

DATE: December 31, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0043

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Carla Conover, Esq., Department Counsel

**FOR APPLICANT**

Steven M. Werner, Esq.

**STATEMENT OF THE CASE**

On June 26, 1997, 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, amended by Change 3, February 13, 1996, 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. Applicant filed his Answer to the SOR on July 17, 1997.

The case was received by the undersigned on August 11, 1997. A notice of hearing was issued on September 16, 1997, and the case was heard on October 1, 1997. The Government and Applicant submitted documentary evidence. The Government called one witness. Testimony was taken from Applicant and four witnesses. The transcript was received on October 14, 1997.

**RULINGS ON PROCEDURE**

At the hearing (Tr. 157), subparagraph 3b of the SOR was amended to read, "You consumed alcohol, at times to excess and to the point of intoxication, from approximately 1971 to at least September 15, 1997." The Government also moved to amend paragraph 3 by adding an additional subparagraph 3j to read, "You were diagnosed as alcohol dependent by a credentialed medical professional on or about September 26, 1997." The motion to add 3 (j) was overruled as the prejudicial impact could potentially outweigh the probative value of the proposed amendment. In addition, the record of Applicant's excessive alcohol involvement is well-documented.

**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 mental disorder (Criterion I), drug involvement (Criterion H), and excessive alcohol abuse (Criterion G).

Applicant's admissions shall be incorporated in the Findings of Facts. Applicant is 40 years old and employed as a senior systems engineer by a defense contractor. He seeks a secret level clearance.

Applicant received inpatient treatment from February 10, 1994 to April 18, 1994 for a condition diagnosed as Schizophrenia, Paranoid Type, Mixed Substance Abuse. Applicant's discharge diagnosis was Schizophrenia, Paranoid Type, and Mixed Substance Abuse.

At the request of the Government, Applicant was evaluated on April 16, 1997 and diagnosed by the Government psychiatric expert with Schizophrenia, Paranoid Type in full remission; Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV - 295.60) and Cannabis Abuse in full, early remission (DSM-IV - 305.20).

The evaluation on April 16, 1997 consisted of an interview and psychological testing. Prior to the interview, the Government expert reviewed Applicant's medical and background records of hospitalization in February 1994 for Schizophrenia Paranoid Type. The 45 minute interview was followed by psychological testing. After a thorough review of the medical and background records, the interview and the testing,<sup>(1)</sup> the expert found: (1) evidence of persecutory delusions lasting from the summer of 1993 to the date of hospitalization in February 1994; (2) little social contact in the last several years; (3) four alcohol-related incidents since 1977; (4) daily use of marijuana since 1977, even while in the military; (5) the psychological testing reflected no psychological problems; and, there were no active symptoms of Applicant's condition present during the examination.

The DSM-IV, published by the American Psychiatric Association, sets generally accepted criteria for a diagnosis of **Schizophrenia**:

A. (Two of more of the following characteristic symptoms, each present for a significant portion of time during a one month period)

1. delusions
2. hallucinations
3. disorganized speech
4. grossly disorganized or catatonic behavior
5. negative symptoms, i.e., affective flattening

B. Social/occupational dysfunctioning: disturbance in one or more areas of functioning, e.g., interpersonal relations, self-care.

C. Duration: Continuous signs of the disturbance for at least six months.

D. Does not meet criteria for a mood disorder or other psychiatric illness.

### **Schizophrenia, Paranoid Type, in full remission - 295.60**

The diagnostic criteria of Schizophrenia, Paranoid Type, in full remission, consists of the absence of prominent delusions, hallucinations, and grossly disorganized or catatonic behavior, but continuing evidence of the disturbance, as indicated by the presence of negative symptoms like affective flattening. First, the Government expert explained the diagnosis of schizophrenia has generally three parts. The first part is hallucinations/delusions, grossly abnormal behavior or speech, that lasts a month unless treated. There were the psychotic symptoms of delusions when Applicant was in treatment between February and April 1994. (Tr. 48) The symptoms also manifested themselves in August 1995 in Applicant's sworn statement. (GE-4)<sup>(2)</sup> The second element of schizophrenia is at least six months of decreased overall performance, either at the job or in interpersonal contacts. Although he had been married and had a child in his earlier years, Applicant had no interpersonal contacts away from work for the last several years. (Tr. 49-50) The third element is that none of the symptoms are caused by any other illness. (Tr. 49) The expert explained that Applicant's

paranoid schizophrenia is characterized by:

"...delusions -- persecutory delusions -- that he was being followed, that he was being observed, and was being tested by the CIA in a clandestine manner.... There was evidence of delusions of reference, which occurs when normal events in the surrounding or in the environment take on special meanings. That there are special meanings -- special messages coming to you from the television, from the newspaper, from the radio. That things that are going on around you have special significance for you and for no other individuals." (Tr. 50-51)

The expert interviewed Applicant about several subjects for diagnostic purposes. Applicant was interviewed about his hospitalization in February 1994 to determine whether there was any current evidence of mental illness, but, the expert found none, and therefore found the mental condition to be in remission. (Tr. 43) Applicant told the expert that a layoff, family problems, and having to move back with his mother, helped trigger Applicant's episode and ultimate hospitalization in February 1994.<sup>(3)</sup> He was hospitalized for about six weeks and then participated in after care treatment for about a year. Applicant has had no treatment since.

While Applicant's schizophrenia is in remission, he is still likely to have a future relapse because the illness is recurrent and is characterized by a gradually worsening course. (GE-7; Tr. 59). If Applicant should experience an episode, Applicant's thought processes could adversely affect his judgment and reliability.

The Government expert also believed that although Applicant had not used cannabis (marijuana) for nine months preceding the interview in April 1997, the expert believed Applicant was at risk for cannabis use in the future. (GE-7) Applicant had used marijuana twice and had been tested positive for marijuana while he was hospitalized in February 1995. (GE-8) Applicant also stated in a sworn statement in November 1995, he would use marijuana in the future if he had enough money. (GE-3)

After being qualified as an expert in psychiatry, Applicant's expert explained his disagreement over the diagnosis reached by the Government expert. First, he explained Applicant's diagnosis should instead be substance induced psychotic disorder.<sup>(4)</sup> He based the diagnosis on the enormity of Applicant's alcohol abuse in the five to seven months before Applicant was admitted in February 1994.<sup>(5)</sup> In addition, Applicant did not respond to anti-psychotic medications (when he was hospitalized in February 1994) quickly like most schizophrenics usually do. (Tr. 117) Applicant's expert believed Applicant's episode was due to his increased alcohol use. With decreased alcohol use, Applicant's expert does not believe Applicant is any more susceptible to a future psychotic episode than any one else who has had one episode. (AE-B) However, the chances of future psychotic episodes would increase if Applicant's drinking remained the same. (Tr. 136)

Applicant began drinking alcohol in 1971. Until 1975, Applicant drank six to eight drinks on Friday and Saturday night. From 1977 to September 15, 1997, Applicant consumed alcohol on a daily basis. He abstained for three periods of up to six months. Those periods of abstinence were 1982 (SOR-3d), 1985 (SOR-3e), and 1986 (SOR-3f), when he was directed to alcohol treatment. Applicant's alcohol-related incidents included a drunk in public conviction in 1977, a driving while under the influence of alcohol (DWI) in February 1986, a DWI in October 1990, and a detention by police on October 19, 1996 for being under the influence of alcohol. Applicant's long history of alcohol abuse coupled with alcohol-related incidents warrant a finding Applicant has an alcohol problem. The denial exhibited by Applicant at the hearing indicates Applicant still does not recognize the magnitude of his alcohol problem. (Tr. 202)

Applicant purchased marijuana on a regular basis from 1971 to July 1996. He used the drug on a daily basis from 1971 to August 1995, when he began to worry that his continued marijuana use would have a negative impact on his job. (GE-2) He smoked marijuana to relax and believes it should be legalized. Applicant sold marijuana on approximately three occasions in the 1970s. He used cocaine in 1985 and LSD on about 14 occasions in the early 1970s. He used and sold psilocybin on two occasions between 1975 and 1977. He sold amphetamines, methamphetamines, dextroamphetamines on one occasion in 1975. He also used hash at some time in his life.

Witness A worked with Applicant from 1986 to 1991 and found Applicant to be honest and a good worker. Witness B was in the military with Applicant in 1982 and also worked with Applicant in 1991. According to Witness B, Applicant is an intelligent and reliable worker. Witness B never saw any sign of drug or alcohol use by Applicant on the job.

Witness C worked with Applicant in the early 1990s and never heard anyone criticize Applicant's work. The character witnesses had little or no social contact with Applicant away from the job.

Applicant received seven certificates of training while in the military and as a civilian. He has received an associates degree and a bachelor of science degree. Applicant received a commendation medal in 1985. Character references from 1987 to 1990 knew of no signs of alcohol or drug use. Another character reference believes Applicant does excellent development work.

## **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:

### **Mental Condition (Criterion I)**

#### Factors Against Clearance:

1. a diagnosis by a credentialed medical health professional that the individual has a disorder that could result in a defect in psychological, social, or occupational functioning.

#### Factors for Clearance:

None.

### **Excessive Alcohol Involvement (Criterion G)**

#### Factors Against Clearance:

1. alcohol-related incidents away from work;
3. diagnosis of a credentialed medical professional of alcohol abuse or alcohol dependence;
4. habitual or binge consumption of alcohol to the point of impaired judgment;

#### Factors For Clearance:

None.

