

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant is a senior analyst for a defense contractor since 1996. He consumed alcohol, at times to excess and to the point of intoxication, from approximately 1976 to at least August 2006. He was arrested, charged, and found guilty of public intoxication. He was diagnosed with alcohol abuse. He was charged with aggravated sexual battery, a felony. He entered a plea to the reduced misdemeanor charge of assault and battery. He did not complete a court-ordered alcohol counseling program. Applicant has not mitigated the alcohol consumption and criminal conduct security concerns. Clearance is denied.

CASENO: 04-11145.h1

DATE: 06/22/2007

DATE: June 22, 2007

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| In re: |) | |
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| |) | |
| ----- |) | ISCR Case No. 04-11145 |
| SSN: ----- |) | |
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| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a senior analyst for a defense contractor since 1996. He consumed alcohol, at times to excess and to the point of intoxication, from approximately 1976 to at least August 2006. He was arrested, charged, and found guilty of public intoxication. He was diagnosed with alcohol abuse. He was charged with aggravated sexual battery, a felony. He entered a plea to the reduced misdemeanor charge of assault and battery. He did not complete a court-ordered alcohol counseling program. Applicant has not mitigated the alcohol consumption and criminal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 2003, Applicant executed a Security Clearance Application (SF 86). He resigned the SF 86 on April 18, 2006.¹ On November 28, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)² detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) 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. The revised guidelines were provided to Applicant when the SOR was issued.

On January 11, 2007, Applicant responded to the SOR allegations and requested a hearing. The Government indicated the case was ready to proceed on March 16, 2007. The case was assigned to me on March 19, 2007. A Notice of Hearing was issued on March 21, 2007, scheduling the hearing for April 11, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted 12 exhibits, Exs. 1-12, and one administrative exhibit, Admin. Ex. 1. Applicant did not submit any exhibits. All of the exhibits were admitted into the record without objection. The transcript (Tr.) was received on April 19, 2007.

FINDINGS OF FACT

Applicant admitted all the factual allegations under Guideline G, subparagraphs 1.a through 1.d. He also admitted the factual allegations under Guideline J, subparagraph 2.a. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 49 years old. He graduated from a well-known university in 1980 with a bachelor's degree in business administration. In 1980, he joined the Army and retired as a major in 1996.³ He held a security clearance while in the military. As a civilian, he was employed by a defense contractor in 1996, and is still employed there as a senior analyst.⁴ He is now divorced, but he was married 18 years. He has seven children, aged 17 through 10.⁵

Applicant was 18 years old and had started college when he began drinking alcohol.⁶ He continued drinking during his military career. He consumed alcohol, at times to excess and to the point of intoxication, from approximately 1976 to at least August 2006. To date, he continues

¹Ex. 1 (Security Clearance Applicant, signed on August 12, 2003. Resigned on April 18, 2006).

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

³Tr. 15, 20.

⁴Tr. 15, 17.

⁵Tr. 21.

⁶Tr. 22.

drinking alcohol. The night before the hearing, he had an alcoholic drink, which was a combination of bourbon and ginger ale.⁷

In October 2003, Applicant's 12-year-old daughter reported that he had sexually molested her on several occasions between January 2000 and December 2000.⁸ On December 5, 2003, Applicant was arrested and charged with aggravated sexual battery, a felony. He entered a plea of nolo contendere to the reduced charge of assault and battery of a family member. He was ordered to complete a substance abuse program and given 18 months' probation. He denied the allegations. He presented himself for a substance abuse evaluation on April 1, 2004. He was recommended to complete an outpatient therapy program consisting of at least 12 sessions of individual therapy and to remain abstinent from alcohol during the length of the program.

As part of the offer to dismiss the felony charge, he had to attend alcohol counseling. He was diagnosed with Alcohol Abuse.⁹ This diagnosis was made by a licensed clinical social worker, working at a local counseling group. Based on Applicant's alcohol use history, he met the DSM-IV-TR criteria for a diagnosis of Alcohol Abuse.¹⁰ Applicant was shocked when this assessment was made because he was told that the evaluator was not going to recommend that he attend any alcohol abuse counseling.¹¹ It was recommended that he attend four months of counseling.¹² He does not believe that he abuses alcohol.¹³ In November 2004, he entered into treatment with a counseling group. He then went to Iraq from June 2004 to the end of August 2004.¹⁴ He returned to counseling for a short period. Applicant continued to drink during the program, as evidenced by positive Breathalyzer tests on January 31, 2005 and February 22, 2005. He did not complete the alcohol counseling program.¹⁵ He was required to restart the treatment process from the beginning because he failed to meet the graduation criteria of continuous sobriety for four months.

