

KEYWORD: Alcohol

DIGEST: Applicant is 36 years old and has been employed as a help desk manager for a defense contractor since August 2004. Between 1988 and 2004, he had five infractions for either driving while intoxicated or being drunk in public. At least once a year from 1989-2005, he has driven while impaired or intoxicated from alcohol. He moderated his drinking behavior in December 2005. Although he has taken credible and responsible steps to avoid further alcohol-related issues, he will, more likely than not, consume alcohol to excess in the future. Applicant has not mitigated the alcohol consumption security concerns. Clearance is denied.

CASENO: 06-18752.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-18752
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 36 years old and has been employed as a help desk manager for a defense contractor since August 2004. Between 1988 and 2004, he had five infractions for either driving while intoxicated or being drunk in public. At least once a year from 1989-2005, he has driven while impaired or intoxicated from alcohol. He moderated his drinking behavior in December 2005. Although he has taken credible and responsible steps to avoid further alcohol-related issues, he will, more likely than not, consume alcohol to excess in the future. Applicant has not mitigated the alcohol consumption security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2004, Applicant executed a Security Clearance Application (SF 86).¹ On September 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)² to Applicant, detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised AG was provided to Applicant when the SOR was issued.

In a document, dated October 18, 2006, Applicant responded to the SOR allegations and requested an in-person hearing. The case was assigned to me on February 5, 2007. A Notice of Hearing was issued on February 21, 2007, scheduling the hearing for March 7, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered five exhibits, Exs. 1-5, which were admitted into the record without objection. Applicant did not offer any exhibits. The transcript (Tr.) was received on March 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline G, alcohol consumption, subparagraphs 1.a through 1.f. Applicant's admissions to the allegations in the SOR are incorporated herein. He denied the allegation in subparagraph 1.g. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 36 years old, and since August 2004, has been a help desk manager for a defense contractor.³ From May to August 2004, he studied computer engineering at a university, but did not graduate.⁴ Although single, he plans to marry in early 2008.⁵ He does not have children.

On August 12, 1988, Applicant was arrested and charged with Driving While Intoxicated (DWI). He pled guilty, and was fined approximately \$200. His driver's license was suspended for six months. This incident occurred shortly after his 18th birthday, around midnight, on his way home

¹Ex. 2 (Unredacted Security Clearance Application, dated August 18, 2004); Ex. 1 (Redacted Security Clearance Application, dated August 18, 2004).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

³Tr. 19, 20.

⁴Tr. 20.

⁵Tr. 26.

from a high school party at a friend's house.⁶ During the party, he drank six or seven beers, and he drove home while intoxicated.⁷

On March 1, 1989, Applicant was arrested and charged with DWI and driving on a suspended license. He was found guilty and was sentenced to a weekend in jail. He was ordered to attend an Alcohol Safety Action Program for about eight weeks. He was on probation for six months, and his driver's license was suspended for two years. This incident occurred at a college party. He had five or six beers before he drove himself and a friend home, in the friend's car.⁸ The friend was more intoxicated than Applicant.⁹

On October 8, 1993, he was charged with possession of alcoholic beverages for underage minors. This charge was subsequently dismissed.

Applicant was arrested on January 8, 2000, and charged with being drunk in public. He was found guilty and fined \$55. He was 29 at the time of this incident.¹⁰ He had four or five beers and one or two shots of alcohol over a period of four to five hours, while watching sports in a bar with a friend.¹¹ Upon leaving the bar intoxicated, he was arrested for being drunk in public.

On August 8, 2004, Applicant was arrested and charged with being drunk in public. He was found guilty and fined \$92. He and former coworkers went to a picnic earlier, and he had five or six beers.¹² After the picnic, he and his friends continued drinking at a bar to celebrate his birthday.¹³ At the bar, he had "a couple beers and a bunch of shots, which turned out to be about four shots."¹⁴ He was intoxicated when leaving the bar, stopped by the police, and arrested for being drunk in public.¹⁵

In an interview on February 21, 2006, with an authorized investigator for the Department of Defense, Applicant admitted driving while impaired or intoxicated from alcohol on an average of twice yearly from about 1989 to at least the fall of 2005. At the hearing, he testified that this

⁶Tr. 27-28.

