

KEYWORD: Alcohol

DIGEST: Applicant's history of excessive drinking and five alcohol-related driving offenses, three of which occurred between February 2004 and April 2005 raised security concerns under alcohol consumption. Applicant mitigated the security concerns due to his active involvement in Alcoholics Anonymous since August 2005. Clearance is granted.

CASENO: 05-03282.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 05-03282
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel

FOR APPLICANT

Kathleen E. Voelker, Esq.

SYNOPSIS

Applicant's history of excessive drinking and five alcohol-related driving offenses, three of which occurred between February 2004 and April 2005 raised security concerns under alcohol

consumption. Applicant mitigated the security concerns due to his active involvement in Alcoholics Anonymous since August 2005. Clearance is granted.

STATEMENT OF THE CASE

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G, Alcohol Consumption.

In a sworn statement, dated December 12, 2006, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the SOR allegations. The case was assigned to me on March 9, 2007. A notice of hearing was issued on March 21, 2007, scheduling the hearing for April 25, 2007. On April 17, 2007, Appellant retained counsel. A delay was granted due to a scheduling conflict. An amended notice of hearing was issued on April 18, 2007, rescheduling the hearing for May 9, 2007. The hearing was held on that date. The government submitted two exhibits that were marked as Government Exhibits (Gov Ex) 1-2. The exhibits were admitted into the record without objection. Applicant called four witnesses, testified on his own behalf, and submitted eight exhibits that were marked as Applicant's Exhibits (AE) A-H. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 22, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 52 year-old site transition manager for a defense contractor.² He has worked for his present employer since March 2001.³ He was granted a SECRET clearance in March 2003 and seeks a TOP SECRET security clearance.⁴ For the past two years, he has worked from home.⁵ He is married and has two adult step-children. His 81 year-old father also lives with him.⁶

Applicant started consuming alcohol while in high school. When he was in his late teens or early 20s, he was arrested for Driving While Under the Influence of Alcohol (DUI). He does not

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and the Revised Adjudicative Guidelines, effective September 1, 2006.

² Tr. at 85, 87.

³ Tr. at 87.

⁴ Tr. at 93, 135; Gov Ex 1, question #31.

⁵ Tr. at 88.

⁶ Tr. at 92.

recall the exact date. When Applicant graduated from high school, he became a mechanic. After work, he and his co-workers would go to bars and drink alcohol.⁷

On May 15, 1987, he was arrested and charged with DUI. He was found guilty and his license was suspended.⁸ He was 33 at the time of this arrest.⁹ He attended Alcoholics Anonymous meetings after this DUI arrest. He met his wife at an AA meeting. They married and bought a house. He attended AA regularly for about two to three years. He stopped attending AA when he became more involved in his church. He had been abstinent for eight years. He started to believe that he was no longer an alcoholic because his life had changed so much. He started drinking and thought he could drink socially. He eventually returned to drinking alcohol every day.¹⁰

Applicant started going to bars after work due to issues involving his teenage stepson.¹¹ On February 9, 2004, he was arrested and charged with DUI. Prior to his arrest, he had consumed seven or eight alcoholic drinks including shots at the bar. At the time of his arrest, his blood alcohol level was .20. He pled guilty to Reckless Driving and was fined \$500 and \$150 in court costs.¹² He did not attend AA meetings after this arrest.¹³

On December 4, 2004, Applicant was arrested and charged with DUI.¹⁴ He pled guilty and was ordered to spend 24 hours in jail, fined \$100 and \$153 in court costs. His license was suspended for three months.¹⁵ Prior to his arrest, Applicant had consumed seven to nine mixed drinks. His drink of preference was bourbon and beer. His blood alcohol content was .20 at the time of his arrest.¹⁶ He did not attend AA meetings after this arrest but began to think that he needed to do something about his drinking. Between December 2004 to April 2005, he had periods where he would stop drinking but he did not enroll in a specific program.¹⁷

On April 16, 2005, Applicant met several of his friends at a bar at 2 pm. He had six or seven drinks while at the bar. They left the bar at 6 pm and went to a friend's house to play music and watch a movie. At around 1 am on April 17, 2005, they went to a diner to get something to eat. Two

⁷ Tr. at 94.