### **Drug Involvement (Criterion H)**

#### Factors Against Clearance:

1. any drug abuse;
2. illegal drug purchase;
3. failure to complete a drug treatment program prescribed by a credentialed medical professional.

#### 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 mental condition (Criterion I), excessive alcohol consumption (Criterion G), and drug involvement (Criterion H) 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's case under mental condition (Criterion I) must include qualified expert testimony from a psychiatrist or psychologist that Applicant has a mental condition that could result in a defect in psychological, social, or functioning. The diagnosis of the Government expert shall stand unless there are sufficient reasons to believe the diagnosis is based on erroneous information. The Government expert's diagnosis of Schizophrenia, Paranoid type, in full remission, and Cannabis, in full remission, is grounded upon solid evidence. In the five to seven months before his admission in February 1994, Applicant had delusions. These delusions became a frequent part of Applicant's thought process. The delusions took on a paranoid character when Applicant's thought process became more loosened by the recurring delusions. His non-work social or interpersonal relationships basically disappeared a few years ago. Applicant's mental disorder places him is at considerable risk to encounter a future psychotic episode, which could result in a defect in his psychological, social or occupational functioning.

As between the diagnosis of both experts, the Government expert's diagnosis is more persuasively supported by the record. First, had Applicant's alcohol problem reached the level Applicant's expert believed then, there should have been more clinical discussion about alcohol withdrawals in the records of Applicant's hospitalization in February 1994. Second, there can be little doubt that Applicant's interpersonal relationships are nonexistent. Notwithstanding the disagreement between the Government's expert and Applicant's expert over the precise diagnosis, both agree that Applicant's mental disorder could result in a defect in his psychological, social, or occupational functioning in the future. In sum, the Government has established a case of Applicant's mental condition under Criterion I.

The Government has made a case of excessive alcohol involvement. Applicant has consumed alcohol on a regular and heavy basis for about twenty one years. Applicant has been involved in four alcohol-related incidents. Other than when Applicant was in treatment, there is no evidence of any significant period of abstinence or control by Applicant. Finally,

Applicant's denial of the severity of his alcohol problem is clearly defined in his equivocal testimony about whether or not he needs assistance in overcoming the alcohol problem. Having weighed the documents with the testimony, Applicant's alcohol abuse has been firmly established.

Applicant's drug involvement is demonstrated by his daily use of marijuana from 1971 to July 1996.<sup>(6)</sup> The seriousness of Applicant's marijuana abuse is established by his use of the drug while having a military security clearance for 10 years and during his hospitalization in February 1994 (SOR-1a). As late as November 1995, Applicant had a severe problem with marijuana because he told the Agent he would use the drug in the future when he got the money.

Considering all the evidence under Criterion I, Applicant's evidence, including the evidence from his expert, is insufficient to persuade me to conclude Applicant's mental disorder is cured or has a low probability of recurrence or exacerbation. In view of Applicant's mental condition, which could result in a defect in his psychological, social, or occupational functioning, coupled with his 20 history of alcohol and drug abuse, Applicant's testimonial and written character evidence falls well short of meeting his ultimate burden of persuasion under Criterion I, Criterion G, and Criterion H.

### **FORMAL FINDINGS**

Having weighed the specific factors together with the general factors (whole-person concept), Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (**Mental Condition**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.

Paragraph 2 (**Drug Involvement**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. For the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.

Paragraph 3 (**Alcohol**): AGAINST THE APPLICANT.

- a. For the Applicant.
- b. Against the Applicant.

- c. Against the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. 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 Applicant.

Paul J. Mason

Administrative Judge

1. The entire procedure lasted about three hours. (Tr. 35)
2. In his sworn statement dated August 30, 1995, Applicant thought he was receiving messages from dignitaries through his television and radio. Applicant also believed he was taken by Government agents when he was five years old. Finally, Applicant described an inner voice telling him what to do in regard to having offspring.
3. He was placed in the hospital after threatening his sister by pounding on the walls and table and forcing her to listen to his beliefs. He was suffering delusions of believing he was appointed by God. He also believed the FBI was monitoring his movements through his television and he also believed someone was determined to harm him.
4. The Government expert disagreed with the alcohol diagnosis because: (1) there was inconclusive evidence of alcohol-induced changes in the lab values; (2) there was a strong family history of schizophrenia; and, (3) if Applicant had been drinking the large amounts of alcohol he was claiming, there should have been more discussion in the intake notes devoted alcohol withdrawal.
5. He also concluded Applicant's alcohol abuse would support a diagnosis of alcohol dependence. (Tr. 110)
6. Applicant's use of the other drugs was isolated and ended more than 15 years ago.