

KEYWORD: Alcohol

DIGEST: Applicant's mitigated security concerns over his alcohol issues and alcohol-related arrests from 2002 to 2004 as he has no recent incidents in the past three years and has fully complied with all court-ordered alcohol education and probation requirements. He voluntarily sought an alcohol assessment from a professional in the field and additional counseling in February 2007. He was assessed as having a "low probability of a substance dependence disorder" and has made a commitment to abstinence. Also, he has a long history at his place of employment where he is highly regarded as having outstanding knowledge, skills, and abilities. Clearance is granted.

CASENO: 06-17541.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:)	
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-----)	ISCR Case No. 06-17541
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esquire, Department Counsel

FOR APPLICANT

Damian L. Martinez, Esquire, Holt Babington Mynatt, P.C.

SYNOPSIS

Applicant's mitigated security concerns over his alcohol issues and alcohol-related arrests from 2002 to 2004 as he has no recent incidents in the past three years and has fully complied with all court-ordered alcohol education and probation requirements. He voluntarily sought an alcohol assessment from a professional in the field and additional counseling in February 2007. He was assessed as having a "low probability of a substance dependence disorder" and has made a commitment to abstinence. Also, he has a long history at his place of employment where he is highly regarded as having outstanding knowledge, skills, and abilities. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 23, 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.¹ The SOR alleges specific concerns over alcohol (Guideline G) based on the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant received the SOR in November 2, 2006. He retained counsel and responded to these SOR allegations in an Answer dated November 15, 2006, and requested a hearing.

Department Counsel on January 30, 2007, indicated the case was ready to proceed. The matter was assigned to me on February 1, 2007. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on February 22, 2007, set the matter for March 15, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered eight exhibits (Exhibit 1-8) and called one witness, a special agent of the Office of Personnel Management (OPM) to authenticate Exhibits 2 and 3. (TR 22-33) Several exhibits were admitted without objection: Exhibits 1, 2, 4, 5, 6, 7² (TR 13-21; 27) On the other hand, Applicant's counsel did object to two pages of Exhibit 3 as he stated pages 3 and part of page 4 reported an incident that was not identified with his client; based on that proposition³ parts of those two pages were not admitted into evidence; and the remainder of the Exhibit 3 was admitted. (TR 30-33) He also objected⁴ to two pages of Exhibit 8, a military police report from 2002; however, I overruled his objection as Applicant had admitted that allegation; and I admitted

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's counsel initially object to Exhibit 7, a corporate adverse action report of 2002, as hearsay, but subsequently withdrew his objection. (TR 15-16)

³ The record itself established that the court dismissed the 1989 charge as the person arrested was not Applicant. (Exhibit 3) Also Applicant reported in an earlier 2002 Statement that in 1989 his brother had improperly used his name when he had been arrested. (Exhibit 4)

⁴ Applicant's counsel object to pages 62 and 64 of Exhibit 8 as those pages were not initialed; he asserted they were hearsay and also might not be authentic. (TR 16-21)

Exhibit 8 into evidence. (TR 19-20; 30-33)

Applicant testified and submitted Exhibits A through C. Government's counsel made a hearsay objection to Exhibit A, which was overruled, all the documents, Exhibits A through C, were admitted into evidence. (TR 43-44) The transcript (TR) was received on March 28, 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, 46 years old, has been employed as a computer operator by a defense contractor in State #1 since May 1981. He completed a Security Clearance Application (SF-86) which he signed on January 4, 2006. He had been granted a Secret clearance in October 2003. He has not served in the military. (Exhibit 1; TR 47-49; Exhibit B; TR 54-55) Earlier, he had been granted a Secret clearance in January 1999. (Exhibit 7) He took three semesters of computer science at a state university. (TR 46)

Applicant was married in October 1995 and divorced in December 2003. (Exhibits 1, 3; TR 46-47) He pays child support for his son born in July 1998; and he has partial custody and visitation rights. (Exhibit 2; TR 47, 49) He has another child who is four; and he agreed to provide support voluntarily. (Exhibit 1; TR 47; 50; 55-56; 81; 82-83)

Alcohol

Applicant admitted he consumed alcohol, at times to excess and to the point of intoxication from 2000 to July 2005. (SOR 1.a.) (Answer) In 2002 he reported that he began drinking 15 beers per week in 2000 at home and became intoxicated on a weekly basis. He reported he saw himself as a "problem drinker." At that point in October 2002 he stated he did not intend to consume alcohol in the future while he was on probation. (Exhibit 4; TR 76-78) Applicant stated in March 2006 that he did not view himself as an alcoholic or problem drinker. (Exhibit 2) However, he did drink again during the period of his separation and divorce. In February 2007 he again made a decision to stop drinking as he knows his future depends on his abstinence. He also sought an assessment from a clinical specialist and counseling in February 2007 as discussed further below. (Exhibit A; TR 52; 78)

