

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant failed to mitigate security concerns over his alcohol-related arrests and criminal conduct. He has made some positive changes in behavior supportive of sobriety and performs well on the job. However, he is still on probation from his December 2005 arrest and conviction. He has not yet demonstrated a commitment to abstain from alcohol, so doubt remains over reform of his recent criminal and alcohol-related conduct. Clearance is denied.

CASENO: 06-10762.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-10762
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns over his alcohol-related arrests and criminal conduct. He has made some positive changes in behavior supportive of sobriety and performs well on the job. However, he is still on probation from his December 2005 arrest and conviction. He has not yet demonstrated a commitment to abstain from alcohol, so doubt remains over reform of his recent criminal and alcohol-related conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 26, 2007. 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.¹ The SOR alleged specific concerns over Alcohol Consumption (Guideline G) in paragraph 1, and Criminal Conduct (Guideline J) in paragraph 2 based on the revised (“new”) Adjudicative Guidelines² 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, but undated, where he admitted all of the allegations in paragraph 1, but denied subparagraph 2.a. He requested a hearing.

Department Counsel on March 21, 2007, indicated the case was ready to proceed. The matter was assigned to me on March 28, 2007. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on March 30, 2007, set the matter for April 19, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered eight exhibits (Exhibits 1-8) which were admitted into evidence without objection. Applicant testified. I left the record open for a week for Applicant to submit additional evidence. (TR 61-62) He submitted Exhibit A on April 27, 2007. Government counsel indicated no objection, so the document was admitted into evidence. The transcript (TR) was received on April 27, 2007.

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:

Applicant, 43 years old, has worked as an electronic technician for a defense contractor in State #1 from April 2004 to present. He completed a Security Clearance Application (SF 86) in April 2004 as he is seeking a clearance. Previously, he worked at four other private sector companies from 1998 to 2004. He has not served in the military. (Exhibit 1; TR 31) He is a high

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

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

school graduate. (TR 31)

Applicant married in 1987, separated from his spouse in October 2002, and divorced in 2004. He has three children, ages 19 and twins age 14. (Exhibits 1, 8; TR 30, 45) He was able to move back into his own home in June 2006 as his wife inherited her mother's home. (TR 58-60)

Alcohol and Criminal Conduct

Applicant began to drink alcohol in 1998 and continues to consume alcohol, at times to excess and to the point of intoxication. His drinking increased after he was divorced in October 2004 as he missed his children. He then drank every weekend either at home or with friends. In his Response to Interrogatories he reported he was last intoxicated in July 2006. Even though he sees himself as an alcoholic, he stated he intends to continue to drink alcoholic beverages, but will not drink to excess or drink and drive. He plans to limit himself to six or seven beers. (Answer; Exhibit 2; TR 28-29; 44-45; 51-53; 57-58) He testified he decided in February 2007 to stop drinking, but he did not keep his own promise to himself. He continued to drink moderately in March and April, approximately a six-pack per week. (TR 57-58) He does not go to Alcoholics Anonymous (AA) as "everyone" tells him "they're stupid." (TR 29) (SOR 1.a.)

Applicant has three alcohol-related arrests:

- He was stopped for not having a light on his license plate in November 1998 and charged with operating a motor vehicle while consuming alcohol in State #1. His jail sentence was suspended; he received two years unsupervised probation.(Answer; TR 32-33-36) (SOR 1.b.)
- He reported on his SF 86 that he was arrested for Driving Under the Influence of an Alcoholic Beverage (DUI) in State #2 in December 2001. He had been drinking at home (probably ten beers) and then drove to a bar with some friends and drank more. He was stopped for swerving. He was fined and sentenced to three years probation. (Answer; Exhibit 1) He paid a fine of \$1,238 in full. He completed a Department of Motor Vehicles (DMV) 3-month program in September 2002. His license was then reinstated. (Exhibit 2; TR 37-40) (SOR 1.c.)
- Applicant went to a retirement party from work in December 2005 after his co-workers assured him that someone would give him a ride home. He drank approximately seven beers. When his co-workers did not give him a ride home, he drove himself home even though he was fatigued. He fell asleep while driving and rolled the car five times, but was not injured. (TR 25-26; 41-42) He was arrested in State #1 and charged with DUI, fined, and sentenced to ten days work release, and three years unsupervised probation. (Answer; Exhibit 7; TR 43) He paid a fine in full of \$2,743 and spent ten days in jail on work release. He also had to have an ignition lock put on his car, so it would not start if it detected alcohol; it costs \$80 per month. He had to take two different alcohol education and treatment classes. (Exhibit 2; TR 27) In April 2006 he reported seeing a counselor to deal with his use of alcohol in a group counseling setting as required by the court. (Exhibit 2; TR 49-50) (SOR 1.d.)

