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Applicant for security clearance

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April 24, 1997

ISCR Case No. 96-0651

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esq. *Pro se*

Department Counsel

STATEMENT OF THE CASE

On September 12, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued the attached 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 4, 1996, and requested to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 18, 1996. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant received the Government's written case on January 7, 1997, and submitted a Response to the FORM on January 28, 1997 (Response). The case was received by the undersigned for

resolution on February 10, 1997.⁽¹⁾

FINDINGS OF FACT

The Applicant is employed by a defense contractor, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and Applicant's Response.

Paragraph 1 (Criterion G - Alcohol consumption). It is alleged in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess.

The evidence shows that the Applicant has consumed alcohol, at times to excess and to the point of intoxication, from 1966 until at least April 1996. In addition, he has had an alcohol related incident and received treatment for alcohol abuse.

The Applicant began to drink alcohol while attending college in the 1960s. By his own account, he "consumed alcohol on weekends, sometimes to intoxication. This in itself was not in excess of normal behavior." (Government Exhibit 3 at page 1.)

During the 1970s and 1980s, the Applicant's drinking began to increase. He attributes this activity to two things. First, the Applicant was in a serious car accident in 1978 and sustained an undiagnosed head injury. As a result of this head injury he began to suffer from bouts of depression which he used alcohol to alleviate. In addition, in 1981, the Applicant's marriage began having problems. These marital problems, which he does not attribute to alcohol, eventually lead to the Applicant's wife filing for a divorce in 1994. The divorce was granted in May 1996 (Government Exhibit 7).

In 1989, at the request of his wife, the Applicant attended an in-patient alcohol treatment program, followed by out-patient aftercare. The Applicant maintains he is not an alcoholic and did not need treatment in any way. He states, "I did not drink to excess more than normal considering the marriage stress I was under." (Government Exhibit 3 at pages 2 through 3.) The Applicant admits leaving aftercare after a certain period of time, but denies that there was a "recommended course" he had to complete. The FORM contains no information to support the allegation of a "recommended course." Accordingly, regarding SOR subparagraph 1.c., I find that the Applicant attended aftercare and voluntarily left it.

The Applicant did not drink after this for approximately two years. He states, "In about January 1993 I began drinking more heavily again, back to my previous habits of about a fifth a weekend, due to increased problems on my job at (Defense Contractor) (i.e. rating lowered, pay raise problems, lack of job satisfaction.)" (Government Exhibit 4 at page 2.) The Applicant was again abstinent from alcohol from September to December 1993. Beginning in January 1994, the Applicant began drinking on weekends.

The Applicant's wife filed for divorce in November 1994. The Applicant states, "From Dec 94 to May 95, my drinking increased to where I was drinking nearly every evening during the week and throughout the day over the weekends at home in my apartment. During this period, I was drinking two bottles of brandy each week. These first 5 months of 1995 were pretty fuzzy for me." (Government Exhibit 5 at page 2.)

In May 1995, the Beneficiary got intoxicated and decided to drive and visit his girlfriend, who lived over 1000 miles away. He drove approximately 150 miles in an intoxicated condition until he was involved in an accident and arrested for Driving Under the Influence (DUI). When arrested the Applicant was given a breathalyzer which the Applicant believes registered a .20 BAC. (Government Exhibit 5 at pages 1 through 2.) The charges also included two counts of Carrying a Loaded Firearm, Reckless Driving and Having an Open Container of Alcohol in Vehicle. He plead guilty to one firearms charge, and the DUI charge was diverted on condition that the Applicant attend alcohol counseling and refrain from alcohol during the counseling.

From August to December 1995, the Beneficiary attended the required counseling and refrained from drinking. The counselors describe the Applicant as follows, "Patient continues to be highly intellectualizing and verbose. He will not let his defenses down. He continues to minimize and deny feelings." (Government Exhibit 6 at page 1.) The Applicant states that he only attended this counseling in order to keep the DUI charge off of his records. As for the counseling, the Applicant states, "I agreed to anything they said to get through Diversion without any pain." (Applicant's Response.)

Since the counseling ended the Applicant quickly returned to drinking. In April 1996, after the breakup of a relationship, the Applicant went on an approximately one week drinking binge. The Applicant states that, while he occasionally drinks, he has not drunk to excess since that time.

Regarding his drinking, the Beneficiary stated more than once that he drinks when he is under stress. (Government Exhibit 3 at pages 3 through 4.) He further states "while the treatment centers say I'm alcoholic, I'm still not sure their diagnosis is correct." (Government Exhibit 4 at page 4.) Finally, the Applicant alleges that much of his drinking was the result of his unhappy marriage.

Mitigation.

The Applicant states that he has obtained a Masters Degree while working full-time. He has received a professional certification in his field of endeavor, and has had advancements in grade and pay at his employer. In addition, he has been heavily involved in his daughter's activities.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 and Section F.3. of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Criterion G (Alcohol consumption)

Conditions that could raise a security concern:

- (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 abuse;
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns:

(None of the mitigating conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors (General Factors):

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in alcohol abuse and alcohol related incidents that demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a *prima facie* case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's *prima facie* case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has used alcohol to excess for many years, that he has been involved in a serious alcohol related incident, and that this evidence shows questionable judgment and unreliability on the part of the Applicant.

The evidence is clear that the Applicant is a long-term binge drinker. By his own admission he drinks when he is under stress. While the Applicant states that he does not drink at work, and his off-work conduct has no impact on his job, such arguments are specious. Excessive drinking often has an impact on a person's job performance, no matter when it is done. In addition, the Government is concerned as to what a person may do or say about classified information at all times and places when under the influence of alcohol.

The Applicant maintains that he does not believe himself to be an alcoholic. The evidence contradicts him. The Applicant's failure to admit and deal with his alcohol problem is of grave concern to the Government. Given the state of the record, it is impossible for me to say that the Applicant's conduct will not recur in the future. That being so, I cannot find in the Applicant's favor.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his

request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

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

Paragraph 1: Against the Applicant.

Subparagraphs 1.a. through 1.f.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. It is noted that Government Exhibit 5 had attached to it an extra page which consists of an excerpt from a Defense Investigative Service Report of Investigation. That extra page has not been read or considered by me.