

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant mitigated the security concerns raised by his three alcohol-related arrests between 2000 and 2005. He has greatly moderated his drinking and altered his personal circumstances so that he leads a more responsible lifestyle. Clearance is granted.

CASENO: 06-26766.h1

DATE: 09/06/2007

DATE: September 6, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-26766
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by his three alcohol-related arrests between

2000 and 2005. He has greatly moderated his drinking and altered his personal circumstances so that he leads a more responsible lifestyle. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On April 30, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his use of alcohol and related criminal conduct.

Applicant timely responded to the SOR, and requested a decision without a hearing. On June 4, 2007, Department Counsel timely requested a hearing in accordance with Section 3.1.7 of the Directive. The case was assigned to me on June 20, 2007, and I convened a hearing on July 26, 2007, at which the parties appeared as scheduled. I admitted the three exhibits proffered by the government (Gx. 1- 3). Applicant testified in his own behalf, but offered no exhibits at hearing. DOHA received the transcript (Tr.) on August 3, 2007. Additionally, I left the record open after the hearing to afford Applicant additional time to submit information in support of his case.² The record closed on August 3, 2007, when I admitted, without objection by Department Counsel, Applicant's timely post-hearing submission marked as Ax. A.

FINDINGS OF FACT

Applicant's admissions in response to the SOR are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 32 years old and employed since October 2003 as a computer technician by a defense contractor. From August 2000 until September 2003, he occupied the same position at the same facility, but for a different contractor. He has held a security clearance since about September 1995, when he worked as an office clerk for a defense contractor. In 2003 and 2004, he attended community college to obtain various information technology (IT) certifications.³ Applicant has achieved numerous qualifications at work, has completed a broad range of training requirements, and has been cited for excellent work by his employer and his government customer.⁴

Applicant has been charged with and convicted of alcohol-related offenses on three occasions. On May 20, 2000, he was charged with driving under the influence of alcohol (DUI) and reckless driving after an initial breathalyzer showed he had a .26% blood alcohol content (BAC). A

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Tr., 98.

³ Gx. 1.

⁴ Ax. A.

test later the same evening showed a .19% BAC. He later pleaded guilty to DUI and the reckless driving charge was dismissed. He was ordered to attend a 10-week alcohol safety awareness program (ASAP), which included attendance at a single Alcoholics Anonymous (AA) meeting. Applicant was also fined and his driver's license was restricted for one year.⁵ Although his alcohol use was evaluated during ASAP, the program is not a treatment or counseling program. Rather, it is intended to educate offenders about the effects of alcohol, with emphasis on the dangers of alcohol abuse and drinking and driving.

On June 29, 2004, Applicant was a passenger in his friend's car. When they stopped at a local convenience store, Applicant remained in the car while his friend went inside. When a sheriff's deputy approached the car and spoke with him, the deputy smelled alcohol and asked Applicant to get out of the car. Applicant was given a breathalyser test, which registered a .13% BAC. Applicant was arrested and charged with being drunk in public. He later pleaded guilty and was fined \$50.⁶

On March 31, 2005, Applicant drove himself and a friend to a local bar. Applicant planned to wait there until his girlfriend was dropped off after a movie. She would then drive them home. When Applicant and his passenger arrived, the latter got into another friend's car to drink a few beers before going into the bar. Applicant, who had not yet had anything to drink, went into the bar. Less than an hour later, police arrived looking for a car similar to Applicant's that had been used in a crime. Applicant, who had already consumed at least four drinks, went out to the parking lot in response to the officer's inquiries about his car. The officer gave Applicant a field sobriety test, which he failed, and a breathalyser, which registered a .28% BAC. Applicant was charged with being drunk in public and with DUI. When he appeared in court, Applicant pleaded guilty to the drunk in public charge, but the DUI was dismissed because the arresting officer had no way of knowing if Applicant had been drinking before he drove to the bar.⁷

Applicant first drank alcohol in 1996, when he was about 21 years old. He started out drinking beer, but later adopted whiskey and coke as his drink of choice. He estimates he was intoxicated about eight times between 1996 and 2004, but generally drank in moderation during that period. When he was arrested for DUI in 2000, it was the first time he had driven after drinking more than one or two drinks. He has not driven after drinking since the DUI arrest.⁸

Applicant lived with his parents until he was about 28 years old. In 2004, he moved into a townhouse with three friends and started running in circles where partying was commonplace. When he was not working, he was either at home or out at restaurants, bars, and clubs with his roommates and other friends several times each month. He estimates he was intoxicated as often as three times each month between 2004 and 2005.⁹ Since his March 2005 arrest for being drunk in public,

⁵ Gx. 3.

⁶ Gx. 2.

⁷ Gx. 2; Tr., 75 - 81, 88.

⁸ Gx. 2; Tr., 42, 56 - 57, 59.

