

KEYWORD: Alcohol; Criminal Conduct

DIGEST: The Applicant had two Driving Under the Influence arrests. One occurred in 2002 and the other in 2005. Based on his history, they are an aberration and not indicative of a pattern. He has taken full responsibility for his actions, and has taken steps to make sure that such acts do not occur in the future. He presents a considerable amount of mitigating evidence that show support for his request for access to classified information. The Applicant has mitigated the case against him. Clearance is granted.

CASENO: 06-17601.h1

DATE: 03/01/2007

DATE: March 1, 2007

In Re:	)	
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-----	)	ISCR Case No. 06-17601
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant had two Driving Under the Influence arrests. One occurred in 2002 and the other in 2005. Based on his history, they are an aberration and not indicative of a pattern. He has taken full responsibility for his actions, and has taken steps to make sure that such acts do not occur in the future. He presents a considerable amount of mitigating evidence that show support for his request for access to classified information. The Applicant has mitigated the case against him. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 12, 2006, and requested a hearing. The case was received by the undersigned on December 15, 2006, and a Notice of Hearing was issued on January 5, 2007.

A hearing was held on January 25, 2007, at which the Government presented two documentary exhibits. Testimony was taken from the Applicant, who also submitted nine exhibits. The transcript was received on February 6, 2007.

### **FINDINGS OF FACT**

The Applicant is 26, single and has a Bachelor of Science degree. He is employed by a defense contractor, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has had alcohol related incidents away from work.

Paragraph 2 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

The Applicant has been arrested twice for alcohol-related driving offenses. The first arrest occurred in January 2002, after the Applicant was involved in a motorcycle accident. He plead guilty to the offense. As a result, his driver's license was temporarily suspended, he was placed on three years probation and he had to attend a three month drinking and driving program. He successfully completed all of the court's requirements. (Transcript at 26-29, 34-35.)

The Applicant was arrested a second time for Driving Under the Influence in February 2005. Once again, the Applicant took complete responsibility for his actions and plead guilty to the offense. He served 40 days of a 60 day jail sentence, attended an 18 month drinking and driving program, paid fines, attended victim panels, was put on five years probation and signed away his driver's license for two years. During those years without a license the Applicant rode a bicycle to work and school. (Transcript at 29-32, Applicant's Exhibit G.)

At the time of the second arrest, the Applicant was applying for his current job. One of the results of this arrest was the necessity of telling his employer about this second arrest during the middle of the hiring process. (Transcript at 30.)

The Applicant continues to drink in moderation, but he does not drink and drive at all. He does this because it is a requirement of his probation, and because he simply does not feel the need to drink to excess. He may drink once a month, if that much. (Transcript at 33, 39-41.)

The Applicant testified in a frank and forthright manner about his alcohol-related arrests, his sentences, what his current drinking pattern is, and what he expects it to be in the future. He takes full responsibility for his actions, and for the results.

#### Mitigation.

The Applicant is a well-respected young man and employee. He submitted letters from three co-workers, all superior to him in rank and experience. These people find the Applicant to be thoughtful, conscientious and mature. (Applicant's Exhibit A.)

One of these people, the Director, Studies & Analysis at his employer states, "[The Applicant] is one of the brightest young men I have ever met." She goes on to state:

[The Applicant] is very mature and has wisdom beyond his years. . . . He made a bad choice several years back, but has learned a great deal from the experience. He himself will look you in the eye and tell you that there was a lot of good that came out of his DUI. [The Applicant] has embraced the consequences, opened himself completely to accepting his actions and learned from his mistakes. He will tell you that the whole experience has made him a better person. (Applicant's Exhibit A at 1.)

The Applicant's former employer also submitted a laudatory letter. (Applicant's Exhibit C.) He also submitted a letter from his girlfriend's father, who is also in the defense industry. (Applicant's Exhibit B.) Documentation from his employer shows that the Applicant is viewed as an exceptional employee. (Applicant's Exhibits E, F, H and I.)

The Applicant is currently taking classes to earn his Master's degree. One of his professors states, "[The Applicant's] work ethic, devotion and integrity are what we would like to see in all of our students." (Applicant's Exhibit D.)

### POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in alcohol related criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

The evidence shows that the Applicant has two alcohol-related arrests, in 2002 and 2005. He took, and takes, full responsibility for his actions. His credible testimony was compelling and believable in this respect. The evidence shows that these incidents were an aberration, and not indicative of his nature. The Applicant was a young man at the time of both of these incidents. He has obviously matured, realized the impact alcohol has made on his life, and has made intelligent decisions about its use in his future.

Under Guideline G, the following Disqualifying Condition applies: E2.A7.1.2.1 (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*). As described above, Mitigating Conditions E2.A7.1.3.1. (*The alcohol related incidents do not indicate a pattern*) and E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*) also apply and justify a finding for the Applicant under Paragraph 1.

Regarding Guideline J, Disqualifying Conditions E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply. Under the particular facts of this case, the

following Mitigating Condition applies: E2.A10.1.3.1. (*There is clear evidence of successful rehabilitation*). Paragraph 2 is also found for the Applicant.

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant has matured since the alcohol related incidents took place (factor d.), he shows considerable evidence of rehabilitation (factor f.), and, under the circumstances of this case, the probability that the Applicant will engage in such conduct again are virtually nil (factor i.).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.  
    Subparagraph 1.a.: For the Applicant.  
    Subparagraph 1.b.: For the Applicant.

Paragraph 2: For the Applicant.  
    Subparagraph 2.a.: For the Applicant.

### **DECISION**

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

Wilford H. Ross  
Administrative Judge