

KEYWORD: Criminal Conduct; Alcohol

DIGEST: Applicant has a history of four admitted alcohol-related incidents between 1981 and 2004 that resulted in convictions, jail time, fines and reduction in pay. A separate assault conviction in 2003 was preceded by alcohol consumption sufficient to make this offense alcohol-related as well. While never diagnosed as alcohol dependent, he has recently admitted to being an alcoholic, following years of self-denial. His restorative efforts to date, while encouraging, are insufficient to enable safe predictive assessments about Applicant's ability to avoid recurrence in the foreseeable future. Applicant fails to fully mitigate government security concerns about his alcohol-related incidents that reflect alcohol abuse. Clearance is denied.

CASENO: 07-00275.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 07-00275
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of four admitted alcohol-related incidents between 1981 and 2004 that resulted in convictions, jail time, fines and reduction in pay. A separate assault conviction in 2003 was preceded by alcohol consumption sufficient to make this offense alcohol-related as well. While never diagnosed as alcohol dependent, he has recently admitted to being an alcoholic, following years of self-denial. His restorative efforts to date, while encouraging, are insufficient to enable safe predictive assessments about Applicant's ability to avoid recurrence in the foreseeable future. Applicant fails to fully mitigate government security concerns about his alcohol-related incidents that reflect alcohol abuse. Clearance is denied.

STATEMENT OF THE CASE

On March 19, 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 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 12, 2007, and requested a hearing. The case was assigned to me on June 20, 2007, and was scheduled for hearing on July 26, 2007. A hearing was held on July 26, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of nine exhibits; Applicant relied on two witnesses (including himself) and four exhibits. The transcript (R.T.) was received on August 3, 2007.

PROCEDURAL ISSUES

_____ Before the close of the hearing, Applicant requested leave to keep the record open to permit him the opportunity to obtain a medical evaluation. For good cause shown, Applicant was granted 14 days to supplement the record. The Government, in turn was allowed three days to respond. Applicant did not supplement the record.

SUMMARY OF PLEADINGS

Under Guidelines J and G, Applicant is alleged to have been (a) arrested, charged, or cited with four alcohol-related offenses between 1981 and July 2004: specifically, in January 1981 for Driving Under the Influence (DuI) and driving with an invalid driver's license, after which he was turned over to military police, cited under Article III, UCMJ for DuI and operating without valid license, and awarded reduced pay; in November 1989 for DuI, for which he was found guilty, fined, sentenced to one day in jail, and ordered to complete 12 hours of alcohol classes; in January 2002 for liquor in vehicle, for which he was found guilty and fined; and in July 2004 for DuI and DuI with a blood alcohol count (BAC) of .08 per cent or more, for which he was found guilty of DuI,

sentenced to one day in jail, fined, and required to attend alcohol screening. Under Guideline J only, he was alleged to have been charged in November 2003 with aggravated assault of a law enforcement officer, to which he pled guilty and was fined. Additionally,

Additionally, under Guideline G, Applicant is alleged to have been hospitalized in 1981 for an alcohol overdose and on occasion to have consumed a beer while driving a motor vehicle.

For his response to the SOR, Applicant admitted each of the allegations. He provided explanations of the events and circumstances associated with the alleged conduct and claimed to be working on his alcohol problem.

FINDINGS OF FACT

_____ Applicant is a 46-year-old electronic technician for a defense contractor who seeks retention of a security clearance he has held since 1985 (R.T., at 62). The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to alcohol in high school (R.T., at 62-63). Following his enlistment in the Army in 1978 he increased his consumption of alcohol (R.T., at 64). He generally drank two to three times a week, and on the occasions he drank, his consumption varied from a 12-pack or six-pack of beer at a time (R.T., at 64). Occasionally, he consumed hard liquor.