⁸ Tr. at 94; Gov Ex 1, question 24.

⁹ Tr. at 93.

¹⁰ Tr. at 97-100.

¹¹ Tr. at 102.

¹² Tr. at 102-103, 133-134, 137.

¹³ Tr. at 137-138.

¹⁴ Gov Ex 2, #5.

¹⁵ Tr. at 105.

¹⁶ Tr. at 138-139.

¹⁷ Tr. at 140.

of his friends were very intoxicated. He planned to drive one home and let the other one sleep on his couch. While driving his friend home, Applicant was arrested and charged with DUI.¹⁸ On February 1, 2007, he pled no contest. He received a \$100 fine and court costs. His license was suspended in June 2006. He will get his driver's license back on May 14, 2007. A safety interlock device will be installed in his vehicle for 18 months.¹⁹

In response to Interrogatories answered on July 13, 2005, Applicant indicated that the last time he drank alcohol was on April 19, 2005. He indicated that he had no intent to drink alcoholic beverages in the future.²⁰ He also started to attend AA classes. Although he intended to stop drinking alcohol, this was not the last time he drank. In August 2005, his father moved in with him. His father is handicapped. His father, a WWII veteran, asked if he would take him to the VFW. On August 7, 2005, Applicant had three beers with his father and realized that he did not want to stop drinking. He realized that he could not safely drink alcohol. This was the last time he consumed alcohol.²¹

Applicant stated it was a hard lesson for him to learn that "once you're an alcoholic, you are always an alcoholic." On August 8, 2005, he started to attend a lot of AA meetings and wanted to find a good sponsor. He attended a meeting daily for 90 days. He found a good sponsor who he talks to almost daily. He has been working the 12 steps. He is currently the chairperson and assistant treasurer of his home group.²² This is the second time he has been chairperson of his home group. In order for a person to be nominated as chairperson of the home group, they have to have a year of sobriety. His home group meets on Tuesday evenings. He goes to meetings on Monday, Tuesday, Wednesday, Thursday and Fridays. He occasionally attends meetings on the weekend but that is the time that he takes care of his responsibilities around the house.²³ He provided a list of the AA meetings he attends on an occasional or regular basis.²⁴

Applicant attended the West Virginia DUI Safety and Treatment Program on two occasions. He attended his first class on July 29, 2006, and completed the last class on September 9, 2006. The DUI Coordinator gave him a favorable prognosis.²⁵ The DUI Coordinator is a Certified Clinical

¹⁸ Tr. at 141-143.

¹⁹ Tr. at 107-108.

²⁰ Gov Ex 2, #1.a.

²¹ Tr. at 109-110.

²² (A home group is a meeting you consider your own. You take service positions to help the group function; Tr. at 50).

²³ Tr. at 112-118.

²⁴ AE E.

²⁵ AE G.

Addiction Counselor (CCAC).²⁶ He took the class twice for each DUI arrest in order to get his driver's license back earlier. The course was six weeks long with a three hour session each week.²⁷

Two fellow AA members testified on Appellant's behalf. One witness has attended AA for 11 years. He sees Applicant three to five times a week at AA meetings and socially afterwards. He has noticed a lot of changes in Applicant since he started attending AA regularly. Applicant first blamed the system for his problems rather than taking ownership and responsibility. He is now more responsible and appears happier and more outgoing. The last time he and Applicant attended a meeting together was the evening prior to the hearing.²⁸ The other witness was Applicant's sponsor. He is a regular member of AA and has been sober since February 14, 1981. He first met Applicant in August 2005 at an AA meeting. He became his sponsor in October 2005. They are in the same home group which meets on Tuesday evening. They see each other at other AA meetings at least four to five times a week. He has daily contact with Applicant.²⁹

Applicant's sponsor has sponsored more than 100 people over the 26 years he has been associated with AA. He states that Applicant is doing exactly what the people he has sponsored who have been successful in the program have done. He has stopped drinking. He attends a lot of meetings. He has a sponsor. He works the 12 step program. He believes in a higher power and trusts God for his sobriety.³⁰ He has noticed a lot of changes in Applicant. Applicant now has more understanding about what alcoholism is and knows what it takes to remain sober. He has matured and is more responsible. When Applicant first came to the program, his problems were everyone else's fault. He now understands that the root cause of the problem was of his own making. He states that if Applicant continues to do what he does on a daily basis, he will remain sober.³¹

