr. B used as examples of detecting alcohol use, do not appear to be esoteric or overly complex to be the type of questions an abuser could not easily fabricate.

7. Applicant testified he has reached Step 12. (Tr. 97). He could never get beyond Step 4 in his efforts before because he did not want to spend the time in taking an inventory of all the negative events. (Tr. 97-98).

8. According to Mr. B, about 200 people who have followed the Book of AA have been able to maintain abstinence. (Tr. 67).