

KEYWORD: Alcohol

DIGEST: Applicant is 50 years old and employed as a supervisory machinist by a defense contractor. Although he has a history of alcohol-related arrests and has attended court-ordered alcohol treatment, he has continued to consume alcohol, at times to intoxication, from approximately 1973 to at least February 2006. Applicant's failure to mitigate his excessive alcohol consumption raises security concerns. Clearance is denied.

CASENO: 06-18779.h1

DATE: 04/11/2007

DATE: April 11, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-18779
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT
James F. Duffy, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is 50 years old and employed as a supervisory machinist by a defense contractor. Although he has a history of alcohol-related arrests and has attended court-ordered alcohol treatment, he has continued to consume alcohol, at times to intoxication, from approximately 1973 to at least February 2006. Applicant's failure to mitigate his excessive alcohol consumption raises security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 16, 2006, under the applicable Executive Order¹ and Department of Defense Directive,² DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under revised Adjudicative Guideline G (Alcohol Consumption), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable revised Adjudicative Guideline. Applicant executed a written response to the SOR on November 2, 2006. He requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 27, 2006. The FORM contained documents identified as Items 1 through 6. On December 29, 2006, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on January 22, 2007. He did not submit any information within 30 days after receiving a copy of the FORM. On March 28, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct under Guideline G, Alcohol Consumption. In his answer to the SOR, Applicant admitted all six allegations. His admissions are incorporated as findings of fact.

Applicant is 50 years old and employed as a supervisory machinist by a defense contractor. He was married for the first time in 1977 and divorced in 1979. He married again in 1987 and remains married to his second wife. He is the father of an adult child. (Item 5.)

Applicant admits consuming alcohol, at times to excess and to the point of intoxication, from approximately 1973 to at least February 2006. Between 1983 and 1987, he was arrested three times and charged with Driving Under the Influence (DUI). After each of those arrests, he attended an Alcohol Safety Action Program (ASAP). (Item 1; Item 4.)

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

In June 2003, Applicant was again arrested and charged with Driving While Intoxicated. He was given first offender status. He pled guilty to the charge and was fined approximately \$250. He was sentenced to 30 days in jail, sentence suspended,. His driver's license was suspended for 12 months, and he was ordered to attend ASAP. (Item 1; Item 6.)

Applicant completed and signed a security clearance application (SF-86) on December 3, 2004. Question 30 on the SF-86 asks: "Your Use of Alcohol. In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" Applicant answered "yes" to Question 30 and listed ASAP treatment from October to December 2003. In his answer to the SOR, he acknowledged he received professional counseling in 2003 for his alcohol consumption in a program set up through his employer. Nothing in the record sustains a finding that Applicant was diagnosed as alcohol dependent or an alcohol abuser.³ While Applicant attended Alcoholics Anonymous (AA) in the past, he no longer does so. However, he retains contact information for AA in case his future alcohol consumption should get out of control. Applicant prefers that people at his workplace not know about his alcohol-related arrests and his alcohol consumption. (Item 1; Item 6.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 clearance.

CONCLUSIONS

Alcohol Consumption

³Accordingly, I find no merit in the Government's assertion that DC 22 (f) applies. (FORM, Argument at 3.)

Applicant's admitted consumption of alcohol to excess and at times to intoxication spans a period of approximately 33 years. Excessive alcohol consumption raises security concerns because it often leads to the exercise of questionable judgment or the failure to control impulses, thus raising questions about an individual's reliability and trustworthiness. Guideline G 21.

The record evidence and Applicant's admissions show he was arrested three times between 1983 and 1987 and charged with driving under the influence of alcohol. After each arrest he was directed to enroll in an alcohol safety awareness program. In 2003, he was arrested for and pled guilty to driving under the influence of alcohol again. He was fined, his driver's license was suspended for one year, and he was again ordered to attend ASAP. Applicant subsequently received counseling for his alcohol consumption in an employee assistance program sponsored by his employer. In his response to the SOR, Applicant admitted a connection with AA. However, he did not participate in the program but kept a contact number to call if his drinking were to get out of control. He did not want those who worked with him to know about his alcohol consumption and his alcohol-related arrests.

The alcohol-related conduct alleged in the SOR and admitted by Applicant raises concerns under Disqualifying Condition (DC) 22(a) and DC 22(c).⁴ His four alcohol arrests away from work raise concerns under DC 22(a). His admitted habitual consumption of alcohol to excess and sometimes to the point of intoxication for more than 30 years raises concerns under DC 22 (c).

Applicant provided no evidence to rebut or mitigate the allegations of disqualifying conduct in the SOR. After a review of the Guideline G mitigating conditions, I find that none apply to the facts of this case.

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, an administrative judge must thoroughly consider and review of all available reliable information about the appellant, past and present, favorable and unfavorable, to arrive at a balanced decision. DoD Regulation 5200.2-R, Appendix 8, describes this process of scrutiny and evaluation as "the whole person concept." The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant began consuming alcohol to excess when he was approximately seventeen years old. He has continued his excessive consumption of alcohol for over 30 years. He has received alcohol counseling four times after arrests for driving under the influence, and after the counseling, he returned to the excessive use of alcohol, suggesting that rehabilitation was not achieved. His concern that his

⁴DC 22(a) reads: "alcohol-related incidents away from work, such as driving while under the influence, 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." DC 22(c) reads: "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."

use of alcohol and his alcohol-related arrests should not be made known to the people he works with may suggest he has not acknowledged his problems with alcohol.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA’s Appeal Board states that an administrative judge, in deciding an Applicant’s security worthiness, “must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*.” I have considered the record as a whole and have evaluated Applicant’s conduct under the whole person concept of the Directive. I conclude that Applicant has neither rebutted nor mitigated the security concerns raised by the allegations in the SOR, and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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
- Subparagraph 1.e.: Against Applicant
- Subparagraph 1.f.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Joan Caton Anthony
Administrative Judge