Applicant's attorney wrote a letter on his behalf, indicating that he has great respect for Applicant and has watched his involvement to a genuine commitment to a life of sobriety through AA.³² Two co-workers testified on Applicant's behalf. One co-worker worked with Applicant every day from 2001 to 2004. He no longer sees him on a daily basis because both he and Applicant work from home. He states that Applicant is organized and has an excellent work ethic and is trustworthy.³³ Another co-worker has known Applicant for six years. They worked on the same

²⁶ AE H, Section IX.

²⁷ Tr. at 122-123.

²⁸ Tr. at 47-59.

²⁹ Tr. at 64-70.

³⁰ Tr. at 71.

³¹ Tr. at 70-73.

³² AE F.

³³ Tr. at 18-25.

program together. He considers Applicant to be honest and reliable.³⁴ Applicant's performance assessments for 2004, 2005, and 2006 states that he meets standards. He is rated as either Exceptional (the highest rating received) or Proficient (the second highest rating received) in all areas.³⁵

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.”³⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive and the revised AGs, effective September 1, 2006. The revised AGs set forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline G - Alcohol Consumption: Excessive alcohol consumption often leads to the exercise of questionable judgment, or failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

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

“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.”³⁷ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.³⁸ An administrative judge should consider the following factors: (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 individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and

³⁴ Tr. at 33-43.

³⁵ AE A - AE C.

³⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

³⁷ Revised AG, dated August 2006, ¶ 2.

³⁸ *Id.*

(9) the likelihood of continuation or recurrence.³⁹

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

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.⁴⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.⁴¹ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”⁴²

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 a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G, Alcohol Consumption.

Alcohol Consumption Disqualifying Condition (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*) applies. Applicant has been arrested on five occasions for DUI. His first arrest occurred when he was in his late teens/early twenties. His second arrest occurred in May 1987. His last three arrests occurred over a fourteen month period between February 2004 and April 2005.

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*) applies. Applicant has long history of alcohol abuse. When he was drinking, he would go to bars

³⁹ *Id.*

⁴⁰ Directive ¶ E3.1.14.

⁴¹ Directive ¶ E3.1.15.

⁴² Directive ¶ E.2.2.2; Revised AG, dated August 2006, ¶ 2(b).

after work and consume around seven to eight drinks. His habitual consumption of alcohol has resulted in at least five occasions where he showed impaired judgment by choosing to drive after drinking to intoxication.

The alcohol consumption concern can be mitigated. In Applicant's case, Alcohol Consumption Mitigating Condition (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)*) applies. Applicant admits that he is an alcoholic. His last drink occurred on August 7, 2005. On August 8, 2005, he started to attend AA meetings regularly. He found a sponsor and has been an active participant in AA since that time. He attends AA meeting on average of four to five times a week, speaks with his sponsor daily, and is currently the chairperson and treasurer of his home group. The testimony of his sponsor and another fellow AA member reveals that he is sincere in his efforts to maintain sobriety. While this is not the first time that Applicant has attended AA (having relapsed after eight years of sobriety), he will have two years of sobriety in August 2007. His sponsor maintains that Applicant is doing what needs to be done in order to be successful in the program.

Finally, AC MC ¶ 23(d) (*the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear or established pattern or 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*) does not apply only with respect to the 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 successfully completed outpatient alcohol counseling, has remained abstinent from alcohol since August 7, 2007, and is active in AA. He received a favorable prognosis from a Certified Clinical Addictions Counselor (CCAC). However, I cannot conclude that a CCAC is the equivalent of a licensed clinical social worker. As such all of the elements of AC MC ¶ 23(d) have not been met. I considered the favorable prognosis from the CCAC under the whole person factors. I found the testimony of his AA sponsor to be the most compelling due to his lengthy involvement in AA, his daily contact with Applicant, and his first hand knowledge of Applicant's active involvement in AA.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. While Appellant has an extensive history of alcohol abuse and alcohol-related driving offenses, he has been forthright about his past problems with alcohol. He has been sober for close to two years and is an active participant in AA. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Erin C. Hogan
Administrative Judge