

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 26-year-old employee of a defense contractor. He had three criminal alcohol-related incidents in three years. He admitted drinking alcohol to excess and to the point of intoxication from 1999 to 2005. He deliberately did not include a driving while intoxicated arrest on his security clearance application. Clearance is denied.

CASENO: 07-00256.h1

DATE: 08/22/2007

DATE: August 22, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-00256
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 26-year-old employee of a defense contractor. He had three criminal alcohol-related incidents in three years. He admitted drinking alcohol to excess and to the point of

intoxication from 1999 to 2005. He deliberately did not include a driving while intoxicated arrest on his security clearance application. Clearance is denied.

### **STATEMENT OF THE CASE**

Applicant submitted a security clearance application on March 24, 2006.<sup>1</sup> On April 13, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant.<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the new Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on April 20, 2007.<sup>3</sup> The SOR alleges security concerns under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on April 23, 2007. He admitted all allegations in the SOR, with an explanation of his response to a question on his security clearance application which raised the allegation under Guideline E.<sup>4</sup> He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 21, 2007. Applicant received a complete file of relevant material (FORM) on June 28, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He timely provided additional information, and Department Counsel stated no objection to consideration of the material on July 31, 2007. The case was assigned to me on August 13, 2007.

### **FINDINGS OF FACT**

Applicant is 26 years old and is employed by a defense contractor. His security clearance application was submitted as part of his employment. He is not married. He has completed a number of years of college.<sup>5</sup> Applicant included a Letter of Reference for work he completed at a United States Embassy abroad. He was praised for his technical work as well as his self-discipline

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<sup>1</sup>Item 4.

<sup>2</sup>Item 1.

<sup>3</sup>Item 2.

<sup>4</sup>Item 3.

<sup>5</sup>Item 4.

and conscientious work habits. He was recommended for future work with the United States Diplomatic Service.

Applicant admits he was arrested in October 2002 for being a minor in possession of alcohol. Applicant admits he was arrested and charged with driving under the influence of alcohol in June 2004. The charge was reduced to drunk and disorderly and he paid a fine. Applicant admits he was arrested for and charged with Driving while Intoxicated in November 2005. The charge was reduced to Impaired Driving, and Applicant was ordered to attend driving classes, pay a fine, and his driving privileges were restricted. Applicant also admits that he consumed alcohol to the point of intoxication from 1999 to November 2005.

Applicant notes he has no excuses for his alcohol consumption. However, he states his excess alcohol consumption is in the past and he has “moved on”. He no longer drinks alcohol to excess. He did see a doctor in 2004 who opined that Applicant did not need classes or treatment for drinking alcohol. He has learned from his mistakes. He is in a new chapter of his life and has a healthier environment. He surrounds himself with others who share his same goals. He has no plans for alcohol in his future. He learned first hand the negative effects of alcohol and how it can affect you and destroy your life.

In completing his security clearance application, Applicant answered “no” to question 23(d) asking if he had “ever been charged with or convicted of any offense(s) related to alcohol or drugs?” Applicant did not list his November 2005 arrest for driving under the influence. Applicant noted that he did not include the arrest on his application because he believed the “charge” would possibly be dropped. He re-read the application and notes that the application does list “arrest” as a criteria requiring a “Yes” response to the question. He stated he mentioned the error to an interviewing agent when asked if there was anything to add to his file that occurred since he submitted his application.<sup>6</sup>

## **POLICIES**

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.”<sup>7</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>8</sup>

The Directive sets out the adjudicative guidelines for determining eligibility for access to classified information, and lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the

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<sup>6</sup>*Id.*

<sup>7</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup>Directive ¶ E2.2.1.

Directive.<sup>9</sup>

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>10</sup> An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>11</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>12</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>13</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>14</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>15</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an administrative judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>16</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>17</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the

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<sup>9</sup>Directive ¶ 2(a)6.3.1 through ¶ 6.3.6.

<sup>10</sup>AG ¶ 2(a).

<sup>11</sup>*Id.*

<sup>12</sup>*See* Exec. Or. 10865 § 7.

<sup>13</sup>Directive ¶ E3.1.14.

<sup>14</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>15</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>16</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>17</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

national security.”<sup>18</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

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.<sup>19</sup>

Guideline E - Personal Conduct: 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.<sup>20</sup>

Guideline J - Criminal Conduct: 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.<sup>21</sup>

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

## **CONCLUSIONS**

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

Applicant’s failure to list his November 2005 arrest for driving while intoxicated in response to question 23(d) on his security clearance application raises Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness). Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be trusted to properly safeguard classified information. The security clearance system depends on an individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. A deliberate omission or false statement on a security clearance application is a criminal

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<sup>18</sup>*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

<sup>19</sup>AG ¶ 21.