Applicant had three alcohol-related misdemeanor arrests between 2002 and 2004:

- Applicant consumed alcohol at a friend's home in 2004 and was stopped for failure to maintain a lane; he refused to take a Breath Alcohol Test (BAT) which led to the arrest for aggravated DWI; and he spent one night in the county jail. While his refusal also put his driver's license at risk, his license was not removed. (Exhibit 2; TR56-60; 84-85) He was arrested in April 2004 and charged with aggravated driving while intoxicated, no registration, expired plates and no insurance. He pled guilty to a reduced DWI charge; the other charges

were dropped by the court. (SOR 1.b.) (Answer; TR 51-52; 60-63) He was fined \$350, ordered to attend an alcohol awareness class and placed on one year probation which he completed on May 9, 2006. He attended educational classes at a counseling center for four weeks. (Exhibits 1, 2; TR 40; 50-51; 62-63)

- In July 2002 Applicant was arrested and charged with resisting, evading and obstructing an officer. (SOR 1.c.) (Answer) He was intoxicated and arguing with his wife when she called the police; he initially hid from them in a field in an effort to avoid a confrontation with his wife and an arrest. Applicant plead guilty to resist, evade and obstruct an officer and paid a fine of \$51 in August 2002. His sentence was deferred; and he was placed on unsupervised probation for 180 days until February 2003. As part of the probation he agreed not to drink while he was on probation; and he complied. His deferred sentence was dismissed in March 2003. He and his wife were subsequently divorced. (Exhibits 2, 3, 5, 6; TR 35-39; 49-50; TR 70-74; 85-86)
- In June 2002 Applicant was charged with aggravated driving while intoxicated and passing in a passing zone which was reduced to a DWI. (SOR 1.d.) (Answer) That night he admitted having had six beers at a bowling alley, feeling intoxicated, but able to drive home. He was pulled over for passing in a no passing zone. After he failed the field sobriety test; he reported readings of .16 and .17 readings on the breath alcohol test (BAT) which was over the legal limit in that state, so he received a ticket. Before his court date he enrolled in a counseling program and started in November 2002 for three Saturdays. He disclosed this arrest in his October 2002 statement, so he did not think to report it again in his 2006 SF-86 (Exhibits 4, 8; TR 41; TR 64-69) The court ordered him to DUI school and to pay a fine; and he complied with the court order. Applicant immediately reported this incident to his supervisor; and the contractor filed an adverse information report with the Defense Security Service (DSS) about this alcohol-related arrest in July 2002 and attached the citation as required by the NIPSOM 1-302a. He had been previously granted a Secret clearance in January 1999. (Exhibit 7; TR 49-50; 53)
- Applicant voluntarily returned to the alcohol counseling center in February 2007. The clinical specialist did an assessment on him for a substance evaluation as Applicant planned to be in counseling for several months. After administering two tests and conducting a one-hour interview, the clinical specialist concluded that Applicant has “a low probability of a substance dependence disorder.” (Exhibit A; TR 52-53)

References

A manager who has known Applicant and his work for 24 years assessed him as taking great pride in providing the best service required of him to support a hectic schedule. He received praise not only from his supervisors and his peers but also from customers. While Applicant had a period of absenteeism when he reported late to work, he overcame this obstacle and has not been late or absent in the last nine months. His manager attributed these attendance problems to Applicant’s divorce. He has never been intoxicated or shown signs of a hangover at work. He concluded Applicant is an asset to the company. (Exhibit B)

Applicant’s supervisor for the past year assessed his knowledge, skills and abilities as

outstanding. Applicant has earned a “very good performance evaluation during this past year.” (Exhibit C)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They 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. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

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 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.

