

DATE: December 10, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0521

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields. Esq, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On July 30, 1997, 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.

Applicant responded to the SOR in writing on August 14, 1997. In his response, he requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on September 5, 1997, and on October 27, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of three exhibits; Applicant relied on his own testimony and eight exhibits. A transcript of the hearing was received on November 4, 1997.

**FINDINGS OF FACT**

In his answer to the SOR, Applicant admitted all of the factual allegations set forth in the SOR except for the allegation (subparagraph 1.n.) that he continued to consume alcohol. I have accepted Applicant's admissions and incorporate them as part of my 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 45 years old and has been employed as a flight test mechanic by his current employer--a defense contractor--since September 1995. He had previously held a security clearance while serving as a helicopter pilot in the U.S. Army during the early 1970's. A favorable preliminary determination could not be made on Applicant's current suitability for a security clearance because of alcohol consumption.

Applicant began consuming alcohol while in high school. He would drink three or four beers with friends on a twice-monthly basis. After joining the Army, he increased his alcohol consumption to 10-20 beers weekly. He continued to consume alcohol after being discharged from the Army. He would drink 2-3 beers on three or four evenings a week, and once a month, he would drink 8-10 beers (Gov. Exh. 2).

As a consequence of alcohol consumption and abuse, Applicant has had at least 13 encounters with law enforcement officials in the past 25 years--where he has been cited or arrested for alcohol-related misconduct. The charges and their disposition follow: he was cited in April 1972 for underage drinking in State A (fined \$50.00); he was arrested in 1977 (date and month unknown)--after consuming alcohol--for erratic driving and driving under the influence (DUI) in State A (charges dismissed); he was cited in 1979 (date and month unknown) for having an open container in State B (fined \$50.00); he was cited in July 1980 for drinking/possession of alcohol in an unsealed container in State A (disposition unknown); he was arrested in January 1982 for DUI in State B (fined \$150.00 and driver's license suspended for 30 days); he was arrested in October 1982 for DUI in State C (fined \$423.00, sentenced to 30 days in jail and placed on one year's probation); he was arrested in April 1984 for DUI in State C (fined \$89.00 and his driver's license was suspended for 120 days because he refused to submit to a blood alcohol test); he was arrested in June 1984 for DUI in State C (fined \$423.00, sentenced to 30 days in jail and placed on one year's probation); he was arrested in February 1989 for DUI State D (fined \$150.00, the sentencing was suspended for two years); he was arrested in June 1989 for DUI in State D (prosecution was deferred, he was required to complete a two year counseling program); he was arrested in March 1995 for DUI in State E (fined \$1574.00, ordered to serve five years unsupervised probation, perform 16 days of community service, and complete an alcohol treatment program); and he was arrested most recently on January 27, 1996 for DUI in State F (fined \$338.00).

Applicant was married from November 1975 to August 1980.

Applicant has received outpatient, alcohol-related treatment three times in the past ten years.

He received treatment from Facility A in State X from June 1989 to June 1991. And from June to August 1995, he received treatment from Facility B in State Y. Neither episode of treatment is documented by medical records; thus, there is no diagnosis that Applicant was alcohol dependent or an abuser of alcohol, and no record documenting the course of treatment at either facility. Applicant's testimony that he did not drink alcohol during each period of treatment and for a period of time after completing treatment is accepted (Tr. 43-44). Applicant had entered each of these treatment programs after DUI arrests (Tr. 42-43).

Applicant stopped consuming alcohol in April 1997 after receiving a correspondence from the DoD<sup>(1)</sup> which informed him that there was a "problem with getting a clearance" (Tr. 46). He began attending AA and currently attends three or four meetings each week (Tr. 35). He testified that he has become more involved in working the AA program than on previous occasions when he had participated in AA (Tr. 45).

More recently, Applicant has been receiving outpatient treatment from Dr. C. Dr. C describes Applicant as a "45 year old male who has had a life long struggle with addictive disease" (App. Exh. E). Applicant first presented to Dr. C "for evaluation and treatment on 09/09/97." Since then, Applicant has been seeing Dr. C an average of once a week (Tr. 38). Dr. C reports that Applicant "has been open and receptive to the feedback provided in our clinical work...and seems fully committed now to achieving his recovery goal one day at a time" (App. Exh. E). However, he asks that the "review" of Applicant's case be delayed for a six month period to afford him "at least 12 months of recovery and completion of psychotherapy."

