

DATE: April 10, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0820

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Barry Sax, Esquire

Department Counsel

FOR THE APPLICANT

*Pro Se*

STATEMENT OF THE CASE

On November 7, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

A copy of the SOR is attached to this Decision and included herein by reference.

The Applicant responded to the SOR in writing on November 26, 1996, and requested a hearing before a DOHA Administrative Judge. The case was reassigned to this Administrative Judge on January 15, 1997 after having been previously assigned to another Administrative Judge on December 23, 1996. On February 5, 1997, a hearing was convened for the purpose of considering whether it would be clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of nine exhibits and no witnesses; Applicant relied on six exhibits and his own testimony. A transcript of the proceedings was received on February 12, 1997.

FINDINGS OF FACT

Applicant has admitted with explanation all of the factual allegations pertaining to alcohol consumption set forth under subparagraphs 1.a. through 1.e. of Criterion G. Applicant's admissions are hereby incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 49 year old employee of a defense contractor. He has held a secret clearance for 27 years and is seeking to retain a clearance at that level. A favorable preliminary determination could not be made because of his alcohol consumption.

Applicant's use of alcohol began when he joined the U.S. Navy at age 18. He went through basic training in a state where the legal drinking age was 18--so he drank beer like the rest of the sailors (Tr. 38). He continued to drink every weekend through the early years of his naval career. When his unit deployed to Vietnam in early 1971, he would drink after every mission<sup>(1)</sup> with the other members of his crew (Tr. 40). He soon realized that his tolerance for alcohol was much higher than that of most of his associates; he could drink a lot more and not appear intoxicated. After Vietnam, he became an instructor at a naval flight school in the U.S. He would occasionally drink after classes during the week, but mostly he drank every weekend with students and other instructors. His tour as a flight instructor was followed by a three year tour of duty in Europe. His drinking during this tour was curtailed because of long duty hours. He would go for periods of time without drinking but would then drink to the point of intoxication on his occasional day off. When he left Europe in 1981, he received the -----, was ----- for his command, and was runner-up for -----.

Back in the U.S. after his European tour, Applicant was in a 9-5 job for the first time in his Navy career. Except for occasional road trips--for as long as six weeks--when he did not drink, Applicant was drinking daily. When he was having trouble sleeping and began to verbally abuse his wife, he told his command he needed help (Tr. 44). In January 1985 when he was screened by a military hospital, he was drinking up to a "fifth of liquor" daily (Gov. Exh. 9). After he was "found to be alcohol dependent," he was admitted to a military alcohol rehabilitation center on February 10, 1985. He remained in that facility until March 27, 1985 (Gov. Exh 8). He stopped drinking for a six months after being discharged from the rehabilitation facility (Tr. 64), but then began to drink again because he was not convinced that he really had a problem with alcohol (Tr. 45). Applicant continued to consume alcohol until November 1987. He is unable to remember a specific reason why he quit at that time; he recalls only that "a light went on," and he stopped drinking on his own "just by biting the bullet or white knuckling it" (Tr. 58). He became active in AA and attended meetings daily for the first six months of sobriety (Tr. 46).

Applicant retired from the Navy in 1989 and continued to live in State A, the location of his last Navy assignment. In 1992, he became concerned about the crowd with whom his teenage daughter was associating. When he was offered a job in State B--at a location several hundred miles from where they had been living--he accepted the job hoping to remove his daughter from her undesirable friends. They moved to State B; however, his daughter was very unhappy at the new location and went back to State A to finish high school and be with her friends. In March 1994, Applicant learned that his daughter was pregnant, and that the father of the child was a reputed drug dealer. About the same time, he learned that his wife had been spending money irresponsibly and had fallen substantially behind in paying their bills (Gov. Exh. 2). Applicant's wife was being treated for depression and had been taking the prescribed drug, Prozac, with poor results (Tr. 99). Applicant began drinking again--five or six drinks per day (Gov. Exh. 2).

When he voluntarily admitted himself to an addictions treatment program at Facility X on August 1, 1994, he reported--to the treating facility-- that he had been drinking a quantity of vodka daily (Gov. Exh. 5).<sup>(2)</sup> The final diagnosis at the time of his discharge on August 6, 1994 was: "alcohol dependence mild to moderate." He attended AA and did not drink for several weeks. Then a combination of work and family related stressors caused him to begin drinking again. He was readmitted to Facility X on October 11, 1994 and remained there until October 14, 1995. The final diagnosis at the time of second discharge was: "alcohol dependence, moderate to severe. Alcoholic organic brain syndrome<sup>(3)</sup> on arrival; in remission." The prognosis was: "Poor."

After his second discharge from Facility X, Applicant continued to consume alcohol at social events (Tr. 104) for the next 14 months. He would drink a couple of beers or several glasses of wine at social gatherings. He does not recall that he ever drank to the point of intoxication during this time. In December 1995, he became involved in AA and decided that it was appropriate time to stop drinking completely. He had a glass of wine at Christmas 1995, and has not consumed any alcohol since that time. His wife has never consumed alcohol, and they do not currently keep alcohol in

their home. He currently attends AA three times a month and finds additional support from other recovering alcoholics with whom he communicates on the Internet through his personal computer.