In January 1981, Applicant was pulled over by German police for making an improper turn. He had consumed alcohol (estimated to be six bottles of beer) with several German friends and was taking them home when he was stopped (R.T., at 66). He was subsequently transferred to U.S. Army military police and charged with DuI with drunk driving and operating a POV without a valid USAREUR driver's license under the Uniform Code of Military Justice (UCMJ). As a result of this arrest, his pay was reduced (R.T., at 67).

Applicant continued to consume alcohol on a regular basis for the duration of his Army enlistment. In the summer of 1981 while stationed overseas, he and his German girlfriend consumed three to four large steins (24 to 30 ounce jugs) of beer during the course of a day while socializing with several Army friends (*see ex. 7*). While traveling as a passenger with his girlfriend, he encountered breathing difficulties and laid down on the sidewalk in some distress (R.T., at 68-70). Friends called for a German ambulance to assist him. An ambulance was dispatched to the scene. Applicant was subsequently taken by ambulance to a U.S. Army hospital for observation (R.T., at 70-71). Attending hospital medical personnel told him he had overdosed on alcohol (*ex. 7*). Applicant disagreed with this assessment and attributed his breathing problems to an asthma attack. Hospital records are not available to corroborate Applicant's account.

Following his discharge from the Army in September 1982, Applicant continued to consume alcohol on a regular basis. While in Alaska (between 1982 and 1984) he drank two beers almost every day (R.T., at 72-73). He increased his alcohol intake to daily drinking after his relocation to his present place of residence in 1984. He continued his practice of daily alcohol consumption between 1984 and 2002. During this period, he occasionally consumed alcohol at the frequency rate

of one to two beers a day (save for a two year period spanning between 1982 and 1984 when he was residing outside of the Continental United States) while on his way to pick up his daughter from school (R.T., at 72-73)

While at a racetrack event in November 1989, Applicant consumed three to four glasses of whiskey. On his way home from the track, he was arrested by city police for DuI and was later found guilty of DuI (R.T., at 58-60). The court fined him \$413.00, sentenced him to one day in jail, and required him to attend 12 hours of alcohol classes. By all accounts, Applicant completed these classes.

Applicant continued his daily drinking after his 1989 DuI arrest, and in January 2002, he was cited for liquor in his vehicle. He was found guilty of the offense and fined \$54.25. Since his 2002 citation, he has never kept a beer or alcohol container in his car (R.T., at 79). He continued consuming beer after his 2002 citation, however, and in November 2003 he became embroiled in a domestic argument with his wife after consuming about three beers (R.T., at 85). Police were called to his house and during an exchange with the police, Applicant slightly bumped one of the police officers (R.T., at 53-55, 85-86). Although he denies any intentional bumping of the officer, he later plead guilty to charges of aggravated assault of a law enforcement officer and was fined \$100.00 for the offense. While Applicant was not cited for an alcohol-related incident, his acknowledged intake of beer preceding the incident is enough to make this an alcohol-related incident.

Applicant continued to consume beer on a daily basis following his 2003 arrest, and was arrested in July 2004 for DuI and DuI with a BAC of .08 per cent or more. He was found guilty of DuI and was sentenced to 10 days in jail (all but one day suspended), fined \$1,000.00, required to attend alcohol screening and counseling (believed to be 12 hours), and had his driver's license suspended for 30 days (R.T., at 81-82). Applicant was never diagnosed by his counselors. So, still believing he did not have an alcohol problem, he continued drinking on a daily basis between June 2004 and June 2007 (R.T., at 82-83).

At the urging of his spouse following his receipt of the SOR, Applicant quit drinking in June 2007 and turned to Alcoholics Anonymous (AA) for help (R.T., at 83-84). Although never diagnosed (R.T., at 88-90), he considers himself an alcoholic (*viz.*, not someone who is dependent, but rather one who drinks too much) and has attended AA meetings weekly (R.T., at 83-84, 88-95). He has earned his 24 hour and 30-day chips that recognize his sustained abstinence for the periods covered (*see* exs. C and D; R.T., at 53). He has a sponsor who he occasionally talks to but has delayed his participation in AA's 12-step program until after the holding of this hearing (R.T., at 84). Afforded a post-hearing opportunity to seek an evaluation from a credentialed medical provider or substance abuse counselor, Applicant has failed to do so in any way that can be documented in this record.