CONCLUSIONS

Alcohol Consumption

The Government established security concerns over Applicant's problem drinking and his three alcohol-related arrests in 2002 and 2004. Applicant's conduct falls within disqualifying conditions (DC) (a)⁵: Alcohol-related incidents away from work, such as driving under the

⁵ **22. Disqualifying 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

influence. His first two arrests occurred within one month in 2002 when he and his wife were have marital difficulties which later led to their divorce in December 2003. With respect to the June 2002 charge⁶ he pleaded guilty to DWI and followed the court order to pay and fine and enroll in alcohol counseling which he completed. After his guilty plea to the July 2002 incident, he paid and fine and served probation which he successfully completed, including an agreement not to drink. After that charge was dismissed in March 2003, he returned intermittently to drinking to excess. This conduct led to a third arrest in April 2004 away from work. He made a decision to drive home from his friend's home and was arrested and charged with aggravated driving while intoxicated, later reduced to a DWI charge, to which he pleaded guilty. His plea to a reduced charge led to a sentence of one year's probation which he completed in May 2006. He attended the required alcohol education sessions as well as paid a fine of \$350.

Applicant has never been diagnosed with an alcohol abuse problem. After each arrest he testified he completed the required alcohol education and has complied and abstained from drinking while on probation. In February 2007 he returned to a counselor for additional sessions. This clinical specialist at a counseling session assessed him as having "a low probability of a substance dependence disorder." He concluded Applicant's problem drinking was linked to his divorce and the period thereafter where he was adjusting to a new lifestyle.

Significantly, he has retained the confidence of two supervisors who provided positive assessments of his work performance and work ethics. They have seen no evidence of alcohol at work and he has corrected his absenteeism issues and is rated an outstanding employee. Consequently, I conclude that Applicant mitigated these alcohol-related security concerns as he provided sufficient evidence to demonstrate that he falls within mitigating conditions.⁷ Under MC

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.

⁶ While not alleged in the SOR, Department Counsel raised concerns over Applicant's failure to report his 2002 incidents on his 2006 SF-86. As Applicant had promptly reported his June 2002 arrest to his supervisor; and an adverse information report had been submitted to DSS, it was reasonable for him to conclude the incident was already included in his file. He had no intent to falsify, and no such allegation was made in the SOR. After a DSS investigation he was granted a security clearance despite these two alcohol-related 2002 arrests in October 2003.

⁷ **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

(b), while not officially diagnosed, Applicant has acknowledged issues with alcohol abuse and provided evidence of his actions taken to overcome this problem. He has fully complied with the court orders to take alcohol-awareness classes and, equally significant, in February 2007 he made a commitment to abstinence from alcohol and again voluntarily sought alcohol counseling. He completed his probation for his last arrest in 2006 as he complied with the court requirements with respect to a required alcohol-education course after his 2004 arrest and guilty plea. He now is voluntarily again in an alcohol education and counseling program. Thus, I conclude he established MC (c), the individual is a current employee who is participating in a counseling or treatment program. While he does have a history of previous alcohol education courses and was rearrested, he has a favorable assessment from the clinical specialist at the counseling program in 2007. A clinical specialist did an assessment on him for a alcohol substance evaluation as Applicant planned to be in counseling for several months. After administering two tests and conducting a one-hour interview, the clinical specialist concluded that Applicant has “a low probability of a substance dependence disorder.” Overall, Applicant has demonstrated positive changes in behavior.

To his credit, Applicant never demonstrated any alcohol-related concerns at work. Two supervisors highly praised his reliability and performance which is also viewed favorably by co-workers and customers. To his credit there is no evidence of any new alcohol-related problems outside of work in the three years since his April 2004 arrest. He has demonstrably reformed his conduct.

Also I see favorable indicators in assessing him under the whole person⁸ adjudicative process guidelines. While the past alcohol-related conduct is serious in a mature person, the clinician sees the recurrence of incidents as related to the situation of his separation and divorce. After Applicant finalized his divorce in December 2003, he had another arrest shortly thereafter in April 2004, but he complied with the probation requirements and successfully completed his probation. In light of the security concerns raised over his past drinking and alcohol-related incidents, he has now made a renewed commitment to abstinence. He demonstrated that he now has the motivation to maintain his abstinence and act responsibly. I carefully observed his demeanor at the hearing. He credibly, candidly, and sincerely stated he abstained from alcohol consumption since February 2007 and intended to continue his abstinence. To shore up his own commitment he returned to the counseling center, not only for an assessment, but also to continue with additional sessions. Significantly, he has demonstrated his reliability at work since 1981 where he is widely viewed as a valued employee. Thus, after appraising critically the assessment of his expert, I conclude there is little likelihood of

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.

⁸ Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 2(a): (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 voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent 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. (AG 2. Adjudication Process)

a continuing problem with alcohol and/or a recurrence of alcohol-related arrests. He values his job highly and has demonstrated his commitment to abstinence and rehabilitation. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.d. under SOR Paragraph 1.

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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For 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. Clearance is granted.

Kathryn Moen Braeman
Administrative Judge