Applicant has been married for 26 years. He and his wife have reconciled with their daughter who became pregnant out of wedlock. She and her son now live with them while she pursues a degree in nursing. His wife has changed doctors and is now being successfully treated for bi-polar disorder with a different medication. Applicant describes her improvement as being "incredible" (Tr. 99). Although he has experienced considerable stress during the past year because of numerous layoffs<sup>(4)</sup> due to cuts in funding for the programs on which he has been working, he has not been tempted to consume alcohol (Tr. 84-86).

Applicant has an excellent work record. He received superior ratings for the last rating periods prior to his retirement from the Navy, and his most recent evaluation from his civilian employer has been excellent. His dedication and intellect have been regularly recognized and rewarded.

### **POLICIES**

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

### **ALCOHOL CONSUMPTION**

(Criterion G)

#### **Conditions that could raise a security concern and may be disqualifying:**

- (3) Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence,
- (4) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following the completion of an alcohol rehabilitation program.

#### **Conditions that could mitigate security concerns:**

- (3) Positive changes in behavior supportive of sobriety,
- (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 a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

### **Burden of Proof**

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated

upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

### CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criteria G.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has met its burden with respect to Criterion G. The evidence establishes that Applicant abused alcohol regularly from 1967 to 1987, from March 1994 to August 1994, and for several weeks preceding October 11, 1994. He has been diagnosed as alcohol dependent by the health professionals who treated him at the Navy rehabilitation facility in 1985, and by the health professionals who treated him at Facility X in August and October of 1994. Applicant admits that he is an alcoholic (Tr. 57).

After carefully considering all of the evidence, particularly Applicant's testimony, this Administrative Judge concludes that the security concerns raised by his past excessive alcohol consumption have been mitigated. While he did not receive a favorable prognosis from a credentialed

medical professional when he was last treated for alcohol dependence, the quality of Applicant's recovery since being discharged from Facility X in October 1994 persuades me that a revision of the "poor" prognosis would now be warranted.

At the time of his administrative hearing, Applicant had not consumed any alcohol since December 1995-- more than 13 months. Applicant had consumed--but not abused--alcohol in the 14 months preceding December 1995. The steps that he has taken since his last treatment for alcohol dependence have considerably reduced the likelihood that he will suffer another relapse. He understands why he began drinking in March 1994 and has been working to establish a support network which will help him prevent a recurrence. Applicant has worked at, and succeeded in improving the family relationships that had been the source of the stress which caused him to begin drinking in March 1994. He and his wife have received counseling from their church to help them work through their problems. His wife's bi-polar condition is now being successfully treated with a prescribed medication. He has reconciled with his daughter and has accepted her and his grandson back into the family. His wife, his daughter, and his grandson are now part of his support group and people with whom he feels comfortable talking over his problems.

Applicant has also re-established a meaningful connection with AA. He attends meetings regularly at chapters with members with whom he feels compatible. Previously, he had not been active in AA since moving to State B. He has identified an additional source of support in the recovering alcoholics he has been in contact with through the Internet.

Applicant's recovery program appears to be working. He has not consumed any alcohol for more than 13 months. And he has been abstinent during a time when he has experienced considerable stress as a result of his employer's laying off most of Applicant's co-workers.

Favorable consideration has also been given to Applicant's excellent work record as a member of the U.S. Navy, and as an employee of a defense contractor. Except for a brief period of time in 1994,<sup>(5)</sup> there is no evidence that Applicant has ever allowed his problem with alcohol to interfere with his work. His professionalism and sense of duty have prevailed. Even when he was abusing alcohol, he demonstrated the self discipline to abstain at times which were critical to the completion of his duty assignments. This evidence together with the fact that Applicant sought treatment on his own before he had been involved in a traffic accident or other alcohol-related misconduct help to allay the security concerns raised by Applicant's past abuse of alcohol. When he began drinking in 1994, it was months, not years before he sought

treatment. His rehabilitation since treatment--as evidenced by positive life style changes--have substantially reduced the likelihood that there will be a recurrence. Criterion G is concluded for Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Criterion G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. He was assigned to a flight squadron and was a member of a flight team.
2. According to the records from Facility X, Applicant reported that he had been drinking between " 1 and 1¼ quarts of vodka" per day. Applicant denies that he had ever consumed a quart of vodka in a day (Tr. 77) and I find his testimony credible.
3. Applicant testified that he was unaware of this component of the diagnosis (Tr. 56).
4. Applicant testified that of the 14 people who were in his section one year ago, only he and one other person are still employed (Tr. 85). Applicant has himself received two layoff notices which were subsequently rescinded.
5. There is information in Applicant's Exhibit E that he missed work during the rating period covered by this document (Gov. Exh. E).