

DATE: March 30, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0031

## **DECISION OF ADMINISTRATIVE JUDGE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Pamela Benson, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

On January 9, 1998, 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 a letter dated January 20, 1998, and asked that his case be decided without a hearing. Applicant received the Government's File of Relevant Material (FORM) consisting of six items on February 28, 1998. Applicant's response to the FORM--consisting of a seven page letter--was received by DOHA on March 9, 1998. The case record was closed on March 9, 1998 and assigned to this DOHA Administrative Judge for decision on March 17, 1998.

### **FINDINGS OF FACT**

In his answer to the Statement of Reasons, Applicant admitted--with explanation--the factual allegation of alcohol abuse set forth in subparagraph 1.b, but denied--with explanation--the factual allegations of alcohol abuse set forth in subparagraphs 1.a, 1.c., 1.d., 1.e., and 1.f. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following findings of fact:

Applicant is 38 years old and currently employed by a DoD contractor. He has Bachelor's and Master's Degrees (both with honors) in computer science. He has never married and currently resides with his elderly parents. His suitability to retain the secret clearance which he has held for nine years has been called into question because of excessive alcohol consumption.

The record fails to disclose Applicant's history of alcohol consumption. The only evidence of Applicant's alcohol use is his admission in a signed, sworn statement to the Defense Security Service (DSS) (Item # 5, dated March 1997) that--as

of that date--he was consuming 3-4 beers, 3 or 4 times each week. He indicated the same pattern of alcohol consumption in his answer to the SOR, and again in response to the FORM. There is no evidence in the record of Applicant's alcohol consumption three, five, or ten years prior to March 1997.

Applicant's alcohol consumption has resulted in two arrests for alcohol-related misconduct. He was arrested in October 1982 and charged with driving under the influence. He pleaded guilty to the charge; he was given a suspended sentence, a restricted driver's licence and ordered to attend a state sponsored alcohol safety action program. No police report has been submitted and Applicant's blood alcohol level at the time of the arrest is not known.

Appellant was arrested for alcohol-related misconduct again in July 1995 after he was stopped for exceeding the speed limit by 7 miles per hour; this time he was charged with driving while intoxicated. He pleaded guilty, his driver's license was suspended for twelve months, he was sentenced to 30 days in jail (all suspended), he was fined \$29.00<sup>(1)</sup> and he was ordered to attend another state alcohol safety action program. Again, there is no police report and Applicant's blood alcohol level at the time of arrest is not known.

When Applicant attended the court-ordered state safety action program after his most recent arrest, he was assigned to, and evaluated by, an individual therapist, Dr. X, L.P.C.<sup>(2)</sup> In the "Treatment Plan" prepared by the therapist (Item # 6), her diagnosis of Applicant was "Alcohol Dependence." The sole, stated treatment "goal, objective" was for Applicant to remain abstinent from alcohol for three months. Applicant saw Dr. X for 12 counseling sessions. In his signed, sworn answer to the SOR and in his response to the FORM, Applicant has repeatedly and credibly denied that Dr. X had ever told him he was alcohol dependent, or that he should abstain from alcohol (Answer to SOR, Para. 1.e.). Each week, Dr. X asked Applicant how much alcohol he was consuming,<sup>(3)</sup> and each week he told her the truth. However, he has not indicated whether the level of alcohol consumption disclosed to his therapist was less or more than the amount he is currently consuming. Although Applicant continued to consume alcohol during the 12 weeks of treatment, he was considered to have successfully completed the ASAP program<sup>(4)</sup> after attending the 12 counseling sessions.

Dr. X reported in her "Treatment Summary" that Applicant "was cooperative and open to feedback," that he "was on time for all appointments," that "treatment was effective in raising (Applicant's) awareness of his drinking pattern and the effects it has on his physical, social and emotional functioning," and that he had "articulated a plan for the future" which would "keep him from driving under the influence." She reported that Applicant had admitted he "is dependent on alcohol," and that he is "clearly depressed and leads an isolated lifestyle which supports his substance abuse." But Dr. X also reported that Applicant "has some fairly strong deterrents from engaging in drinking and driving in the future."

The information in the treatment records from Facility A is found to be incomplete. Because of the records' deficiencies, Dr. X's diagnosis that Applicant is alcohol dependent is not accepted. There is no evidence in the record that Dr. X has the training and experience to qualify her as a "credentialed medical professional."<sup>(5)</sup> And the records do not include any history of Applicant's alcohol use, or any reference to his level of consumption prior, or subsequent, to the July 1995 arrest.

Information in the treatment records is also inaccurate. According to Dr. X's report, Applicant had "a prior DWI and education in 1992" followed by "three years of sobriety" (Item # 6). In fact, Applicant was arrested for DUI in 1982, and the only evidence in the record of counseling or "education" after the 1982 arrest was completion of the court-ordered ASAP program. Applicant has denied--in his response to the FORM--that he had admitted being dependent on alcohol, that he has used alcohol as mood stabilizer, or that he had been abstinent for three years prior to his most recent arrest. Applicant's denials in response to the FORM are found to be credible, as are his statements concerning his professional achievements.<sup>(6)</sup>

Moreover, the treatment objective (three months abstinence) prescribed by Dr. X is not found to be adequate or appropriate for someone suffering from alcohol dependence.<sup>(7)</sup> She does not indicate whether the goal of three months abstinence was established because it was the length of time she would be seeing Applicant, or because she believed that period of abstinence is all that is necessary to demonstrate rehabilitation from alcohol dependence. A longer period of abstinence would certainly have lent credibility to the alcohol dependence diagnosis. That diagnosis is further

undermined and complicated by the absence of an explanation (from Dr. X) on how she was able to conclude that Applicant had satisfactorily completed the ASAP program--when he (Applicant) had failed to achieve, or even work toward, the single, stated objective of the treatment plan she had prescribed for him.

Since his 1995 arrest for driving while intoxicated, Applicant no longer consumes alcohol in "public establishments" (Response to FORM). He never drives after consuming alcohol. He now drinks beer in moderate amounts at home while he is working on his hobbies. He does not consume alcohol under circumstances where he will be required to operate an automobile.

## **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 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 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 unauthorized disclosure of classified information due to carelessness.

#### **Conditions that could raise a security clearance 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.

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

(1) The alcohol related incidents do not indicate a pattern.

(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.

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 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 has been arrested twice in the past 16 years for alcohol-related misconduct. He has admitted that in October 1982 and July 1995, he had consumed alcohol prior to being arrested for operating a motor vehicle under the influence.

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.

The security concerns raised by Applicant's alcohol consumption and two alcohol-related arrests have been mitigated by the circumstances surrounding their occurrence. Two arrests--separated by almost 13 years--do not indicate a pattern of alcohol abuse. His other accomplishments during the same time period--completing his Bachelor's, Master's and four Associates Degrees and his mastery of 30 software programs--corroborate his statement that his alcohol use has been controlled, that it has been minimal or moderate most of the time.

Further mitigation is found in Applicant's credible assurances that his alcohol consumption is now limited to drinking beer while working on his hobbies or watching television--at home. He has stated repeatedly that he does not intend to consume alcohol under circumstances where he will be required to operate a motor vehicle. And his therapist has also stated that Applicant "has some fairly strong deterrents from engaging in drinking and driving in the future" (Item # 6). Applicant has persuaded this Administrative Judge that he has learned his lesson and will abide by the assurances he has made. 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

Subparagraph 1.f. 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 grant Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. The SOR alleges a fine of \$294.00; Applicant has proffered a canceled check to the Clerk of Court for \$29.00 and asserts that to be amount of the fine. Without court documents to substantiate the larger amount, Applicant's proffer is accepted as the amount of the fine.

2. The initials "L.P.C." are not defined in the record, nor are the qualifications, or the credentialing process, of a person whose name precedes those initials.
3. See Applicant's response to Paragraph 1.e. in his answer to the SOR.
4. See Letter from Applicant's Probation Counselor dated May 26, 1996, which informs him (Applicant) that he has successfully completed the ASAP requirements.
5. See Disqualifying Factor 3, Criterion G, DoD Directive 5220.6 (Encl. 2).
6. In response to the FORM, Applicant states that he has received four Associate Degrees in addition to his Bachelor's and Master's (all with honors), and that he has mastered over 30 computer software application packages.
7. While not controlling in this circumstance, the Directive requires completion of an alcohol treatment program and one year of abstinence to mitigate the security concerns raised by a diagnosis of alcohol dependence.