<sup>20</sup>AG ¶ 15.

<sup>21</sup>AG ¶ 30.

offense under federal law.<sup>22</sup>

Applicant's explanation that he misread the question not realizing it pertained to arrests as well as convictions is without merit. The question is clear and unambiguous that it applies to both arrests and convictions. Applicant has some college education so he should have college level reading comprehension. Applicant also noted that at the time he completed the application he had not been sentenced for the offense and thought it may be dismissed. It is clear he minimally understood that a charge was pending and therefore he was required to report it. This thought is another indications he understood the question and deliberately did not provide a correct response. His false answer to the question was deliberate and misleading, and I find Applicant intentionally failed to provide correct information in response to question 23(d) on the security clearance application.

I have considered Personal Conduct Mitigating Conditions (PC MC) ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts); and PC MC ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). While Applicant mentioned his failure to list the offense to the security agent, he did it in response to questions raised by the agent but not before he was confronted with a potential omission error. Also, a deliberate failure to include a criminal offense on a security application is not a minor offense, it happened only 16 months prior so a lot of time has not passed, there were no unique circumstances concerning his completion of the application, and there is no indication it will not happen again. I find against Appellant as to Personal Conduct.

Applicant's convictions for driving while intoxicated, drunk in public and disorderly conduct, possession of alcohol as a minor, and a false statement on a security clearance application raises Criminal Conduct Disqualifying Condition (CC DC) ¶ 31(a) (a single serious crime or multiple lesser offenses), and CC DC ¶ 31(c) (allegations or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). In this case, there are three alcohol-related offenses and a criminal offense for deliberately not providing required information on a security clearance application. These acts raise criminal conduct security concerns.

I have considered the Criminal Conduct Mitigating Conditions (CC MC), and only CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and CC MC ¶ 31(d) (there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement) may have some applicability. Applicant engaged in alcohol-related criminal conduct in 2002, 2004, and 2005. He deliberately failed to provide correct information on his security clearance application in 2006. These events all happened within four years, the last less one than two years ago. The events are based on Applicant's voluntary action and there is no information to suggest the events happened under unusual circumstances. Applicant presented no evidence of attendance at any counseling or rehabilitation programs for his use of alcohol. Applicant presented limited information

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<sup>22</sup>10 U.S. C. § 1001.

on any rehabilitation. With insufficient time elapsed since his last criminal act and limited evidence of successful rehabilitation, Applicant has not met his burden of establishing that he is rehabilitated and his past criminal actions do not indicate a security concern. I find against Applicant for criminal conduct.

Security concerns for alcohol consumption are based on Applicant's driving while intoxicated arrest, disorderly conduct and drunk in public offense, minor in possession of alcohol offense, and Applicant's admitted excess drinking of alcohol to the point of intoxication from 1999 to November 2005. Applicant's admission to these alcohol-related incidents raises Alcohol Consumption Disqualifying Conditions (AC DC) ¶ 22(a) (alcohol-related incidents away from home, 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). Driving while intoxicated is one of the examples used for an alcohol-related incident away from work. His arrest for drunk in public and disorderly conduct is similar in kind to disturbing the peace. He was arrested and/or convicted of three alcohol-related offenses in three years, thereby establishing (AD DC) ¶ 22(a).

The government has established and Applicant admitted a security concern based on the alcohol-related offenses and excess consumption of alcohol to the point of intoxication. Applicant has the heavy burden of establishing facts and information to refute, extenuate, or mitigate the security concern. Applicant raised, in his responses to the SOR and FORM, Alcohol Consumption Mitigating Conditions (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 or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment, and 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). There were three alcohol-related incidents in almost a three year period. Applicant admitted he drank alcohol to excess and the point of intoxication at times for seven years. The behavior was frequent and voluntary. Applicant acknowledged he had an alcohol problem. His rehabilitation information consists merely of his statement that he no longer drinks alcohol, nor associates with friends who do, and lives a healthier life style. While he stated a doctor informed him that he did not need to attend alcohol abuse classes or programs, he presented no substantiating documents to verify his medical consultation. Applicant's statement alone is not sufficient to conclude there was an evaluation that he does not require further rehabilitative programs. He presents no other information of rehabilitation activities like counseling, or meeting attendance to overcome his alcohol problem or other corroboration to his claims. He has not presented sufficient information that his alcohol consumption is no longer a security concern.

I have considered Applicant's conduct under the "whole person" concept. I find he is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are;

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a.:	Against Applicant

### **DECISION**

\_\_\_\_\_In light of all of the circumstances in 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

Thomas M. Crean  
Administrative Judge