Applicant has an excellent work record in a demanding vocational environment where there is no tolerance for mistakes. He is described by his current and former supervisors, and by co-workers as a diligent, conscientious, skilled, reliable employee (App. Exhs. A, B, C, D). Most of those who have prepared statements on Applicant's behalf have been in positions to observe him on a daily basis; no one has ever observed him to be careless or reckless in the work environment. There is no evidence that Applicant has used alcohol on the job, or that his abuse of alcohol has ever interfered with his job performance

## POLICIES

The Adjudicative Guidelines in 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 these 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)

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of an unauthorized disclosure of classified information due to carelessness.

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

- (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 use;
- (4) Habitual or binge consumption of alcohol to the point of impaired judgment;

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

- (3) Positive changes in behavior supportive of sobriety;

### **Burden of Proof**

The Government has the burden of proving any controverted facts 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.

### **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 Criterion 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 adjudicative process, both in the Directive.

Applicant admits that he has had 13 encounters with law enforcement authorities in six different states over a 25 year time period--after and as a consequence of consuming alcohol. These arrests and/or citations, together with the two occasions in the past 10 years when he has resumed alcohol consumption after having received professional counseling (because of alcohol related arrests) are sufficient evidence of excessive alcohol consumption to raise a security concern.

Evidence in mitigation consists of Applicant's abstinence from alcohol since April 5, 1997, his regular (three to four times weekly) participation in AA meetings since April, and the professional counseling he has received from Dr. C in the six weeks preceding his administrative hearing. Applicant professes to be more serious about his recovery this time, in contrast with his earlier attempts at sobriety. He is now more involved in working the steps and more attentive to listening to the experiences of his sponsor and the other AA participants. Applicant is also credited with being open and honest in acknowledging his problem with alcohol, both during interviews with the Defense Investigative Service and during his testimony at the administrative hearing.

In an attempt to further mitigate his record of alcohol-related arrests, Applicant argues that his case involves "special circumstances;" His security clearance should be granted because he has an outstanding work record, and excessive alcohol consumption has never interfered with his ability to do his job. Applicant argues that there has been no nexus between his past alcohol consumption

and his ability to do his job and safeguard classified information. Applicant believes that the Government's concerns about his past alcohol abuse should be quieted by his work record, his seven months of sobriety, and his commitment to remain alcohol free.

Favorable consideration has been given to Applicant's outstanding work record. Indeed, there is no indication that his excessive alcohol consumption has ever interfered with his work attendance or has prevented him from performing the duties of his very responsible position. However, the Adjudicative Guidelines in the Directive do not identify an outstanding work record as one of the conditions that could mitigate the security concerns raised by years of excessive alcohol consumption and 13 alcohol-related arrests.

While Applicant's reputation as a skilled and reliable employee is impressive, so too is his lengthy arrest record. Applicant's abuse of alcohol has gone on far too long for this Administrative Judge to believe that he has now put this problem behind him after less than seven months of sobriety. It is significant that Applicant has abused alcohol in six different states over a 25 year period. On five occasions, he had an opportunity to make a new start, break off relationships with drinking associates and develop relationships on the basis of more constructive pursuits. It is likewise significant that Applicant drank and was arrested for alcohol-related incidents before he was married; he drank and was arrested for alcohol-related incidents while he was married; and he drank and was arrested for alcohol-related incidents after he was divorced. And in like fashion, he drank and was arrested in his 20's; he drank and was arrested in his 30's; and he has continued to drink and be arrested in his 40's. He did not learn to curtail his alcohol consumption when the fines were small, and he did not learn to curtail it when the fines became larger.

Also of concern is the fact that Applicant did not stop drinking alcohol in April 1997--his most recent attempt at sobriety--until he received a letter from the DoD advising him that there was a problem with his security clearance. In his current attempt at sobriety, as in his earlier efforts, he stopped drinking because of external circumstances, not because he had decided--on his own--that he had a problem with alcohol. No external event or circumstance in Applicant's past has caused him to stop abusing alcohol for more than two years; it is unlikely that his current concern about his security clearance will succeed in accomplishing what other events in his life have not. Criterion G is concluded against 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) 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. Against 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. Against the Applicant

Subparagraph 1.m Against the Applicant

Subparagraph 1.n For 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Applicant has been unable to specifically identify the correspondence he received from the DoD, only that it informed him that there was a problem with his security clearance.