On January 20, 2006, Applicant returned home from an eight-month deployment to Iraq. His friend picked him up at the airport and took Applicant to his apartment to stay.¹⁶ During the course

⁷Tr. 27.

⁸Tr. 64.

⁹Ex. 8 (Substance Abuse Evaluation, dated April 1, 2004).

¹⁰Tr. 30-32. *See also*, Ex. 5 (Counseling Group Discharge Summary, dated October 31, 2005). *See also*, Admin Ex. 1 (Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR), Axis I, 305.00 Alcohol Abuse).

¹¹Tr. 32, 43.

¹²Tr. 44.

¹³Tr. 32.

¹⁴Tr. 46.

¹⁵Tr. 41.

¹⁶Tr. 33, 40.

of the day, they both consumed alcohol. Applicant had about six drinks.¹⁷ Applicant called his 16-year-old son to pick him up so he could visit his other children at his ex-wife's house.¹⁸ Once he got to her house, she called the police because she did not want him there. The police asked him for two pieces of identification and he provided his military and employment identification cards.¹⁹ When asked for his driver's license, he balked, and was arrested and charged with public intoxication. He was found guilty and fined \$25 with court costs of \$66. He notified his facility security officer of the incident immediately upon return to work.

Applicant's supervisor testified at the hearing.²⁰ He has known Applicant for 10 years, since they started working in the same company about the same time.²¹ Applicant told him about the sexual allegation reported by his daughter.²² He sees Applicant on a daily basis at work and they socialize outside of work about once or twice a month.²³ He believes Applicant is trustworthy and reliable and endorses him for a security clearance.²⁴

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²⁵ 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.”²⁶ 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.”²⁷ 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

¹⁷Tr. 34.

¹⁸Tr. 35, 36.

¹⁹Tr. 38.

²⁰Tr. 88.

²¹Tr. 87.

²²Tr. 88, 90, 94.

²³Tr. 92.

²⁴Tr. 87-89.

²⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶*Id.* at 527.

²⁷Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

should err, if they must, on the side of denials.²⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁹ 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.³⁰

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 listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Alcohol Consumption

Alcohol consumption is a security concern because excessive 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.

Applicant visited his ex-wife's home after consuming at least six alcoholic drinks and was arrested for not providing police the appropriate identification. Applicant's arrest after consuming alcohol is evidence of an alcohol incident away from work. He was back from eight months in Iraq and wanted to celebrate. However, he knew that he would also see his children that day, and continued to consume alcohol to the point that he was too impaired to drive and had his son pick him up. Moreover, Applicant did not have 12 consecutive weeks of abstinence and meetings without consuming alcohol. He never successfully completed his alcohol treatment program that was mandated by the court. He has also been diagnosed twice with alcohol abuse. Thus, Alcohol Consumption Disqualifying Conditions (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*), 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*), AC DC ¶ 22(e) (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), and AC DC ¶ 22(g) (*failure to follow any court order regarding alcohol education, evaluation,*

²⁸ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁹*Id.*; Directive, ¶ E2.2.2.

³⁰Exec. Or. 10865 § 7.

treatment, or abstinence) apply. I have considered all of the Alcohol Consumption Mitigating Conditions, and I find that none apply. The Government has established a *prima facie* case for disqualification under Guideline G. Applicant has not mitigated the Government's case. Allegations 1.a through 1.d of the SOR are found against Applicant.

Criminal Conduct

Criminal conduct under Guideline J is always a security concern because 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.

Applicant was charged with a felony, a serious crime, for sexually abusing his daughter, but the prosecution allowed him to plead to a lesser included offense. Nevertheless, while the court ordered him into an alcohol counseling program, he failed to complete that program as indicated above. Thus, Criminal Conduct Disqualifying Conditions (CC DC) ¶ 31(a) (*a single serious crime or multiple lesser offenses*), CC DC ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*), and CC DC ¶ 31(e) (*violation of parole or probation, or failure to complete a court-mandated rehabilitation program*) apply. I have considered all of the Criminal Conduct Mitigating Conditions, and I find that none apply. The Government has established a *prima facie* case for disqualification under Guideline J. Applicant has not mitigated the Government's case. Allegation 2.a of the SOR is found against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant has had a progressive drinking history since 1976. He has been drinking daily since then, with the exception of periods when he was overseas. He did not complete order court-ordered alcohol counseling. While he disagrees with his diagnosis for Alcohol Abuse, professionals made the diagnosis. Based on the evidence of record, it is clearly not consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable 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 G (Alcohol Consumption):

AGAINST APPLICANT

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| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |

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| Paragraph 2. Guideline J (Criminal Conduct): | AGAINST APPLICANT |
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| Subparagraph 2.a: | Against Applicant |
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DECISION

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

Jacqueline T. Williams
Administrative Judge