

Date : December 31, 1997

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In Re:

SSN:

Applicant for Security Clearance

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ISCR OSD Case No. 97-0120

## **DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

On March 7, 1997, 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 April 4, 1997, and requested a hearing. The case was received by the undersigned on June 5, 1997, and a Notice of Hearing was issued on June 24, 1997.

A hearing was held on July 11, 1997, at which the Government presented eleven documentary exhibits, and called one witness. Testimony was taken from the Applicant. The Applicant also called one additional witness and submitted three exhibits. The transcript was received on July 22, 1997.

### **FINDINGS OF FACT**

The Applicant is 49 and has a high school education with two years of college. He is employed by a defense contractor as an Electronics Technician II, and he seeks to retain a Secret-level 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 the live testimony.

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

The Applicant has a long history of alcohol use and abuse. He states, "I consider myself to be an alcoholic, and all of my arrests are a result of my inability to control my drinking." (Government Exhibit 11 at 1.) Introduced to alcohol at a young age by his father, the Applicant began drinking on a serious basis at the age of 18, when he entered the service. In March 1969, the Applicant received an Article 15 for Reckless Driving. The Applicant admitted at the hearing that he had been drinking when this incident occurred. (Transcript at 35.)

The Applicant's first arrest for driving under the influence occurred in 1972 (SOR 1.c.). Soon after, the Applicant stopped drinking for a period of seven years. (Transcript at 71.) Concerning abstinence, the Applicant testified, "I've stopped plenty of time (sic), you know, for periods of, you know, six months, a year, seven years." (Transcript at 34.)

The Applicant resumed drinking in approximately 1979. The years 1984 and 1985 saw the Applicant become involved in three alcohol related incidents. The first two incidents (SOR 1.d. and 1.e.) occurred when the Applicant became intoxicated at work-related parties and walked past schools in an inebriated state. He was arrested by police and detained until he sobered up. The third incident took place when the Applicant went to a farewell party before leaving for a remote area (SOR 1.g.). He became intoxicated, fell down while walking home, and was arrested by police. He went to court and was fined for this incident.

The Applicant denied SOR 1.f., and the Government presented no evidence to support the allegation. Accordingly, that subparagraph will be found for the Applicant.

In approximately 1986, the Applicant began working at a remote location in the Arctic. The Applicant began to drink more during the next three years at this location because he was away from his family the entire time. He also was drinking more because of an undiagnosed manic-depressive illness, which the Applicant still suffers from. In February of 1989, the Applicant, while intoxicated, began to suffer from delusions and was hospitalized for several days (Government Exhibit 7). At the end of this hospitalization the Applicant voluntarily began to take Antabuse to reduce his desire for alcohol. He was subsequently abstinent from alcohol for a period of approximately two years, until he left this remote location and returned home. (Transcript at 42-45.)

Once he returned home, the Applicant began taking medication for his illness. In 1993 the Applicant stopped using his medication and increased his alcohol use. SOR allegation 1.i. concerns an alcohol related incident with his son after he had stopped taking his medication. The 1994 incident (SOR 1.j.) took place when the Applicant, while intoxicated, became involved in a verbal dispute with another person at a bar. During this altercation the Applicant displayed a knife to this other person. The Applicant was subsequently arrested for Exhibiting a Deadly Weapon and Public Intoxication. He pled guilty to the Public Intoxication charge and the Exhibiting a Deadly Weapon charge was dismissed. (*See*, Government Exhibits 2 and 8.) As part of his sentence the Applicant attended an alcohol awareness program in April and May 1994 (SOR 1.k.). At this point the Applicant reduced his drinking considerably for six months.

In December 1994, the Applicant left to begin an assignment at a remote location in the Indian Ocean. His manic-depressive disease resurfaced, the Applicant again suffered from delusions, and was medically evacuated back to the United States. The medical care he received in December 1994 and January 1995, consisted primarily of psychiatric care (SOR 1.l.). While his diagnoses included Alcohol Abuse, in remission, a thorough review of the medical records does not indicate that any alcohol abuse therapy was provided to the Applicant during this hospitalization. The Applicant testified that he may have told the attending psychiatrist that he was using alcohol to self-medicate his condition. (*See*, Government Exhibit 9 and Transcript at 52.)

The Applicant's last alcohol-related incident occurred in August 1996 (SOR 1.m.). After drinking to excess the Applicant was involved in an automobile collision while intoxicated. The four people in the other automobile suffered minor injuries. He was subsequently convicted of Driving With A .08% Blood Alcohol. His sentence includes three years informal probation, a fine, jail time, that he enroll in and complete an alcohol program, and his driving privileges were suspended for one year. The Applicant currently is on probation.

As of the date of the hearing the Applicant had been abstinent from alcohol for over ten months. He expresses a credible intent not to use alcohol again. The Applicant successfully completed his alcohol program (Applicant's Exhibit A) and continues to attend AA (Applicant's Exhibit B).

Mitigation. The Applicant's work supervisor testified. He has known the Applicant for 16 years, and has been his direct supervisor for two years. He expressed confidence in the Applicant and stated that he is, "a knowledgeable and hard working individual at work." (Transcript at 66.)

## 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 stated 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 acts of alcohol

abuse that demonstrates 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 an alcohol problem, and has been involved in several alcohol related incidents (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, except in part. Subparagraph 1.f. is found for the Applicant because the Government failed to prove that allegation. Subparagraph 1.l. is found for the Applicant because the treatment he received at that time was not related to his alcohol abuse.

The evidence in this case shows that the Applicant has had a serious alcohol problem for many years which he cannot, or will not, resolve. The Applicant has consumed alcohol on a binge or habitual basis to the point of impaired judgment. He has been involved in several alcohol related incidents, including two incidents of driving under the influence of alcohol, the last of which happened less than a year before the record closed.

The record shows several periods of time, up to seven years, where the Applicant has stopped drinking. However, he has always returned to alcohol eventually, and has had subsequent alcohol related incidents once he begins to drink. The Applicant contends that his current period of sobriety, ten months at the time of the hearing, together with his alleged change of attitude about alcohol, shows that this period of sobriety is different. Given his history of eventual relapse after varying periods of abstinence, I cannot find that his current sobriety is sufficient to overcome his history.

The Applicant's efforts at reform are noted, and he is commended for his decision to refrain from further drinking. If he continues to remain abstinent, he may well be eligible to reapply for a security clearance in the future. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

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.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: For the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: Against the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: For the Applicant.

Subparagraph 1.m.: 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