

KEYWORD: Alcohol

DIGEST: Applicant is a 49-year-old employee of a defense contractor. Applicant was arrested in February 2005, and charged with driving under the influence (DUI), and pled guilty to the lesser charge of reckless driving. He was arrested again for DUI in April 2005, and subsequently convicted. Applicant was on probation through early July 2007. Applicant has not mitigated the security concerns raised by his alcohol consumption. Clearance is denied.

CASENO: 06-25687.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-25687
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old employee of a defense contractor. Applicant was arrested in February 2005, and charged with driving under the influence (DUI), and pled guilty to the lesser charge of reckless driving. He was arrested again for DUI in April 2005, and subsequently convicted. Applicant was on probation through early July 2007. Applicant has not mitigated the security concerns raised by his alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 25, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on February 13, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on May 2, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on May 8, 2007. His response was due June 7, 2007. As of July 17, 2007, he had not responded. The case was assigned to me on July 19, 2007.

FINDINGS OF FACT

Applicant is a 49-year-old employee of a defense contractor. He has worked for the same employer since 1980, except for a two-year stint with another company. Applicant is divorced with two children. He holds a bachelor of science degree. Applicant served in the U.S. Army National Guard, the Air National Guard, and the Air Force Reserve, attaining the rank of First Lieutenant.²

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1977 to April 2005.³

Applicant was arrested in July 1978, and charged with driving under the influence (DUI). The charge was dismissed without an adjudication of guilt. Applicant stated that his “blood alcohol was under the legal limit and the Judge dropped the charges.”⁴

Applicant was arrested in February 2005, and charged with DUI. Applicant admitted his blood alcohol content (BAC) was above the legal limit.⁵ Applicant pled guilty to the lesser charge of reckless driving in November 2005. He was sentenced to pay a \$1,350 fine.⁶

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Items 3 and 4.

³Item 3.

⁴Items 3 and 4.

⁵Item 5 at 3.

⁶Items 3-5, 7.

While pending his court date on the above charge, Applicant was arrested again on April 21, 2005, for DUI, reckless driving, failure to maintain lane, and following too closely. Through a negotiated plea, Applicant pled guilty on July 5, 2006, to DUI, and the other offenses were merged into that charge. Applicant was sentenced to a \$300 fine and 12 months in the county jail. He was credited with one day for time served, and the remainder of 11 months and 29 days was served on probation. Terms of his probation included that Applicant attend a risk reduction program and at least three Alcoholics Anonymous (AA) meetings per week for six months, provide 40 hours of community service within six months, pay a probation fee of \$32 per month, not drink any alcohol or take any drugs without a prescription, and submit to random alcohol and drug testing at Applicant's expense. Applicant's probation was scheduled to become non-reporting without fees after six months, upon completion of all special conditions, and provided Applicant had not violated probation.⁷

Applicant kept his employer's security personnel fully apprised of the status of his two arrests in 2005. Applicant started attending AA meetings in about April 2005, long before he was ordered by the court.⁸ In his response to the SOR in February 2007, Applicant stated his probation officer told him his case was closed. He stated he had not consumed alcohol since his April 2005 arrest, was still attending AA meetings, and intended to continue to do so.⁹ Because Applicant elected to have his case decided on the written record and did not submit any information in response to the FORM, there is no information about Applicant's status since February 2007.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁰ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹¹ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹² An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such

⁷Items 3-6.

⁸*Id.*

⁹Item 3.

¹⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹*Id.* at 527.

¹²Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

sensitive information.¹⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁵

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline G: Alcohol Consumption

Excessive 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.

The potential Alcohol Consumption Disqualifying Conditions (AC DC) in this case are AC DC 22(a) (*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*), and AC DC 22(c) (*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*).