Applicant has pleaded guilty to assault, a misdemeanor, in September 2006 and was given six months probation and told to stay away from the child who was visiting his neighbor. He has complied with this requirement. (SOR 2.a.) (Exhibits 3, 4, 5, 6; TR 20-24; 54-55)

References

Applicant's co-worker attested he can depend on Applicant "to get something done and get it done correctly the first time." (Exhibit A)

Another co-worker who recommended him for a security clearance attested that Applicant is "an honest hard working contractor. . . . He is an asset to our shop and mission." (Exhibit A)

His current supervisor for three years praised Applicant's "technical ability, professionalism, and customer service" as outstanding. He described him as being level-headed and having a "can-do-attitude." He is an asset to the section. (Exhibit A)

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.³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of

³Executive Order No. 10865 § 7.

Defense have established for issuing a security clearance.

CONCLUSIONS

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 alcohol-related arrests in 1998, 2001, and 2005. Applicant's conduct falls within disqualifying conditions (DC) ¶ 22.⁴ which raise security concerns: In Applicant's case the relevant DC are ¶ 22.(a), alcohol-related incidents, such as driving under the influence, 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. The most recent alcohol-related arrest in 2005 illustrates Applicant's questionable judgment: Applicant made a decision to drive home from a bar even though he was intoxicated and fatigued. Falling asleep while drive, he rolled the car and was charged with DUI. He paid a substantial fine and was sentenced to ten days work release and three years of unsupervised probation with required alcohol education and therapy sessions. In 2006 he did complete the court required alcohol education.

Even after these three alcohol-related arrests, Applicant has continued intermittently to drink, at times to excess. While Applicant has never been diagnosed with an alcohol abuse problem, he continues to drink even in the face of his own stated desire to stop drinking. He has never sought support from AA or a similar group that might assist him keep a commitment to sobriety. To his credit, three individuals from his workplace praised his work performance. Nevertheless, I conclude that Applicant failed to mitigate these alcohol-related security concerns. In light of the seriousness of his repeated arrests and his own characterization of himself as an alcoholic, he provided

⁴ ¶ 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.

insufficient evidence to demonstrate that he falls squarely within the mitigating conditions.⁵

Notably, under MC ¶ 23.(a), his December 2005 arrest is recent. He has been unable to maintain his own decision 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 individuals reliability, trustworthiness, or good judgment.” Under MC ¶ 23.(b), while not officially diagnosed, Applicant has acknowledged issues with alcohol abuse and provided evidence of several actions he has taken to overcome this problem. While he did comply with the court orders to take an alcohol-awareness class, he has not established a practice of abstinence from alcohol despite his intent to do so.

While his supervisor views his work performance as good, his supervisor did not recommend him for a security clearance. Nether has Applicant sought out 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 decision not to again drive and drink and has complied with the court ordered requirements. On the other hand, he has no record of abstinence from alcohol, so he has not met the expectations of MC ¶ 23.(d.). He has avoided any participation in meetings of Alcoholics Anonymous or a similar organization, and has not documented that he 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.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.d. under SOR Paragraph 1.

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.

⁵ ¶ 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 individuals 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.

The government established security concerns under criminal conduct⁶ over a September 2006 guilty plea to a misdemeanor assault charge (¶ 2.a.) and also include concerns over his previously discussed alcohol-related arrests (¶ 2.b.). Disqualifying conditions include: ¶ 31. (a), a single serious crime or multiple lesser offenses, and ¶ 31. (d), individual is currently on parole or probation. He has complied with the conditions of probation from his 1998, 2001, 2006 convictions; but he is still remains on three years probation from his December 2005 conviction.

Overall Applicant provided insufficient evidence of mitigation⁷: Applicant’s criminal conduct is too recent to be mitigated under MC ¶ 32.(a). Applicant failed to demonstrate evidence of successful rehabilitation under MC ¶ 32. (d). While it has been over a year without recurrence of any criminal activity, he failed to provide evidence of abstinence from alcohol as an indicator he will not re-offend. While he established an fine employment record, that by itself is insufficient to mitigate. He has failed to demonstrate his commitment to being alcohol free and is still on probation from his December 2005 arrest, so security concerns persist.

Thus, after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. and 2.b. 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 G:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Paragraph 2. Guideline J:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.a.:	Against Applicant

⁶ ¶ 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.

⁷ 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.

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