⁷Tr. 28-29.

⁸Tr. 32.

⁹Tr. 41.

¹⁰Tr. 45.

¹¹Tr. 45.

¹²Tr. 48.

¹³Tr. 47-48.

¹⁴Tr. 47-48.

¹⁵Tr. 48-49.

information was not accurate. He stated that he drove while impaired or intoxicated from alcohol “maybe once a year from ‘89 to 2005.”¹⁶

Applicant’s girlfriend was pregnant in 2005. He testified that this event made him amend his negative beer-drinking routine:

Since around December of 2005, I’ve undergone a lifestyle change, due to the fact that I thought I was going to be a father, and started thinking about what I’ve done with my life and the mistakes I’ve made, and I made a conscientious effort to abstain from drinking, planning on getting married and having a kid, and realizing that my behavior in the past would be unacceptable to raising a kid.¹⁷

His girlfriend had a miscarriage. To date, Applicant continues to have a beer every now and then.¹⁸ He does not drink to get drunk.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁹ 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.”²⁰ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²¹ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not

¹⁶Tr. 52.

¹⁷Tr. 17.

¹⁸Tr. 24.

¹⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰*Id.* at 527.

²¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²³*Id.*; Directive, ¶ E2.2.2.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.²⁴

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Alcohol consumption is always a security concern because excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. The Government has established a *prima facie* case for disqualification under Guideline G, alcohol consumption.

Between 1988 and 2004, Applicant had five infractions for either driving while intoxicated or being drunk in public. He had his driver's license suspended two different times, once for six months and then for two years. He admits driving while impaired or intoxicated from alcohol at least once a year from 1989 to 2005. Thus, Alcohol Consumption Disqualifying Condition (AC DC) 22(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 abuse or alcohol dependent*) and AC DC 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*) apply.

Various factors can mitigate alcohol consumption security concerns. The alcohol-related arrests that occurred in 1988, 1989, and 1993 have not been mitigated by time because the behavior is not infrequent and it recurred, casting doubt about Applicant's reliability, trustworthiness and judgment. Thus, Alcohol Consumption Mitigating Condition (AC MC) 23(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 judgment*) does not apply. Applicant's alcohol-related arrests in 2000 and 2004, together with the earlier ones, indicate a pattern of excessive drinking by Applicant over a 16-year period. His two DWI charges occurred in 1988 and 1989. Since 1989, there is no evidence in the record that he has had any other DWI charges. Moreover, the arrests in 2000 and 2004 were for being drunk in public. He was intoxicated to the point of being arrested, but he was not driving. In 2005, his girlfriend was pregnant with his child. He had an epiphany and by December 2005 or January 2006,

²⁴Exec. Or. 10865 § 7.

he changed his lifestyle, and drinking excessively was no longer a priority. He modified his drinking behavior, including the quantity consumed. He continues to have a beer every now and then. Although he has taken credible and responsible steps to avoid further alcohol-related incidents, he will, more likely than not, consume alcohol to excess in the future since he has not abstained from drinking alcohol. Moreover, he has driven while impaired or intoxicated from alcohol at least once a year from 1989 to 2005. Thus, AC MC 23(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)*) does not apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.g of the SOR are concluded against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. At 42, Applicant has matured and realized that his earlier behavior with arrests for drinking and driving and being drunk in public are not favorable character traits. He seemed earnest and credible at the hearing regarding his reformed behavior and his consumption of alcohol. He wants to get married, have a family, and have a career that will enable him to provide for his family. He is more interested in a future for himself and his family. He now moderates his alcohol consumption, but I cannot conclude that he will not deviate from his moderate drinking and not become inebriated in the future. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.g:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge