

DATE: February 25, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0630

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Teresa A. Kolb, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

On September 17, 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 answered the SOR in an undated response and asked that his case be decided without a hearing. Applicant received the Government's File of Relevant Material (FORM) consisting of nine items on November 17, 1997. Applicant's response to the FORM--consisting of a cover memorandum and five attachments--was received by DOHA on December 29, 1997. The case record was closed on December 31, 1997 and assigned to this DOHA Administrative Judge for decision on January 7, 1998.

### **FINDINGS OF FACT**

In his answer to the Statement of Reasons, Applicant admitted--with explanation--the factual allegations of alcohol abuse set forth in subparagraphs 1.a., 1.d., 1.g., 1.i., 1.j. and 1.k. He denied the allegations of alcohol abuse set forth in subparagraphs 1.e. and 1.h., but his answer neither admitted nor denied the factual allegations set forth in subparagraphs 1.b, 1.c. and 1.f.

Applicant is a 43 year-old employee of a defense contractor who is seeking to retain the secret clearance which was first granted to him in December 1979 (Item 4). His suitability to retain his security clearance has been called into question because of his history of alcohol consumption.

Applicant began consuming alcohol in 1975 when he was 21 years old. Initially, he consumed six beers, two to three

times each week. That rate of alcohol consumption continued until 1985 when he switched to vodka and tonic, after which his alcohol intake typically consisted of five vodka and tonic drinks, three to four times each week. Once a month, he would consume 10-12 drinks and become intoxicated. By Applicant's own account, he continued to consume alcohol at this rate until January 1997 (p.2, Item 9). And by his own admission, he would occasionally have "a few drinks" (p.1, Item 9) with lunch. He consumed most of the alcohol in a private club of which he was a member.

From April of 1994 to at least April of 1996, there have been occasions when Applicant's employer became aware of his alcohol consumption because of his appearance and demeanor while on the job. A security guard reported that Applicant had been loud and belligerent while at work on a weekend in late April 1994 (Item 8); approximately one month later, his supervisor reported that he had appeared intoxicated while working on a subsequent weekend (Item 8). In January 1995, a representative of another contractor reported to Applicant's employer that he (Applicant) had "reeked of alcohol" a couple of days earlier. As a result of this incident, Applicant was advised that his "conduct had reached the point where it jeopardized his clearance and job" (Item 7). In an effort to stop Applicant's drinking, his employer removed some of his duties and gave him the telephone number of the employee assistance program. In April 1996, Applicant was observed to have "bloodshot eyes, slurred speech and a slight odor of alcohol" (Item 7). The record includes reports of additional incidents where Applicant was observed to have been under the influence of alcohol while at work. While these reports do not include sufficient detail to prove that Applicant was intoxicated on any of the occasions, they contain sufficient information to support a finding that he had consumed alcohol near in time to the witnesses' observation of him.

In mid-January 1997, Applicant was arrested for driving while intoxicated (DWI). Prior to this arrest, he had consumed five vodka and tonic drinks after having consumed five beers earlier in the afternoon. His blood alcohol level registered .26. Applicant was charged with driving while intoxicated and careless driving. He pleaded guilty to driving while intoxicated and was fined \$505.00. In addition, his driving privileges were suspended for nine months and he was required to complete 12 hours of an alcohol awareness class. The careless driving charge was dismissed. Applicant reported the DWI arrest to his employer on May 15, 1997.

After his DWI arrest in January 1997, Applicant stopped drinking alcohol for a brief period of time and attended two Alcoholics Anonymous (AA) meetings. He concluded after attending the AA meetings that he did not have a problem with alcohol because he was not alcohol dependent. He began consuming alcohol again in March but reduced his consumption to the rate of one to three beers, three times each week.

Since his January 1997 DWI arrest, Applicant has given the Department of Defense varying accounts of his current/recent relationship with alcohol. When he was interviewed by the Defense Security Service (DSS) on August 5, 1997, he indicated that he intended to continue consuming alcohol at the rate of one to three beers three times a week. In his undated answer to the SOR (after September 17, 1997) he stated that he had "ceased to consume alcoholic beverages in any form" with the receipt of the SOR. He reported that he had contacted his employer's employee assistance program and had been referred to "a professional in this field to determine if there was a problem." Later in his response to the FORM, Applicant stated that he had stopped consuming alcohol "upon the date of the receipt of the DUI" <sup>(1)</sup> (January 18, 1997). In this response, he indicated that he "voluntarily went to see a counselor" after the DWI.

Applicant has proffered copies of the performance evaluations for the past five years. He is described in these evaluations as a knowledgeable employee who will do whatever is necessary to get his job done.

## **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 decisions 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 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 lead to the exercise of questionable judgment, unreliability, failure to control impulses, and increase the risk of unauthorized disclosure of classified information due to carelessness.

### **Conditions that could raised 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 abuse.

(2) Alcohol-related incidents at work, such as reported for work or duty in an intoxicated or impaired condition, or drinking on the job.

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

None Applicable

## **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.

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 the 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 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 the Adjudication Process, both in the Directive.

Applicant's 20 year history of regular alcohol consumption is well documented in the File of Relevant Material. From 1975 to 1985, he drank with friends two or three times each week--consuming an average of six beers on each occasion. Since 1985, his drink of choice has been vodka and tonic; he admits that he consumed four to five vodka and tonic drinks three to four nights a week from 1985 to at least 1995. This pattern of alcohol consumption places Applicant at high risk for abuse. While his rate of alcohol consumption does not by itself establish that he was alcohol dependent or an abuser of alcohol, other evidence in the record points in that direction. There have been several occasions when he has been observed to be under the influence of alcohol at work. On at least five occasions between April 1994 and April 1996, Applicant's supervisor and co-workers were sufficiently concerned about Applicant's use of alcohol that their observations of his behavior were recorded in written memoranda and became part of his record--which was subsequently released to the DSS. While it is not documented in these brief memoranda whether Applicant was counseled on each of these occasions, it is documented that he was counseled or questioned about his demeanor and appearance on at least three occasions. In addition to the alcohol related behavior observed by his co-workers, Applicant

was arrested for driving while intoxicated as recently as January 1997; his blood alcohol level at the time of arrest was .26.

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.

In mitigation, the evidence of rehabilitation consists of Applicant's recent self-serving, uncorroborated statements that he has "ceased" consuming alcohol. In weighing Applicant's credibility on this central issue, it cannot be overlooked that as recently as August 1997--during the DSS interview, he stated that he did have a problem with alcohol and would continue to consume alcohol at a moderate rate--one to three beers, three times week. However, when he received the SOR (after September 17, 1997); he decided on a different approach. In response to the allegation that he continued to consume alcohol, he announced that he had stopped drinking alcohol--after receiving the SOR--and had sought help from his employer's employee assistance program. More recently--after receiving the File of Relevant Information--Applicant revised his earlier statements about when he last consumed alcohol. In his response to the FORM, Applicant claimed that he had stopped drinking alcohol and had voluntarily gone to a counselor "upon the date of receipt of the DUI"(January 1997). These inconsistent statements do not enhance the credibility of Applicant's claim that he no longer drinks alcohol.

Further undermining Applicant's claim of rehabilitation is the fact that he did not believe he had a problem with alcohol before he received the SOR in late September 1997. In early August, he stated his intention to continue drinking at a moderate rate. Even if Applicant stopped drinking in late September as he now claims, it is unclear whether he stopped because he became convinced that he had a problem with alcohol, or because he realized that the DoD was seriously concerned about his alcohol consumption, and only by stopping consumption, could he allay those concerns and salvage his security clearance and his job. Because of Applicant's inconsistent and revised statements about when he stopped drinking, this Administrative Judge is not persuaded that Applicant has come to accept that he has a problem with alcohol and will continue to abstain from alcohol after he achieves his immediate, short-term objective--retaining his security clearance. 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. For the Applicant

Subparagraph 1.c. For 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. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Applicant repeatedly refers to his January 1997 arrest as being for "DUI" when the record reflects that it was for "DWI" (see Item 5).