Applicant is highly regarded by his supervisors and colleagues. A test officer and colleague who has worked along side of Applicant rates Applicant a class A radar operator and describes him as the best radar operator he has ever seen (R.T., at 27-30). He credits Applicant with being an asset to the contractor's mission. This colleague assures he has never heard of Applicant's being drunk on or off the work site (R.T., at 28). However, this same colleague was not aware of Applicant's prior DuIs until just recently (R.T., at 33). Other colleagues who have known Applicant for many years also characterize him as an excellent radar operator who has never exhibited signs of drinking

on or off the job (*see ex. A; R.T., at 36-43*). Applicant has received numerous letters of appreciation and awards that recognize his contributions to the Army's test programs (*see ex. B*).

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the conditions that could raise a security concern and may be disqualifying (Disqualifying Conditions), if any, and all of the Mitigating Conditions, if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: 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.

Alcohol Consumption

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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the

applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a highly regarded electronics technician for a defense contractor with a history of regular alcohol consumption over a 30-year period and five alcohol-related incidents between 1981 and 2004. Applicant's history of alcohol-related incidents and self-diagnosis of alcoholism reflect both a recent pattern of alcohol abuse outside the work place and a potential dependency problem that raise security concerns.

On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: 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 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*). Because Applicant's drinking has never been diagnosed, it is not entirely evident that his years of daily drinking can be considered habitual much less binge drinking within the meaning of DC 22(c). Nonetheless, the combination of his years of daily drinking when considered in juxtaposition to his DuI incidents and recent self-diagnosis of alcoholism justifies assigning some application to DC 22(c) of the guidelines for alcohol consumption.

Because four of Applicant's alcohol-related offenses are covered by arrests or charges that involve criminal conduct, they are covered by the guidelines for criminal conduct as well. Specifically, DC 31(a) (*a single serious crime or multiple lesser offenses*) applies. Because Applicant's 2002 citation for liquor in the vehicle does not involve a likely criminal offense, this incident is not specifically covered by guideline for criminal conduct.

To his credit, Applicant has acknowledged alcoholism, has become involved with AA, has obtained a sponsor, and has earned chips for 24 hours and 30 days of sustained abstinence, respectively. However, his failure to seek an evaluation and enlist substance abuse counseling for any identified alcohol problem to date, his acknowledged alcoholism, and his failure to furnish a favorable prognosis preclude application of any of the mitigating conditions of the guidelines for alcohol and criminal conduct. Applicant's renewed commitment to abstinence does reflect positive changes in behavior supportive of sobriety, and for these efforts Applicant is to be commended. Favorable views of his progress from work colleagues who know him are also helpful in gauging the strength of his commitment to sobriety.

Taking into account both Appellant's history of alcohol abuse and his strong work record, his mitigation efforts to date, while encouraging, reflect insufficient evaluative information and

evidence of sustained commitment to AA and its tenets of sobriety to conclude he is no longer at risk of recurrence. Without a favorable prognosis, it would be imprudent to relax the time mitigation requirements of any of the mitigating conditions of the alcohol and criminal conduct guidelines, which in Applicant's case work conjunctively with each other.

Considering the record as a whole, Applicant failed to make a convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk of judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to all but one the allegations covered by the alcohol and criminal conduct guidelines of the SOR. Subparagraph 1.c is favorably concluded.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
GUIDELINE G (ALCOHOL):	AGAINST APPLICANT
Sub-para. 2a:	AGAINST APPLICANT
Sub-para. 2.b:	AGAINST APPLICANT
Sub-para. 2.c:	AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

