

DATE: April 15, 1997

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In Re:)

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-----) ISCR OSD Case No. 96-0727

SSN: -----)

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Applicant for Security Clearance)

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DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

Appearances

FOR GOVERNMENT FOR APPLICANT

Earl C. Hill, Jr., Esq. *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On October 8, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on November 1, 1996 and elected to have his case determined on the basis of the written record. Applicant was furnished copies of the File of Relevant Materials (FORM) on January 15, 1997 and is credited with receiving them on January 22, 1997. He provided no written response within the time (30 days) provided by the Directive. The case was assigned to this Administrative Judge on April 3, 1997.

STATEMENT OF FACTS

Applicant is 48 years of age and has been employed by his current defense contractor (Company A) since 1966. He has held a security clearance at the level of confidential since 1982 and seeks to retain the same.

Summary of Allegations and Responses

Applicant is alleged to have (1) consumed alcohol, at times to excess and to the point of intoxication and blackout, from about 1969 to at least July 1996, (2) been arrested on June 14, 1996 in State A for DuI, driving with a Blood Alcohol Content ("BAC") over .10% and Careless Driving, pleaded guilty to driving with a BAC over 10%, fined \$700.00 (with

\$600.00 stayed for one year), sentenced to 40 days in jail (stayed for one year) and required to perform 40 hours of community service, (3) been arrested on August 26, 1989 in State A for DuI-Liquor, BAC over .10% and Careless Driving, pleaded guilty to DuI-Liquor, fined approximately \$1,000.00 (with \$800.00 stayed for 730 days), sentenced to serve 365 days in jail (with 350 days stayed for 730 days), required to receive alcohol treatment and attend Alcoholics Anonymous ("AA") for one year and awarded probation for one year, (4) received an evaluation on December 13, 1989 at X Facility in State A, was diagnosed as alcohol dependent, and referred for alcohol treatment, (e) received treatment from December 26, 1989 to January 23, 1990 at Y Center for diagnosed alcohol dependency, continuous, (5) been arrested on June 7, 1996 in State A for DuI (third offense in 10 years), DuI with BAC of .10%, third offense in 10 years and BAC of .10% or more within two hours, third offense in 10 years, pleaded guilty to DuI with BAC of .10%, third offense in 10 years, fined approximately \$2,500.00 (with \$1,600.00 stayed for 3 years), sentenced to serve 180 days in jail (stayed for 3 years on conditions that he pay a fine of approximately \$900.00, pay a \$135.00 surcharge and a \$10.00 fee, serve 120 days at home under electronics monitoring, receive alcohol treatment and attend AA meetings weekly) and awarded probation for 3 years and (6) received treatment from July 22, 1996 to August 20, 1996 at Z Unit in State A for diagnosed alcohol dependence, directed into aftercare program for 12 weeks and required to attend AA meetings.

For his response to the SOR, Applicant admits each of the specific allegations while denying the general allegations of his drinking to excess. He adds some explanations to his responses: He claims to have survived 27 years without drinking to the point of intoxication and blackouts, save for his acknowledged drinking to the point of intoxication during this period on maybe 10 occasions. Admitting to his covered 3 DuIs, he claims no other trouble and his doing everything currently possible to avert any recurrences.

Relevant and Material Findings

The pertinent allegations of the SOR are admitted by Applicant and are incorporated herein by reference. Additional findings follow.

Applicant was introduced to alcohol around the age of 21. For the first year, he consumed alcohol once a week. By the time he was 23, he had increased his consumption pattern to daily drinking, averaging 2 pitchers of beer a day. He continued drinking at this frequency rate for a couple of years before cutting back some. Come 1986 and Applicant increased his drinking to daily drinking (12 to 15 beers a day); he maintained this level of alcohol consumption to December 1989. Applicant's drinking resulted in his becoming intoxicated and experiencing increased tolerance for alcohol and occasional blackouts.

First arrested for DuI on June 14, 1986, Applicant continued his drinking at abusive levels and experienced a second alcohol-related arrest on August 26, 1989. On December 13, 1989, he enrolled in X Facility for evaluation. After being diagnosed at the Facility as alcohol dependent, he was referred by staff to treatment and rehabilitation. Applicant attended one AA session and resumed drinking before voluntarily enrolling in Y Center's outpatient alcohol rehabilitation program on December 26, 1989. At Y Center, Applicant was diagnosed for alcohol dependence, continuous. In denial, withdrawn and despondent about his break-up with his spouse the first week of his treatment program, Applicant made noticeable progress over the ensuing 3 weeks of his program. His therapy regimen included regular AA attendance, step work (completing satisfactorily the first 5 steps), group sessions and family exchanges. His medical records from Y Center reflect significant improvement in his appreciation of the dangers of alcohol abuse and the importance of staying sober. At discharge (on January 23, 1990), Applicant's medical assessment included continuing low esteem but improved understanding about his troubles with alcohol and a willingness to continue with his recovery efforts. He was assigned a fair prognosis by his counseling staff and a chance for considerable improvement in the event he was successful in applying his aftercare/recovery goals and making good on his AA commitments.

Applicant was able to maintain his sobriety for approximately 2 years following his Y Center discharge before returning to drinking (oft-consuming 6 to 12 sixteen ounce beers 3 to 4 evenings a week at a local bar after work) and experiencing his third alcohol-related incident on June 7, 1996. Complying with the court's set conditions, he entered Z Unit's inpatient alcohol rehabilitation program on July 22, 1996. Quiet and subdued upon admission to the Unit's outpatient evening program, he responded well to his treatment therapy, opening up more to discussions about his life and the affects of alcohol. He was joined in a number of the sessions by his daughter (who lived with him at the time)

and his ex-spouse, with whom he has maintained contact. Both were supportive of his treatment efforts and took active parts in his treatment. Applicant was credited with successfully completing his outpatient Z Unit program and committing to an aftercare program comprised of weekly meetings and bi-weekly AA attendance. He was discharged on August 20, 1996 with a discharge diagnosis of alcohol dependence, continuous, and a fair to good prognosis, assuming he (a) followed through with regular attendance of his aftercare and AA programs; (b) he obtained an AA sponsor; and (c) he maintained regular contact with his chosen sponsor. Applicant was urged to develop sober friendships and begin addressing his life.

By Applicant's accounts, he has remained true to his aftercare/AA commitments since being discharged from his Z Unit's outpatient program and has held his sobriety since his last arrest in June 1996. He continues to attend weekly aftercare sessions and AA meetings, and covenants to "try my hardest to remain abstinent from alcohol" (ex. 6). Applicant's sincerity is not challenged, but in view of his considerable record of alcohol-related incidents, ensuing recurrent drinking abuses and enlisted treatment efforts over a 7-year effort that have not been able to ensure his abstinence for more than 2 years at a time, any drawn inferences of likely long term success must await careful balancing of the entire record.

POLICIES

The Adjudication Guidelines of the Directive (Change 3) lists "binding" policy considerations to be made by Judges in the decision making process of most all DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. It does not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant adjudication guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in F.3 of Enclosure 2 of the Directive, as well as the Directive's preamble to Change 3, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption (Criterion G)

Disqualifying Conditions:

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, non-traffic violation or other criminal incidents related to alcohol use.
3. Diagnosis by a credentialed 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.

Mitigating Conditions:

3. 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.

Burdens of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest.

Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Put another way, the Judge cannot draw inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controversial fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's inability to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant comes to these proceedings with a prolonged history of alcohol abuse and law enforcement difficulties stemming from 3 alcohol-related incidents over a 10-year period spanning 1986 to June 1996. Each of his earlier arrests and convictions were followed by returns to alcohol abuse (intoxication and blackouts). Not until after the second alcohol-related incident did Applicant seek professional assistance: From outpatient facilities, notably X Facility and Y Center. And despite dependence diagnoses in 1989 and credited successful outpatient treatment, Applicant inevitably returned to abusive drinking. His last alcohol-related incident (in June 1996), for instance, came after his self-imposed two years of abstinence and return to abusive drinking. His bouts of alcohol abuse and related alcohol-incidents placed him at risk to encountering future judgment lapses (including the unauthorized disclosure of classified information) when under the influence of alcohol. Such risks, unless successfully mitigated and absorbed, create unjustifiable security risks which Government need not continue to underwrite in its active protection and safeguarding of its entrusted secrets.

On the strength of the record presented, Government is entitled to a host of disqualifying conditions: DC 1 (alcohol-related incidents away from work), DC 3 (diagnosis of alcohol dependence), DC 4 (habitual or binge consumption of alcohol) and DC 5 (consumption of alcohol subsequent to a diagnosis of alcohol). Government carries its initial proof burden.

To his credit, Applicant has sought professional assistance for his alcohol problems. Until recently, though, his post-treatment efforts have been marked by recurrent drinking and alcohol-related incidents, with his latest incident occurring just 10 months ago (*i.e.*, on recent as June 7, 1996). Applicant's most recent turn to treatment produced some tangible successes for him and a fair to good prognosis with continued adherence to his aftercare and AA programs. Hopefully, his current sobriety efforts will be enduring ones. With the support he has received from his counselors and family, it is entirely conceivable that Applicant is strengthened enough mentally and emotionally now to hold his sobriety for more than a few months or a couple of years. If history is prologue, though, the risks associated with his potential return to alcohol abuse are too fresh and uncertain to safely discount at this time. At the moment, Applicant can lay no plausible claim to obtaining an AA sponsor, completing step work beyond what he was credited with completing at Y Center in 1989, or receiving chips from his AA chapter in recognition of his sustained time in abstinence. With less than 10 months of sustained sobriety, it is still too soon to draw convincing conclusions that Applicant is a safe risk to avert any recurrences of alcohol abuse in the foreseeable future. So, while Applicant is to be commended and encouraged in his efforts at seeking professional help for his alcohol problems, he needs more time to persuasively season his commitments to stay sober and away from alcohol abuse in the future. In turn, Applicant may claim some of the mitigation benefits of MC 4 (successful completion following diagnosis of alcohol dependence), but not all of the benefits (particularly his lack of sustaining sobriety for at least 12 months).

For the present time, it is sufficient to conclude that Applicant' mitigation efforts, though encouraging, are not of

sufficient strength and endurance to enable him to absorb the Government's pressing security concerns associated with his past abuses of alcohol. Applicant does not carry his mitigation burden, and sub-paragraphs 1.a through 1.g are concluded unfavorable to Applicant.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in F.3 of the Directive and the Directive's Change 3 Guidelines in the preamble.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION G: AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge