

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant mitigated security concerns over his alcohol-related arrests and criminal conduct based on his abstinence from alcohol since March 2006 and his total compliance with court-ordered education and therapy. He provided persuasive evidence that he has reformed his conduct and demonstrated positive changes in behavior supportive of sobriety. Significantly, he has performed well on the job and has earned accolades from his managers who uniformly recommend him for a security clearance. Clearance is granted.

CASENO: 06-18748.h1

DATE: 06/11/2007

DATE: June 11, 2007

In Re:)	
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)	
-----)	ISCR Case No. 06-18748
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over his alcohol-related arrests and criminal conduct based on his abstinence from alcohol since March 2006 and his total compliance with court-ordered education and therapy. He provided persuasive evidence that he has reformed his conduct and demonstrated positive changes in behavior supportive of sobriety. Significantly, he has performed well on the job and has earned accolades from his managers who uniformly recommend him for a security clearance. 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 September 29, 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 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 on October 20, 2006, where he admitted all of the allegations with explanation in paragraph 1 and in paragraph 2. He requested a hearing.

Department Counsel on January 3, 2007, indicated the case was ready to proceed. The matter was assigned to me on January 8, 2007. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on January 17, 2007, set the matter for February 5, 2007, at a location near where Applicant works and lives. While Applicant did not receive the notice until January 24, 2007, he believed he had sufficient notice to prepare and waived the 15-day notice requirement. (TR 13)

At the hearing the Government offered one exhibit (Exhibit 1) which was admitted into evidence. (TR 19-20) Applicant testified, called one witness, and submitted Exhibits A through C. Government’s counsel indicated no objection, so the documents were admitted into evidence. (TR 20-24) The transcript (TR) was received on February 15, 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, 29 years old, has worked for a defense contractor in State #1 from May 2004 to

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) on September 29, 2006. (TR 8; 14)

present. He completed a Security Clearance Application (SF 86) in May 2004 and is seeking a top secret clearance. He was granted an interim security clearance. Previously, he worked at a private sector company in 2003 until he was terminated. He then returned to a state agency where he had worked earlier and worked for a state contractor from 2003 to 2004. Initially, he had worked for the state agency as an intern in 2002, and later was employed there in 2002 as a web applications programmer. He attended community college from 1997 to 1999 where he received an associate of science degree; he then attended college in State #1 from 2000 to 2002. He received his Bachelor of Science (BS) degree in computer information systems in May 2002. (Exhibit 1; TR 8; 28-37; 49; 68-69) Applicant is not married and has no children. (Exhibit 1; TR 39)

Alcohol and Criminal Conduct

Applicant began to drink in 1994 as a minor and was arrested twice in 1997 when he was 19: his first arrest was for Driving Under the Influence (DUI) in March 1997 and his second was for possessing alcohol as a minor in August 1997 when he accepted a beer at a state fair. He pleaded guilty to both charges and had to pay fines and do community service; he also served six months on probation. The charges were dismissed when he completed the terms of probation. When he was in college his alcohol abuse was at its peak; "since college, it has declined significantly." Nevertheless, he was arrested again in January 2006 after he registered .132 on the Blood Alcohol test and was charged with DUI and Illegal Turn. Initially, he went to a game with his girlfriend and let her drive as he had consumed liquor; he decided to have her drive as he did not want to risk drinking and driving while he had a security clearance. However, later that evening they decided to break up, so he drove home twenty miles even though he was intoxicated. He pleaded guilty to a reduced charge of Driving While Ability Impaired and was sentenced to one year probation, 20 hours of community service and ordered to attend an alcohol awareness program, attend a Mothers Against Drunk Driving (MADD) meeting, and pay a fine of \$528. One of the terms of probation was no alcohol consumption. (Answer; Exhibit C; TR 18; 26-27; 38; 41-60)

At the time of the hearing in February 2007 Applicant was still on probation and still in alcohol treatment which he had entered in May 2006. While he has had no diagnosis as an alcoholic, Applicant signed a document saying that he would abstain from drinking alcohol at the beginning of probation. He has kept that agreement. Also, he has completed community service and all twelve of the required educational sessions. He was unsure how long he would remain on probation as he needed to complete level 2 therapy in group counseling. He has not yet attended a required Alcoholics Anonymous (AA) class. (Exhibit C; TR 18; 26-27; 38; 41-60) His intent is to continue to refrain from alcohol. As he is now dating a woman with a three-year old son, he does not go to bars or clubs; he intends to ask her to marry him. . (TR 63-65)

Under the terms of his current probation he is not allowed to drink and is subject to random urine tests and Breathalyzer tests when he attends class. If he were to fail a test, he could have his probation revoked and serve time in jail. Consequently, he had not had any alcohol since March 2006 when he went on probation. He plans to refrain from drinking even after he completes probation as he values his job. (TR 63-65; 70-71; 73-74) He has fourteen weeks left of therapy, so he could remain on probation for four to six more months to June or August 2007. (TR 73)

In August 2006, his counseling service reported that Applicant had completed all of the requirements for the Level II Education program but his counselor had concerns that he only shared

when prompted. He started Level II therapy treatment thereafter and has completed 16 of the required 34 sessions. In January 2007 the same counselor stated that Applicant was “comfortable” in the group and was open about his previous alcohol use and arrests. She concluded that since he “seems quiet by nature” that participating in therapy is a “struggle.” However, she noted that he does answer questions and provide feedback “when prompted.” (Exhibit C)

References

Applicant’s project manager, who has a security clearance, testified and recommended Applicant for a security clearance as he has an excellent work ethic and makes a key contribution to the corporation. This manager has known Applicant for three years and has overseen his evaluations since March 2006. Last year Applicant got a level “4” rating, the top rating on a four point scale as his work reflected “far exceeds expectations.” This year he is rated as a “3” as he is in a new position and level “4” ratings are limited to 10 to 20 per cent of the employees and are very rare. Applicant plays two key roles in his new assignment. This manager has traveled with Applicant to visit a customer and has never seen him drink alcohol. The manager was aware of Applicant’s past alcohol-related arrests, but understands that Applicant now abstains from drinking any alcohol. He assessed Applicant as having good skills and has demonstrated what this manager is looking for in a long-term employee; he, also, is effective in the current project. (TR 76-88)

Applicant’s first supervisor, who supervised him from May 2004 to March 2006, is aware of Applicant’s 2006 arrest as he reported it immediately. He observed that Applicant generally demonstrated a high regard for security and was always very conscientious on security issues. He recommended Applicant for a security clearance. (Exhibit A; TR 65-66)

His current supervisor since March 2006 recommended him for a security clearance. She also has known him since he began work at the company in 2004 as they worked on a project together. She also knew of the 2006 arrest. She assessed him as “an energetic and talented engineer that always brings a positive attitude to any task that he is assigned.” Overall, she viewed him as “a hard working, conscientious employee.” She endorsed him for a security clearance. (Exhibit B; TR 66)

POLICIES

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

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.

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.

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 Defense have established for issuing a security clearance.

CONCLUSIONS

Alcohol Consumption

The Government established security concerns over Applicant's problem drinking and his alcohol-related arrests in 1997 and 2006. Thus, Applicant's conduct falls within disqualifying conditions (DC) (a)⁴: Alcohol-related incidents, such as driving under the influence. His first two

³Executive Order No. 10865 § 7.

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)

arrests occurred in 1997 before he was working; indeed, he was an underage drinker. He did community service and served probation which he successfully completed, so the charges were dismissed. However, he continued intermittently to drink to excess, even to the point of intoxication. This conduct led to an arrest in 2006 away from work. He made a decision to drive home from his girlfriend's home even though he was intoxicated. Making an illegal turn, he was arrested and charged with DUI. His plea to a reduced charge of Driving while Ability Impaired led to a sentence of one year's probation and required alcohol education and therapy sessions as well as a fine of \$518.

Applicant has never been diagnosed with an alcohol abuse problem. In 2006 he successfully completed the required alcohol education and has complied with the court-ordered condition that he could not drink. He remains in court-ordered therapy and has completed 16 of the required 34 sessions. In January 2007 his counselor stated that Applicant was "comfortable" in the group and was open about his previous alcohol use and arrest. She concluded that since he "seems quiet by nature" that participating in therapy is a "struggle." However, she noted that he does answer questions and provides feedback "when prompted."

Significantly, Applicant promptly reported his 2006 arrest to his supervisors and has retained their confidence: three supervisors endorsed him for a security clearance and praised his work performance and work ethics. One manager observed that Applicant has abstained from any use of alcohol. Consequently, I conclude that Applicant mitigated these alcohol-related security concerns as he provided sufficient evidence to demonstrate that he falls within mitigating conditions.⁵ Under MC (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 an alcohol-awareness class and, equally significant, he established a pattern of abstinence from alcohol for over one year since March 2006. While at the time of the hearing he remained on probation, he has fully complied with the court requirements with respect to a required alcohol-education course after his 2006 arrest and guilty plea. He now is a court-required alcohol therapy program where the counselor reports he is cooperating.

Equally important, his supervisors view his work performance as good. His supervisors

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.

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.

expressed confidence in him, and recommended him for a security clearance. Thus, I conclude he established MC (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. As noted above, he has demonstrated positive changes in behavior and has complied with the court ordered requirement that he demonstrate sobriety by his record of abstinence from alcohol since March 2006.

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.

Criminal Conduct

The government's security concerns under criminal conduct⁶ parallel the concerns over alcohol based on allegation 2.a. and include (a) his multiple lesser offenses and (d) his being currently on probation as he is in the process of completing his required court-ordered therapy treatment.

As discussed above, Applicant provided sufficient evidence of mitigation⁷: under MC (d), Applicant demonstrated evidence of successful rehabilitation; including but not limited to the passage of over a year without recurrence of any criminal activity as there has been no additional alcohol-related arrest. Also he supplied evidence of his abstinence from alcohol which is an indicator he will not re-offend. In addition, there was almost a ten year gap between his youthful arrests and his 2006 incident for which he demonstrated his remorse for this poor judgment in deciding to drive while impaired. Given the substantial progress he has made in completing his alcohol education requirement and his commitment to completing the alcohol therapy requirement, I feel confident that his commitment to being alcohol free will lead to his successfully completing his probation requirements. He demonstrated his willingness to change his life style in order to exhibit his renewed commitment to responsibility and trustworthiness. Significantly, he persuasively established an excellent employment record with all of his three supervisors endorsing him for a security clearance as discussed above.

Thus, after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

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 individuals 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;

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
Paragraph 2. Guideline J:	FOR APPLICANT
Subparagraph 2.a.:	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