

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant's long history of alcohol abuse that includes two DUI's, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

CASENO: 06-25815.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:)	
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-----)	ISCR Case No. 06-25815
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Thomas D. Leland, Esquire

SYNOPSIS

Applicant's long history of alcohol abuse that includes two DUI's, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On February 2, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 21, 2007, and requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on April 23, 2007. The case was reassigned to the undersigned Administrative Judge on June 14, 2007. A notice of hearing was issued on May 4, 2007, scheduling the hearing for June 19, 2007. At the hearing the Government presented six exhibits. The Applicant presented twelve exhibits and testified on her own behalf. The official transcript (Tr.) was received on June 27, 2007.

FINDINGS OF FACT

The Applicant is 31 years old, single, and is currently working on her Masters Degree in business. She is employed by a defense contractor as a Systems Engineer, and is applying for a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because she abuses intoxicants.

The Applicant admitted to each of the allegations set forth in the SOR under this guideline.

The Applicant was arrested on May 18, 2001, and charged with (1) Driving Under the Influence and (2) Driving While Having a Measurable Blood Alcohol. She explained that she went out after work with her girlfriends and had several cocktails before getting behind the wheel. She was pulled over for speeding and it was determined that she was also under the influence of alcohol. It was determined that the Applicant had a blood alcohol level of .12 percent at the time of the arrest. She pled guilty to Reckless Driving. She was sentenced to a first time offenders program that included required attendance at Alcohol Anonymous meetings and she was fined. Her driver's license was suspended for six months and she was placed on probation for three years.

From May 2001 until October 2005, the Applicant was not arrested nor confronted by law enforcement for any reason.

On October 28, 2005, the Applicant was charged with (1) Driving Under the Influence of

Alcohol, (2) Driving with a Measurable Blood-Alcohol Concentration of .08 percent or more, (3) Driving on a Suspended License, and (4) Driving with No Proof of Insurance or Liability. She explained that again it was a Friday after work and she had met some friends for cocktails at a bar. She left the bar and rear-ended another car. No one was injured as a result of the accident. She pled guilty to Count (1) and were sentenced to a Multiple Offender Program, that included 64 hours of volunteer work, attendance at two Alcoholics Anonymous meetings, her drivers license was suspended and she was placed on probation for five years and fined \$1,750.00. She plans to get her driver's license back in April 2008, and remains on probation until at least 2010.

The Applicant indicates that she is in compliance with the sentencing requirements however, she has only completed 27 hours of the required 64 hours that is needed to complete her community service. Since the Applicant's driver's license has been revoked she must rely on friends, cabs and buses for transportation.

The Applicant's program manager testified that the Applicant is not afraid of hard work. She has initiative and works well with others. (Tr. p. 66). He has no reservations about her having access to sensitive information. (Tr. p. 71).

A friend and business school classmate of the Applicant's also testified and indicated that he has never known the Applicant to drink to the point of intoxication but he has gone out with her for cocktails in the past. He has never observed her driving after consuming alcohol. (Tr. p. 77-78)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she engaged in questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations that raise questions about her ability to protect classified information.

The Applicant admitted to the allegations set forth in the SOR under this guideline.

On May 31, 2002, the Applicant provided a signed sworn statement to a Special Agent from the Defense Security Service wherein she stated that she would never drive after drinking any amount of alcohol from that date forward. (*See* Government Exhibit 4). The Government contends that the Applicant deliberately provided false information to the investigator and that the statement was not true since she continued to drink and drive until at least October 2005. The Applicant explained that at the time she made the statement her true intent was to never drink and drive again and she fully intended to comply with that, but was simply unable to.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline G (Alcohol Consumption)

21. *The Concern.* 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.

Conditions that could raise a security concern:

22. (a) alcohol-related incidents away from work, such as driving under the influence . . . ;

22. (c) habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16. (b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse or personal conduct that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G) and poor personal conduct (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines G and E of the SOR.

The Applicant's recent and extensive history of alcohol abuse as evidenced by her two DUI's in 2001 and 2005, demonstrates that her exercise of poor judgment is not an aberration, but has become a basic part of the Applicant's character during her recent adult life. Her most recent DUI occurred just two years ago. At the present time, she has not yet completed her required community service and she remains on probation until at least 2010. She no longer drinks and drives because her drivers license has been revoked. Although there is no formal diagnosis in the record of alcohol dependence, the Applicant acknowledges that drink has caused her many problems, but she continues to consume alcohol. There is no evidence in the record to indicate that she has been able to remain alcohol free for any extended period of time.

I have carefully considered the favorable words from her professional colleagues, her favorable performance reviews, and commendable graduate school grades, but that evidence does not come close to mitigating the negative effect of her two very serious alcohol related arrests.

Under Alcohol Consumption, Disqualifying Conditions 22 (a) *alcohol-related incidents away from work, such as driving under the influence . . .* ; and 22(c) *habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* apply. None of the mitigating conditions apply. Accordingly Guideline G is found against the Applicant.

Under Personal Conduct, there is no evidence in the record that indicates that the Applicant deliberately provided false information to the Government when she told the investigator that she had no intention of ever drinking and driving again. At the time she made the statement, her intent was to never drink and drive again. As she explained, it was her good intention at the time, but she was unable to follow her desires. Upon that assumption, I do not find that she provided false information to the investigator at the time she made the statement. Accordingly, Guideline E is found for the Applicant.

On balance, however, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 of the SOR. Paragraph 2 is found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For 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 or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

