

KEYWORD: Criminal Conduct; Alcohol

DIGEST: While Applicant mitigated security concerns over five of his alcohol-related arrests and criminal conduct from 1984 to 1998, he failed to mitigate his 2004 DWI conviction as he provided no evidence that he has completed his two years of probation. While he did attend treatment in 2005 and has made some positive changes in behavior supportive of sobriety, he did not demonstrate his ongoing and current commitment to abstain from alcohol. In addition, has had at least two relapses in 2005 and 2006. Thus, doubt remains over his reform and rehabilitation from his recent criminal and alcohol-related conduct. Clearance is denied.

CASENO: 05-07695.h1

DATE: 09/17/2007

DATE: September 17, 2007

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In Re: )  
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SSN: ----- )  
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Applicant for Security Clearance )  
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ISCR Case No. 05-07695

**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

While Applicant mitigated security concerns over five of his alcohol-related arrests and criminal conduct from 1984 to 1998, he failed to mitigate his 2004 DWI conviction as he provided no evidence that he has completed his two years of probation. While he did attend treatment in 2005 and has made some positive changes in behavior supportive of sobriety, he did not demonstrate his ongoing and current commitment to abstain from alcohol. In addition, has had at least two relapses in 2005 and 2006. Thus, doubt remains over his reform and rehabilitation from his recent criminal and alcohol-related conduct. Clearance is denied.

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### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 9, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>1</sup> The SOR alleged security concerns in paragraph 1 over Criminal Conduct (Guideline J) and in paragraph 2 over Alcohol Consumption (Guideline G) based on the revised (“new”) Adjudicative Guidelines<sup>2</sup> issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant responded to these SOR allegations in an Answer notarized and dated November 8, 2006, where he admitted all of the allegations in subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.f., but denied subparagraph 1.e; he admitted all of the allegations in paragraph 2 and requested a decision without a hearing.

On April 30, 2007, Department Counsel, prepared a File of Relevant Material (FORM) which was forwarded to the Applicant on May 1, 2007. Applicant was advised he had 30 days to respond to the FORM by submitting any objections or any additional information. In the FORM, Department Counsel amended SOR ¶ 1.e. to conform to the evidence:

SOR ¶ 1.e. In January 1998, you were arrested. . . and charged with public intoxication. In March 1998, you were found guilty of public intoxication and were sentenced to a \$25 fine and \$40 court cost.

Applicant received the FORM on May 11, 2007, but he sent no objection to the amendment nor any response to the FORM, which was due on June 10, 2007. The matter was assigned to me on September 10, 2007. I granted the motion to amend SOR ¶ 1.e.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, (Directive), as amended.

<sup>2</sup> Applicant did receive a copy of the DoD Directive 5220.6, which was sent with his Statement of Reasons (SOR).

Applicant, 42 years old, has worked as a senior designer for a defense contractor in State #1 from October 1984 to present. He completed a Security Clearance Application (SF 86) in February 2004 as he is seeking a clearance. (Exhibit 5) He is a graduate of a community college program. Applicant is single. (Exhibit 5)

### **Criminal Conduct and Alcohol**

In February 2004 in response to a question about his police record, Applicant disclosed on his security form that he had five alcohol-related arrests and convictions in 1984, 1987, 1990, 1996, and 1998 for either Driving While Intoxicated (DWI) and Drunk in Public where he was fined and/or had his driver's license suspended. (Exhibit 5) Subsequently, he had another arrest in June 2004. (Answer; Exhibits 6, 11, 12) Thus, Applicant has six alcohol-related arrests from 1984 to 2004:

- Applicant was arrested for Public Drunkenness in April 1984 and fined. (Answer; Exhibit 6) (SOR ¶ 1.a.)
- Applicant was arrested for DWI (First Offense) in December 1987; found guilty, fined, and driver's license restriction for one year; ordered to attend alcohol safety action program (ASAP). (Answer; Exhibit 6) (SOR ¶ 1.b.)
- Applicant was arrested for DWI (Second Offense) in March 1990, found guilty, fined, ordered to attend alcohol safety action program (ASAP) and weekly AA meetings. (Answer; Exhibit 6) (SOR ¶ 1.c.)
- Applicant was arrested initially for DWI (Third Offense) in December 1996 which was dismissed; later he was charged with Reckless Driving and Unreasonable Refusal to Submit to a Blood or Breath Test; he pleaded guilty and was sentenced in February 1998 to a \$1,500 fine (\$1,250 suspended), two years probation, and driver's license suspended for one year. (Answer; Exhibits 6, 7, 8, 9) (SOR ¶ 1.d.)
- Applicant was arrested for Drunk in Public in January 1998; in March 1998 he was found guilty in absentia and fined \$25 and \$40 court costs. (Answer; Exhibits 4, 6, 10) (SOR ¶ 1.e.)
- Applicant was arrested in June 2004 for Reckless Driving (which was dismissed) and for DWI; in November 2004 he was found guilty of DWI, sentenced to six months in jail (5 months and 25 days suspended) where he served two days, two years probation, and was fined \$750, had a restricted driver's license for one year, and was ordered to attend an alcohol safety action program (ASAP) and weekly AA meetings. (Answer; Exhibits 6, 11, 12) (SOR ¶ 1.f.)

In his Response to Interrogatories in August 2006, Applicant reported he had completed a treatment program at a counseling center in July 2005 and achieved 26 weeks of sobriety. At that time he did not intend to drink in the future and was not then drinking alcohol. He had sought help by attending alcoholics anonymous (AA) meetings; for a period he attended meeting and then quit.

However, after he quit attending AA meetings, he had a relapse in December 2005. He was last intoxicated in July 2006 where he had 36 beers over the course of a weekend. He now attends AA again and participates in most of the meetings but has not “worked the program” like he should. In the past he did not work the 12 steps, did not get a home group with a sponsor, and did not do service work. He intends to work the program one day at a time to acquire more sobriety, but he admitted “I can’t guarantee that I won’t ever drink again.” (Exhibit 6)

After receiving the FORM in May 2007, Applicant provided no supplemental or updated information on the status of his sobriety or involvement with AA or a similar program.

Except for a couple of safety violations when he was in the apprentice school from 1997 to 1990, Applicant reported that he has had an impeccable personnel and attendance record in his 22 years with his employer. (Exhibit 6) He provided no work or community references nor supplemental information on the status of his employment.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. The guidelines are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, an administrative judge weighs the relevant revised Adjudication Guidelines and considers the evidence as a whole.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then, the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. An applicant must meet the guidelines the President and the Secretary of Defense have established for issuing a security clearance.

## CONCLUSIONS

### **Guideline J - Criminal Conduct**

**¶ 30. *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.**

The government established security concerns under criminal conduct<sup>3</sup> over misdemeanor alcohol-related charges and convictions from 1984 to June 2004 ¶ 1.a. through ¶ 1.f.). Disqualifying conditions include: ¶ 31.(a), a single serious crime or multiple lesser offenses, and ¶ 31.(d), individual is currently on parole or probation. He did not provide any evidence that he completed his two years of probation required after the November 2004 finding of guilt for his June 2004 DUI.

Overall Applicant provided insufficient evidence of mitigation.<sup>4</sup> While Applicant's earlier criminal conduct from 1984 to 1998 can be mitigated under MC ¶ 32.(a) as so much time has elapsed, his 2004 arrest and conviction reflect a repeated and recurrent problem; therefore, security concerns persist over that recent 2004 conviction. Also, Applicant failed to demonstrate successful rehabilitation under MC ¶ 32.(d). While it has been three years without any evidence of recurrence of any criminal activity since his 2004 DWI arrest, he admitted two alcohol relapses: a relapse in December 2005 (¶ 2.g.) and a relapse in July 2006 (¶ 2.h.). While he confirmed he returned to AA in August 2006, he failed to provide evidence of his current abstinence from alcohol as an indicator he will not re-offend, nor did he provide evidence that he has completed his time on probation from the last arrest in 2004. Also, in considering ¶ 32.(d), Applicant provided insufficient evidence of successful rehabilitation, such as constructive community involvement. While he stated he has a fine employment record, that by itself is insufficient to mitigate. He failed to demonstrate his ongoing commitment to being alcohol free, so security concerns persist.

Thus, after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.e., but against Applicant on subparagraph 1.f. under SOR Paragraph 1.

### **Guideline G --Alcohol Consumption**

**¶ 21. *The Concern.* 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.**

The Government established security concerns over Applicant's problem drinking and his six alcohol-related arrests from 1944 to 2004. Applicant's conduct falls within disqualifying

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<sup>3</sup> ¶ 31. Conditions that could raise a security concern and may be disqualifying include: (a) a single serious crime or multiple lesser offenses; (d) individual is currently on parole or probation.

<sup>4</sup> ¶ 32. Conditions that could mitigate security concerns include: (a) so much time has elapsed since the criminal behavior happened, or 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; (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; (c) evidence that the person did not commit the offense; (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.

conditions (DC) ¶ 22.<sup>5</sup> In Applicant's case the relevant DC are ¶ 22.(a), alcohol-related incidents, such as driving under the influence, as discussed above, 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. Applicant admitted he was diagnosed with alcohol dependence and was referred to 26 weeks of treatment in 2005 at an outpatient counseling center. He also admitted he had stated to a DoD investigator in April 2005 that he had no intent to drink alcohol in the future. However, subsequently, he has had two relapses since he completed treatment in July 2005. The most recent alcohol-related arrest in June 2004 and relapses in December 2005 and July 2006 illustrate Applicant's questionable judgment: Applicant made a decision to stop attending AA before his relapses. While he stated he was again attending AA meetings in August 2006, he provided no updated information on his status in 2007. It his burden to do so.

In sum, even after six alcohol-related arrests, Applicant continued intermittently to drink, at times to excess. Even after Applicant was diagnosed with alcohol dependence, he continued to drink. Even after treatment and in the face of his own stated desire to stop drinking, he continued to drink, at times to excess. Overall, I conclude that Applicant failed to mitigate these alcohol-related security concerns. In light of the seriousness of his repeated arrests over a twenty year period and his intermittent recent relapses, he provided insufficient evidence to demonstrate that he fulfills the mitigating conditions.<sup>6</sup>

Notably, under MC ¶ 23.(a), his 2004 arrest is recent and for periods in 2005 and 2006 he

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<sup>5</sup> ¶ 22. **Conditions that could raise a security concern and may be disqualifying include:** (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. (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent. (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. (d) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; (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; (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

<sup>6</sup> ¶ 23. **Conditions that could mitigate security concerns include:** (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 judgement; (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); (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required after-care requirements, has demonstrated a clear and established pattern of 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.

was unable to maintain his own resolve to stop drinking. Given this recency, he does not meet the test that “so much time has elapsed since the criminal behavior happened, or 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.”

Under MC ¶ 23.(b), Applicant has acknowledged issues with alcohol dependence. While he did comply with the court orders to take an alcohol-awareness class, he did not establish his abstinence from alcohol in 2007 nor establish that he attends an ongoing individual or group treatment program. Thus, I conclude he failed to establish MC ¶ 23.(c), the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress. He has shown some positive changes in behavior by his compliance with the court ordered requirements. On the other hand, he has only a limited record of abstinence from alcohol, so he has not met the expectations of MC ¶ 23.(d). He has not provided 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. Also, he provided no provided evidence of ongoing and current participation in meetings of Alcoholics Anonymous or a similar organization.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.i. under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline J: AGAINST 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
Subparagraph 1.f.:	Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	Against Applicant
Subparagraph 2.e.:	Against Applicant
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g.:	Against Applicant
Subparagraph 2.h.:	Against Applicant
Subparagraph 2.i.:	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 a security clearance for the Applicant. Clearance is denied.

Kathryn Moen Braeman  
Administrative Judge