

KEYWORD: Alcohol

DIGEST: Applicant, a 51-year-old employee of a defense contractor for the past 33 years, mitigated security concerns arising from alcohol consumption resulting to two DUIs in the 1980s and a work related alcohol incident in 2004 when he was escorted from his workplace. Since the most recent event, he has been in a treatment program and is now in Alcoholics Anonymous where he has a sponsor and has been abstinent since entering the program earlier this year. Applicant's motivation to not repeat his problems is sufficient to overcome any problem arising from the relatively brief period of his abstinence. Clearance is granted.

CASENO: 06-08708.h1

DATE: 07/11/2007

DATE: July 11, 2007

In Re:)	
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-----)	ISCR Case No. 06-08708
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant, a 51-year-old employee of a defense contractor for the past 33 years, mitigated security concerns arising from alcohol consumption resulting to two DUIs in the 1980s and a work related alcohol incident in 2004 when he was escorted from his workplace. Since the most recent

event, he has been in a treatment program and is now in Alcoholics Anonymous where he has a sponsor and has been abstinent since entering the program earlier this year. Applicant's motivation to not repeat his problems is sufficient to overcome any problem arising from the relatively brief period of his abstinence. Clearance is granted.

STATEMENT OF CASE

_____ On October 9, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On October 25, 2006, Applicant responded to the allegations and requested a hearing. The matter was assigned to me on March 28, 2007. A notice of hearing was issued on May 8, 2007 for a hearing held on May 31, 2007. Seven government exhibits and one Applicant exhibit were admitted into evidence. Applicant and one witness on his behalf testified. The government amended one SOR allegation to conform to the facts. The transcript was received on June 20, 2007.

FINDINGS OF FACT

_____ Applicant admitted with explanation the five allegations relating to alcohol consumption. After a complete review of the evidence in the record and upon due consideration of the entire record, the following findings of fact are made:

_____ Applicant is a 51-year-old employee of a defense contractor for 33 years with the same company who works as a nuclear machinist in a shipyard. He has held a security clearance since 1987.

Applicant has had difficulty with alcohol consumption. He has had two arrests for alcohol-related activities. They were for DUI's in 1985 and 1988 for which he received counseling for the first and loss of his driver's license, a \$500 fine, and two days in jail with six months suspended while on probation for the second. In 1996 he completed a treatment program for alcohol use at a well-known local facility near his workplace. He went voluntarily because he realized he needed help. His in-patient treatment was interrupted by hospitalization for pneumonia but he participated as an outpatient for ten of the twelve sessions offered by the facility and completed the program (Tr. 53-55).

In January 2004, his most recent incident occurred while on the job when he was given a breathalyser and escorted from his workplace. His shipyard had been closed for the holidays and he had drunk to excess over that period. He voluntarily went into treatment for 28 days at the same

facility where he had been in 1996. He was diagnosed as alcohol dependent according to the facility records (Exh. 7) but he was not given a discharge summary so was not advised of the diagnosis until this matter arose and he received documentation from the government. Thus, he thought that he could drink in moderation which he was doing but did not recognize that one who is alcohol dependent should be abstinent.

On September 12, 2006, Applicant was evaluated by a licensed clinical social worker who found that he had been over two years in post in-patient treatment without relapse and that his overall prognosis was good provided he continued to monitor his alcohol usage and frequency (Exh. A).

At the time of the hearing, Applicant was abstinent and had been since March 2007 when he entered Alcoholics Anonymous after first learning of the diagnosis of alcohol dependence. He attends meetings every Friday and is in the twelve step program. He has a sponsor who supports him and he has adjusted to the program. He does not intend to use alcohol in the future (Tr. 59-61).

Applicant is well regarded by his employer. His supervisor who has known him for 30 years vouches for his trustworthiness, reliability, and integrity as well as his work ethic (Tr. 24-25). In addition to his regular duties, Applicant mentors younger employees of the company and those who have returned to work needing refreshers after lay-offs. He works as much overtime as he can and that is often 70-80 hours a week.

Applicant has never been married, lives alone, walks to work, and has his mother, siblings and their children in his supportive family with whom he is close. His work at his company has been his life since graduation from high school when he was first hired by the company. He intends to do all within his power to insure that he continues to work, and that he does not endanger his health.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

____ Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly

consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government cited a disqualifying condition (DC) under the revised adjudicative guidelines (AG) pursuant to the Directive concerning alcohol consumption under Guideline G. The security concern is that excessive alcohol consumption leads to exercise of questionable judgment and can raise questions about an individual’s reliability and trustworthiness (AG 21). The specific concern is alcohol-related incidents away from work, such as driving while under the influence. (AG 22 a), alcohol-related incidents at work, such as reporting for work in an intoxicated or impaired condition (AG 22 b), and diagnosis by a duly qualified medical professional of alcohol dependence (AG 22 d).

Possible mitigating conditions (MC) might include the fact that so much time has passed, or 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 (AG 23 a), the individual acknowledges his alcoholism, provides evidence of actions taken to overcome this problem and has established a pattern of abstinence if alcohol dependent (AG 23 b), and the individual has successfully completed inpatient or outpatient counseling along with required aftercare, has demonstrated an clear and established pattern of modified consumption or abstinence in such as participation in meetings of AA and has received a favorable prognosis by a duly qualified licensed clinical social worker who is a staff member of a recognized alcohol treatment program (AG 23 d).

Both DUI arrests occurred three years apart 20 years ago and do not indicate a pattern of conduct. The 2004 incident at work resulted in Applicant’s taking action to resolve his alcohol related difficulties and he has received a favorable prognosis from a licensed clinical social worker in September 2006. While the period of his abstinence is relatively brief, the briefness of the period is overcome by Applicant’s strongly stated and demonstrated intent not to jeopardize his employment and health, and the fact that he was not aware of the alcohol dependent diagnosis until he received documents relating to this proceeding. The mitigating factors cited are applicable in view of the facts established in this matter.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. The “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant has held steady employment for 33 years and is well regarded for his work and

dedication to his company. He has recognized his conduct could jeopardize his job which is his entire life outside his family. He has taken the necessary steps to insure that further incidents with alcohol do not happen.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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
_____ Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant

DECISION

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

Charles D. Ablard
Administrative Judge