Applicant's two alcohol-related charges in 2005 establish AC DC 22(a). Applicant admitted he consumed alcohol, at times to excess and to the point of intoxication, from approximately 1977 to April 2005. No further evidence was submitted as to how much and how often he drank. This admission is insufficient to support a finding that Applicant's drinking was "habitual," or constituted "binge" drinking. AC DC 22(c) is not established.

Applicant was arrested for DUI in 1978. The charge was dismissed without a guilty finding. Applicant stated the charge was dismissed because his BAC was below the legal limit. No other evidence was submitted. The arrest alone, without a guilty finding or other evidence, is insufficient to support a finding against Applicant. SOR ¶ 1.b. is concluded for Applicant.

¹⁴*Id.*; Directive, ¶ E2.2.2.

¹⁵Exec. Or. 10865 § 7.

SOR ¶ 1.e. alleges that Applicant “attended AA meetings from about April 2005 to at least October 2006.” This is true, but seeking assistance for his drinking issues through AA is a positive development. I do not find that attending AA meetings supports the application of any disqualifying condition. SOR ¶ 1.e. is concluded for Applicant.

There are three potential Alcohol Consumption Mitigating Conditions (AC MC) in this case, AC MC 23(a) (*so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*), AC MC 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*), and AC MC 23(d) (*the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*).

Applicant’s last arrest for DUI was in April 2005, while pending adjudication of a February 2005 DUI arrest. Applicant stated in February 2007, that he had not consumed alcohol since his April 2005 arrest, he was still attending AA meetings, and intended to continue to do so. Applicant was on probation at that time, and continued on probation until early July 2007. He could not drink while on probation, and was required to attend AA meetings through January 2007. I have no information from Applicant since February 2007. Applicant stated his probation officer told him that his case was closed. He still had to complete the non-reporting half of his probation. There is no information whether Applicant successfully completed his probation without drinking, or that he has remained abstinent since his probation ended. Because of his incidents of poor judgment, and lack of recent information, I am unable to make an affirmative finding that Applicant’s alcohol incidents are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AC MC 23(a) does not apply.

Applicant acknowledged his issues of alcohol abuse. He provided evidence of actions taken to overcome his problem, i.e., AA meetings and abstention from alcohol. Applicant did not drink from April 2005, through at least February 2007. Applicant has established a pattern of abstinence. I find AC MC 23(b) is applicable, but Applicant does not merit as much consideration under this mitigating condition because of the relatively short duration of the pattern of abstinence, the abstinence occurred while Applicant was pending adjudication of his charges, or on probation, and Applicant did not submit evidence that he has remained abstinent the last six months.

Applicant attended a risk reduction program as part of his sentence. There was no other evidence submitted about what that involved in the program, so I cannot conclude that Applicant completed alcohol counseling or rehabilitation. There was no diagnosis in this case of alcohol dependence or alcohol abuse, nor was there a favorable prognosis. AC MC 23(d) is not applicable.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Available, reliable

information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

I have considered Applicant's military service and his stable employment record. Applicant had two alcohol-related arrests in 2005, and subsequent convictions. His second DUI arrest occurred while he was waiting for his other charge to go to court. To Applicant's credit, he did not attempt to hide his arrests, but kept his employer's security officials apprised of his circumstances. Applicant stated in February 2007, that he complied with his court requirements, had not consumed alcohol since April 2005, and continued to regularly attend AA meetings. I have no information from Applicant since February 2007. He remained on probation through early July 2007. Applicant's second DUI, shortly after his other DUI, reveals alcohol issues, and it also reveals questionable judgment, reliability, and trustworthiness. It is Applicant's burden to mitigate the security concerns raised by his alcohol issues. He has done nothing to establish what he has done the last six months. Applicant has not been incident-free long enough to show the presence of rehabilitation. Without an extended pattern of incident-free conduct, during a period in which Applicant is unrestrained by the conditions of probation, it is too early to conclude this pattern will not continue. The likelihood of continuation or recurrence of incidents of questionable judgment remains significant.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his alcohol consumption.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Edward W. Loughran
Administrative Judge