⁹ Gx. 2; Tr.,

Applicant has moderated his drinking. Between that arrest and his subject interview with a government investigator in May 2006, Applicant thinks he was intoxicated three or four times. He last drank liquor in December 2006. The next (and last) time he drank any alcohol was in April 2007.¹⁰

On February 1, 2007, Applicant and his girlfriend moved into a room in a house her sister and brother-in-law owned. The house is a suburb of the city where Applicant previously lived, and he has adopted a quieter lifestyle there. Applicant's girlfriend, her sister, and brother-in-law do not drink. Applicant enjoys staying home more and occupying his time by fishing, bowling, and other more sedate activities than before.¹¹

POLICIES AND BURDEN OF PROOF

Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative guideline¹² applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.¹³ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties at hearing require that Revised Adjudicative Guidelines G (alcohol consumption) and J (criminal conduct) be applied.

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest¹⁴ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a

¹⁰ Tr., 89 - 90, 66.

¹¹ Tr., 65, 90 - 92.

¹² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

¹³ Commonly referred to as the "whole person" concept, these factor are as follows: 1. Nature and seriousness of the conduct and surrounding circumstances; 2. Frequency and recency of the conduct; 3. Age of the applicant; 4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; 5. Absence or presence of rehabilitation; and 6. Probability that the circumstances or conduct will continue or recur in the future.

¹⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

heavy burden of persuasion.¹⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.¹⁶

CONCLUSIONS

Alcohol Consumption. The government alleged that Applicant drank alcohol, at times to excess, between 1996 and 2007 (SOR ¶ 1.a); that he was convicted of DUI after an arrest on May 20, 2000 (SOR ¶ 1.b); that he was arrested for and pleaded guilty to a charge of drunk in public in June 2004 (SOR ¶ 1.c); and that, in March 2005, he was arrested for and pleaded guilty to a charge of drunk in public (SOR ¶ 1.d). The government submitted sufficient information, along with Applicant’s admissions, to support the SOR allegations. The facts thus established by the available information—three alcohol-related arrests and instances of excessive consumption between 1996 and 2006—raise a security concern addressed in the Revised Adjudicative Guidelines at ¶ 21; that is, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” More specifically, the disqualifying conditions (DC) in ¶ 22(a)¹⁷ and ¶ 22(c)¹⁸ must be considered.

In response to the government’s information, Applicant asserts he has moderated his drinking and alcohol no longer plays a major role in his life. Further, Applicant’s heaviest alcohol consumption occurred between 2004 and 2005, after he moved out of his parents’ home and while he associated mostly with friends who liked to go out drinking. Combined with the fact his last alcohol-related misconduct occurred more than two years ago, Guideline G mitigating condition (MC) 23(a)¹⁹ must be considered. Applicant’s personal life has changed sufficiently that he now is less likely to find himself in the same circumstances that led to his alcohol abuse and related misconduct. I conclude this guideline for the Applicant.

Criminal Conduct. The government also alleged the conduct specified in SOR ¶¶ 1.b - 1.d constitutes criminal conduct (SOR ¶ 2.a). The same information that establishes the facts in SOR ¶¶ 1.b - 1.d, also establishes SOR ¶ 2.a. These facts raise a security concern addressed in the Revised

¹⁵ See *Egan*, 484 U.S. at 528, 531.

¹⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

¹⁷ “alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;”

¹⁸ “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;”

¹⁹ “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;”

Adjudicative Guidelines at ¶ 30; that is: “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” Also to be considered is the disqualifying condition at ¶ 31(a).²⁰

For the same reasons supporting consideration of the mitigating condition at ¶ 23(a), available information also supports consideration of the mitigating condition at ¶ 32(a).²¹ Applicant’s last criminal offense occurred more than two years ago, and the circumstances underlying that misconduct are no longer present. I conclude this guideline for the Applicant.

Whole Person. I have evaluated the facts and have applied the appropriate adjudicative factors, pro and con, under Guidelines G and J. I have also reviewed the record in the context of the whole person factors listed in section 2(a) of the Revised Adjudicative Guidelines.²² Applicant is now in his 30s and has learned, albeit later than most, that he cannot continue to live the same lifestyle as someone in college or their early 20s, especially when holding a security clearance. To his credit, he no longer drinks to excess and has changed his circumstances by moving away from friends and associates with whom his socialization involved drinking alcohol. He now lives a domesticated life in a different location, and he has matured in his choice of priorities. Combined with the passage of time since his last alcohol-related misconduct, there is little likelihood the adverse information in Applicant’s background will recur. A fair and commonsense assessment²³ of all available information shows that the Applicant has overcome the doubts about his ability to exercise the requisite good judgment and discretion expected of one who holds a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline G (Alcohol):	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

²⁰ “a single serious crime or multiple lesser offenses;”

²¹ “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;”

²² “ (1) The nature, extent, and seriousness of the conduct; (2) The circumstances surrounding the conduct, to include knowledgeable participation; (3) The frequency and recency of the conduct; (4) The individual's age and maturity at the time of the conduct; (5) The extent to which participation is voluntary; (6) The presence or absence of rehabilitation and other permanent behavioral changes; (7) The motivation for the conduct; (8) The potential for pressure, coercion, exploitation, or duress; (9) The likelihood of continuation or recurrence.”

²³ Directive, 6.3.

Paragraph 2, Guideline J (Criminal Conduct): FOR THE APPLICANT
Subparagraph 2.a: For the Applicant

DECISION

In light of the available information about Applicant's suitability for access to classified information, it is clearly consistent with the national interest to continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone
Administrative Judge