

DATE: March 11, 1997

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In Re:

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SSN: -----

Applicant for security clearance

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ISCR OSD Case No. 96-0643

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny, II, Esq.

Department Counsel

FOR THE APPLICANT

*Pro se*

STATEMENT OF CASE

On September 6, 1996, 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 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 October 3, 1996.

The case was received by the undersigned on November 18, 1996. A notice of hearing was issued on December 4, 1996, and the case was heard on December 17, 1996. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on December 27, 1996.

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 alcohol consumption. Applicant admitted all the factual allegations of the SOR. His admissions shall be incorporated in Findings of Facts which follow.

Applicant consumed alcohol to the point of intoxication and blackout from 1980 to April 1996. (1) Applicant was arrested on February 21, 1981 for driving while intoxicated (dwi). He was driving the wrong way on a one way street. (GE #2). He was ordered to pay costs and to attend driving while intoxicated school. He satisfied both conditions of his sentence. On December 31, 1985, Applicant was arrested for dwi. He pled guilty to dwi and was fined. He failed to pay

the fine and a warrant was issued on May 14, 1986. He answered the warrant with his appearance and was sentenced to 90 days in jail, 87 days suspended. (GE #2).

Applicant was terminated from his employment in March 1986 for reporting to work under the influence of alcohol. He was caught on videotape pouring himself a drink at work. (GE #2).

In April 1987, Applicant was charged with dwi and being an unlicensed motor vehicle operator. Applicant pled guilty to dwi and was fined, ordered to attend driving while intoxicated school and given three months probation. He satisfied the terms of the sentence. (GE #2).

In October 1989, Applicant pled guilty to disorderly conduct. He was under the influence of alcohol. While he was trying to physically remove someone from his house, a brick was thrown through a window. A police officer was driving by and saw Applicant with the brick and charged him with the disorderly crime. (GE #2).

In September 1990, Applicant was charged with dwi, driving with a suspended license and malicious mischief. Applicant pled guilty to all three crimes and was fined, ordered to obtain an alcohol assessment, and directed to attend Alcoholics Anonymous (AA). Applicant did not comply with the terms of his sentence, and a warrant was issued. Applicant appeared in court and spent approximately 21 days in jail. (GE #2).

In early 1991, Applicant reported to his job under the influence of alcohol. He was advised to seek treatment. (GE #2).

Applicant received treatment from March 8, 1991 to April 7, 1991 for alcohol dependence. He did not enroll in the aftercare program until he was forced to show his employer proof of attendance. (GE #2).

Applicant received treatment from August 21, 1991 to January 16, 1992 for alcohol dependence in partial remission. He consumed alcohol during treatment. (GE #2).

In February 1992, Applicant was taken into protective custody for reporting to work under the influence of alcohol, and, a month later, he was terminated. (GE #2).

In May 1993, Applicant was taken into protective custody because of his intoxicated condition.

In January 1995, Applicant was cited for criminal mischief. Applicant had consumed a pint of whiskey and blacked out. (GE #2).

Applicant continued to consume alcohol to at least to June 15, 1996, when he discovered he had a medical condition that was aggravated by the consumption of alcohol. (GE #2; Tr. 22).<sup>(2)</sup>

According to GE #2, Applicant began drinking regularly in 1980 at a frequency of about twice a week (drinking about four or five containers of beer) until 1981 when he had a motorcycle accident. He resumed drinking in 1985, after he recovered from his motorcycle injuries, and, after his divorce. From 1985 to 1989, he drank twice a week or more with about 12 beers and five or six shots of whiskey on the weekends. In 1991, he began drinking once a week although the medical records indicate he was drinking daily. (GE #7). From February 1995 to April 1996, Applicant was drinking a six-pack every other week. He recalled having seven blackouts while he was drinking but no problems with the law since February 1995. Applicant had not attended AA because of embarrassment.

## 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....
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:

None.

## **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 established a case of excessive alcohol consumption under Criterion G. Applicant has encountered eleven alcohol-related offenses between 1981 and April 1996. In the eleven year span, Applicant was found guilty of DWI on four occasions, and, in two of the four DWI incidents, Applicant was driving without a valid driver's license or with a license that was suspended. After his DWI convictions in 1981 and 1985, Applicant was convicted in 1987 of DWI and ordered to attend driver's education school a second time. In 1990, Applicant was convicted of DWI a fourth time. Even though he was ordered to obtain an alcohol assessment and participate in AA as conditions of probation, he failed to comply with the conditions and was jailed for 21 days.

On three separate occasions between 1986 and 1992, Applicant was admonished and ultimately terminated from two jobs for being under the influence of alcohol. In March 1986, Applicant reported to work under the influence of alcohol. In early 1991, Applicant reported to work under the influence of alcohol and was advised to get treatment or be

terminated. In March 1992, Applicant was terminated for reporting to work under the influence of alcohol. Even though he attended treatment, he did not enroll in aftercare until he was required to show proof of participation by his employer.

Applicant's excessive alcohol consumption is reinforced by his drinking habits since 1980. In 1980, he was drinking twice a week, up to four or five containers of beer, until his motorcycle accident in 1981, which left him with injuries he did not recover from until 1985. From 1985 to 1989, he was drinking twice a week or more. He consumed about 12 beers and five or six shots of whiskey on the weekends. The outpatient treatment in 1991, where Applicant was diagnosed as alcohol dependent, had practically no effect on Applicant as he became involved in four more alcohol-related offenses, ending with a citation for criminal damage on January 25, 1995.

Applicant's case in mitigation and rehabilitation is insufficient to outweigh the case of excessive alcohol consumption from 1980 to 1981 and 1985 to 1996. Applicant has offered no evidence, other than the medical report, that he has made any other positive changes in behavior in support of his sobriety. Even though he participated in outpatient treatment in 1991, there is no evidence he attended AA for any sustained period of time or that he plans to attend AA in the future. His six months of abstinence, without any independent support or network, is far too short a period to conclude with complete confidence Applicant has overcome his excessive alcohol history.

In view of Applicant's long history of excessive alcohol consumption, together with alcohol-related incidents both behind the steering wheel or at the job, and the fact there is still a warrant outstanding for Applicant's arrest from January 1995, Applicant's evidence fails to show he has the necessary qualifications to safeguard classified information.

### **FORMAL FINDINGS**

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

Paragraph 1 (excessive alcohol consumption): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. Although Applicant began drinking in 1972 at the age of 10, there is no evidence showing what his drinking habits were between 1972 and 1980. Therefore, I find excessive alcohol consumption between 1980 and 1981, and 1985 to April 1996.
2. Applicant's Exhibit A reflects Applicant is taking some medication which creates additional complications to his medical condition if he consumes alcohol.