

April 22, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0811

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Melvin A. Howry, Esq. *Pro Se*

Department Counsel

**STATEMENT OF THE CASE**

On November 13, 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 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on December 4, 1996, in which he elected to have the 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 February 10, 1997. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 13, 1997, and he submitted a reply on March 6, 1997.

This case was assigned to the undersigned for resolution on March 24, 1997.

## **FINDINGS OF FACT**

The Applicant is forty-nine years old, and he is employed by a defense contractor. He seeks a DoD security clearance in connection with his employment in the defense industry.

The Government opposes the Applicant's request for a security clearance, on the basis of 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:

Paragraph 1 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admits to an abusive pattern of drinking to excess and to the point of intoxication from about 1971, to at least July 1996. (See, Applicant's Answer to SOR). The Applicant also admits that his drinking has caused family disturbances, arrests and military disciplinary actions.

The Applicant began abusing alcohol in early 1971. Although his drinking frequencies and quantities varied over the years, on many occasions the Applicant drank six beers, three to four days during the week, and a twelve pack on a Saturday and another one on Sunday.

As a result of his abusive drinking, the Applicant was arrested on February 7, 1971; September 9, 1985; July 1, 1990; and June 22, 1996, for Driving Under the Influence of Alcohol.

The Applicant was arrested for Drunk Driving on July 20, 1974; November 17, 1976; and August 20, 1977. He was also arrested for Battery on September 4, 1973, and was under the influence of alcohol at the time of the incident. Each of the eight arrests resulted in a conviction. While in the military, the Applicant received non-judicial punishment for Drunk Driving, on February 15, 1982. The Applicant's punishment included substantial fines, jail time, alcohol drivers schools, license privilege revocations, and most recently, an ignition interlock device was placed his automobile. (See, Government Exhibits 9, 10, 11, 12, 13, 14, 15, 16 and 17). Although he was arrested many times for drinking and driving, most of the Applicant's drinking occurred at his home, as it makes him feel relaxed and happy.

From time to time, over the years, the Applicant would stop drinking for a period, just to later return to a pattern of abusive drinking. For example, the Applicant's arrest of September 9, 1985, involved a situation which nearly killed him. The Applicant was driving his motorcycle after a drinking episode and had an accident. The Applicant did not drink for an entire year after this incident.

After his arrest of July 1, 1990, the Applicant stopped drinking alcohol for two and one half years. However, during mid-1993, the Applicant began drinking one beer, which eventually led to his regular pattern of six beers, three or four days a week, and a twelve pack on a Saturday and another one on Sunday. (See, Government Exhibit 6).

From July 20, 1978, to August 9, 1978, the Applicant received alcohol treatment for his abusive drinking problem and was diagnosed as an "Alcoholic". The Applicant also received treatment from September 4, 1990, to March 5, 1992, for his alcoholism.

After his treatment program in 1992, the Applicant reduced his drinking, somewhat, in that he changed his drinking habits to four beers per day. At that time, he also felt that he had learned how to control his drinking if he was going to drive. On those occasions where he knew he would not be driving, he would drink eight to nine beers per day. (See, Government Exhibit 6).

The Applicant has never drank alcohol on the job, or reported to work hung over, or under the influence of alcohol. In addition, the Applicants drinking has never effected his work performance or his attendance.

The Applicant's most recent arrest for Driving Under the Influence of Alcohol occurred on June 22, 1996. The Applicant consumed one and one-half pitchers of beer before driving home from a legion hall. The Applicant was arrested, and booked, and he spent the night in jail. He pled nolo contendere to the charge, and was sentenced to fifteen days in jail, a \$1500.00 fine, drinking drivers school, three years probation, and an interlock system was placed on his vehicle. His drivers license was also suspended for one year. The Applicant's driving privileges on the base were also revoked. (See, Government Exhibit 6).

Since July 7, 1996, the Applicants has consumed no alcohol, and has made a commitment to stop drinking. (See, Government Exhibit 6). The Applicant's doctor has also told him to stop drinking as it is causing him problems with his blood pressure and his weight gain. (See, Government Exhibit 6).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; 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 conditions are neither 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 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:

### Alcohol Consumption

#### Conditions that could raise a security concern:

- (1) alcohol-related incidents away from work, such as driving under the influence....
- (4) habitual or binge consumption of alcohol to the point of impaired judgement.

#### Conditions that could mitigate security concerns:

None.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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, posed in Section 2 of Executive Order 10865, 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 repeated instances of off-duty alcohol abuse which demonstrates poor judgment, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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

In DOHA cases the Government has the initial burden to go forward with *prima facie* evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, 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 interests of national security to grant him or her a security clearance.

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. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, then there exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

In this case, the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has abused alcohol to excess (Criterion G). The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case against him. Accordingly, he has not met his ultimate burden of persuasion under Criterion G.

The Applicant has admitted to a long history of alcohol abuse beginning in 1971, extending over a period of twenty-five years, to at least July 1996. During this period, his excessive alcohol consumption is evidenced by eight alcohol related arrests, including four arrests for Driving Under the Influence of Alcohol, three for Drunk Driving, and one for Battery. The Applicant also received non-judicial punishment for Drunk Driving while in the military. The Applicant's most recent alcohol related arrest occurred on June 22, 1996, just ten months ago. The Applicant presently remains on probation for this offense until sometime in 1999. Although the Applicant has participated in two alcohol treatment programs, and many drinking drivers programs, they do not appear to have helped him to any great extent.

The record shows that the Applicant is an alcoholic. After twenty-five years of excessive drinking, it appears that the Applicant has made a decision to finally stop drinking. Since July 7, 1996, the Applicant has consumed no alcohol, and has no intentions of ever drinking again. For many years, however, the Applicant had known that his excessive drinking was causing him problems, but failed to do anything about it. There is still some question as to whether the Applicant really understands the serious impact his drinking has had on his criminal record, among other things, and his need to completely and totally abstain from drinking.

The Applicant is commended on his recent decision to stop drinking alcohol. However, at this time, the recency of his

alcohol abuse and the lack of any evidence of reform preclude a favorable finding in this case. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. Accordingly, Criterion G, (Alcohol Consumption) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's *prima facie* case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 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.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge