

KEYWORD: Guideline G; Guideline E

DIGEST: Applicant’s four instances of alcohol-impaired driving resulting in convictions; his various diagnoses of alcohol abuse/dependence; and his overall history of excessive or binge drinking support the Judge’s conclusion that the case raised security concerns Adverse decision affirmed.

CASE NO: 10-05120.a1

DATE: 01/03/2013

DATE: January 13, 2013

In Re:)	
)	
-----)	ISCR Case No. 10-05120
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Joseph F. Collins, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 17, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 26, 2012, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that Applicant's circumstances raised security concerns under Guideline G and whether the Judge failed properly to apply the mitigating conditions. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge made the following findings pertinent to the issues raised on appeal: Applicant is a maintenance mechanic who has worked for a Defense contractor since 2001. He has held a security clearance for most of this time.

On three occasions—in 1990, 1997, and 2000—Applicant was arrested for DUI. On the first occasion he had crashed his car into a ditch. On the second he had driven the wrong way down a one-way street. On the third he crashed his car into a tree. Although Applicant had been drinking before each infraction, the first two instances resulted in convictions for the lesser included offense of reckless driving. The third resulted in a conviction for DUI.¹ In 2009, Applicant visited a fraternal club, where he consumed approximately ten 12-ounce bottles of beer, after which he drove home. A policeman pulled him over for failure to stay within the marked lane and, suspecting that Applicant had been drinking, performed a field sobriety test. Subsequent additional testing demonstrated that Applicant's blood alcohol level was .1 %. Applicant pled guilty to Driving While Intoxicated (DWI). He was required to attend a multiple offender program, pay a fine, and undergo a drivers license revocation of 320 days duration. At the multiple offender program, Applicant was advised to attend alcohol counseling. Later in 2009, he attended 15 to 21 sessions of outpatient counseling, at which he was diagnosed as “addicted to alcohol” and advised to abstain from drinking. Decision at 4.

Applicant has a long history of alcohol consumption. He began drinking at age 15, and, by the time he was in college, he was consuming five to six beers at a time on weekends, occasionally as many as fifteen “with no adverse consequences.” *Id.* at 3. He later reduced his alcohol intake to every other weekend, four to six beers at a time. Despite the counselor's advice in 2009 that Applicant refrain from drinking alcohol, in 2011 he acknowledged in response to DOHA interrogatories that he still consumed alcohol and intended to continue doing so.

Later in 2011, Applicant was evaluated by another counselor, in an effort to retain his security clearance. He appeared to minimize his drinking and stated that he had stopped consuming alcohol because “nothing good” ever came from it. *Id.* at 5. This counselor diagnosed Applicant as an alcohol abuser, though not dependent. The reason for this diagnosis was Applicant having matched only two criteria, three being needed for a diagnosis of dependence. He counselor noted that Applicant “may have under-reported his use and/or consequences of his use of alcohol.” *Id.* Applicant was advised to abstain from all mood-altering substances, including alcohol. He was also recommended for alcoholics anonymous (AA) attendance and further counseling sessions.

¹These three incidents were not alleged in the SOR. However, citing to ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Judge stated that she was considering them in order to assess Applicant's credibility, to evaluate his case for mitigation, to consider whether he had demonstrated rehabilitation, to determine which portions of the Directive were applicable to his circumstances, and to perform a whole-person analysis.

Applicant attended weekly treatment sessions and was found to have achieved his treatment goals. He was found to be at a low risk for recidivism and to have a credible plan for continued sobriety by identifying “triggers” that might result in relapse. Applicant expressed an intention to continue with AA meetings, although he attended only two or three more after his counseling ended and none after February 2012. At the hearing, Applicant stated that alcohol should not be part of his life. However, he had resumed drinking in March 2012, and, as of mid-August 2012, he was associating with friends who drink. He stated that being at a club with friends is a trigger for him drinking more than two beers.

Applicant enjoys an excellent reputation for the quality of his work performance. He has had no security incidents.

In the Analysis, the Judge concluded that Applicant’s four alcohol related offenses set forth security concerns under Disqualifying Condition (DC) 22(a).² She concluded that his pattern of alcohol consumption, to include binge drinking,³ established DC 22(c).⁴ She also concluded that his circumstances raised DC 22(e),⁵ given Applicant’s diagnosis of alcohol abuse. In evaluating Applicant’s evidence for mitigation, the Judge noted that his most recent DWI was part of a larger pattern of criminal acts resulting from irresponsible drinking and, therefore, was not isolated. She also noted that, although Applicant was found to be a low risk for recidivism, this prognosis was based upon Applicant’s stated plan to continue self help meetings. However, as the Judge found, he attended only 2 or 3 AA meetings thereafter. She also noted that Applicant continued to drink as recently as August 2012, and that his presence at locations where friends are drinking was one of his self-identified triggers for possible alcohol abuse. All in all, the Judge concluded that Applicant had failed to mitigate the security concerns in his case.

Applicant contends that the evidence, viewed as a whole, does not raise security concerns under Guideline G. However, given Applicant’s four instances of alcohol-impaired driving that

²Directive, Enclosure 2 ¶ 22(a): “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent[.]”

³The Judge noted that the Directive does not define “binge drinking.” However, she stated that the “generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. This definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004.” Applicant has not challenged the Judge’s use of this definition on appeal, although he argues that his Substance Abuse Evaluation of September 20, 2011, admitted as Government Exhibit 3, does not include a finding of binge drinking. We conclude that a reasonable person could characterize Applicant’s consumption of alcohol as binge drinking, given the Judge’s findings that he sometimes consumed as many as 15 beers at a time. *See* ISCR Case No. 05-16753 at 4 (App. Bd. Aug. 2, 2007), in which the applicant acknowledged that having consumed 12 to 18 beers at a July 4 celebration constituted binge drinking.

⁴Directive, Enclosure 2 ¶ 22(c): “habitual or binge consumption or alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent[.]”

⁵Directive, Enclosure 2 ¶ 22(e): “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program[.]”

resulted in convictions, his various diagnoses of alcohol addiction and/or alcohol abuse, and his overall history of apparently excessive or binge drinking, we conclude that the Judge did not abuse her discretion in ruling as she did on this question. *See, e.g., Cole v. Young*, 351 U.S. 536 at 559 n. 13 (1956) (Excessive use of alcohol can render a person a security risk). Moreover, given the repeated nature of Applicant’s alcohol-related offenses and his continued drinking despite that history and despite professional advice that he abstain, the Judge’s application of the mitigating conditions is supportable.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Judge’s decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board