

KEYWORD: Alcohol; Drugs

DIGEST: Applicant is a 60-year-old employee of a defense contractor. Applicant received alcohol rehabilitation treatment in 1996. He remained sober until 2004, when he had a relapse and returned to drinking. Applicant also started abusing prescription pain medication. In 2004 to 2005, Applicant received substance abuse rehabilitation treatment on at least four occasions. His diagnosis was alcohol dependence and opiate abuse. He returned to drinking after every program, and was arrested and convicted in January 2006, after he crashed his car while intoxicated. Applicant has been sober since January 2006. After all of Applicant's relapses, he has not established a sufficient record of sobriety to mitigate the alcohol and drug concerns. Clearance is denied.

CASENO: 06-19237.h1

DATE: 05/22/2007

DATE: May 22, 2007

In re:)	
)	
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-----)	ISCR Case No. 06-19237
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 60-year-old employee of a defense contractor. Applicant received alcohol rehabilitation treatment in 1996. He remained sober until 2004, when he had a relapse and returned to drinking. Applicant also started abusing prescription pain medication. In 2004 to 2005, Applicant received substance abuse rehabilitation treatment on at least four occasions. His diagnosis was alcohol dependence and opiate abuse. He returned to drinking after every program, and was arrested and convicted in January 2006, after he crashed his car while intoxicated. Applicant has been sober since January 2006. After all of Applicant's relapses, he has not established a sufficient record of sobriety to mitigate the alcohol and drug 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 December 28, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline H (Drug Involvement) 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. Applicant answered the SOR in writing on January 25, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 29, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on April 9, 2007, and responded on April 24, 2007. The case was assigned to me on May 2, 2007.

FINDINGS OF FACT

Applicant is a 60-year-old employee of a defense contractor. He has worked for the same employer for more than 30 years and has held a security clearance for the same period. He married in 1994. He has an adult daughter and a teenage stepdaughter. Applicant served in the U.S. Navy from 1966 to 1972, and was honorably discharged as a second class petty officer (E-5). He has an associate's degree.²

Applicant was admitted as an inpatient to a health center in December 1996, for alcohol detoxification. He completed an outpatient program upon his release. Applicant remained sober from December 1996, until about January 2004, when he started drinking again.³

Applicant had surgery in about 2004. He was prescribed Vicodin for the pain. Vicodin is the brand name of a prescription drug that is a combination of acetaminophen and hydrocodone. Acetaminophen is an over-the-counter analgesic, but hydrocodone is an opiate and a Schedule III controlled substance.⁴ Applicant also took his wife's Vicodin.⁵ It is illegal to take someone else's prescription drugs which contain a controlled substance.

Applicant was admitted to the intensive care unit of a hospital in about July 2004, after he drank denatured isopropyl alcohol. He was treated and transferred to another hospital for alcohol detoxification. He told the hospital that he had a relapse about four months prior to his admission

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Item 2.

³Items 4, 6-8.

⁴www.usdoj.gov/dea/pubs/abuse; 21 CFR 1308.13.

⁵Items 4, 6-8.

and that his opiate abuse led him back to alcohol because he ran out of Vicodin. He admitted he drank denatured alcohol in the past, but this time he just kept drinking it even though it made him sick. His medical records indicate Applicant admitted intermittent drinking and abstaining since January 2004. His discharge summary reflects a diagnosis by a medical doctor (M.D.) of alcohol dependence and opiate abuse. It further states that Applicant admitted that he had been drinking for the previous couple of weeks. Applicant was discharged and placed in a chemical dependency outpatient program.⁶

Applicant remained sober for a time. He had a relapse in January 2005, and drank alcohol. Applicant was treated at a hospital in January 2005, for chemical dependence. He was admitted to a religious-based substance abuse treatment facility in about May 2005. He was discharged in about June 2005.⁷

Applicant was admitted to a hospital for alcohol detoxification in about August 2005, after he again drank denatured isopropyl alcohol. His medical records show Applicant was drinking almost a pint of vodka a day. He was also taking his wife's Vicodin, and replacing it with Tylenol. Initially there was some indication of opiate dependence, but the final diagnosis by an M.D., was alcohol dependence and opiate abuse.⁸

Applicant was arrested on January 2, 2006, and charged with operating a motor vehicle while intoxicated (OWI), operating with a blood alcohol content (BAC) more than .08% and less than .15%, and speeding. Applicant drove his car into a ditch. His BAC was .13%. Applicant pled guilty on January 3, 2006, to OWI and speeding. The remaining charge was dismissed. Applicant was sentenced to jail for one year, with all but eight days suspended, community service, a fine and costs, and he was required to attend a drug and alcohol counseling program. Applicant successfully completed the court ordered counseling program on December 6, 2006.⁹

In his response to the SOR, Applicant admitted to “a one-day relapse in Jan of 2004,” a “single day relapse in July 2004 after drinking denatured ethyl alcohol,” to “drinking a small amount of isopropyl alcohol in Aug of [200]5 . . . [t]he opiate indications were from painkillers at home prescribed for eye surgery and from other pain episodes,” and “drinking on Jan. 2, 2006.”¹⁰

Applicant has remained sober for more than 16 months. He completed a relapse prevention counseling program from December 2006 to March 2007. His addiction counselor reported Applicant “was discharged successfully with a good prognosis of recovery if he continues to use the

⁶Items 4, 6-8.

⁷Items 4, 6, 7.

⁸Items 4, 6, 7.

⁹Items 4-6.

¹⁰Item 4.

tools he gained and stay connected to his sober support system.” Applicant participates in Alcoholics Anonymous (AA), has a sponsor, and receives support from his church.¹¹

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹² 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.”¹³ 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.”¹⁴ 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.¹⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁶ 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 met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁷

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 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

¹¹Item 4; Applicant’s response to FORM.

¹²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³*Id.* at 527.

¹⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶*Id.*; Directive, ¶ E2.2.2.

¹⁷Exec. Or. 10865 § 7.

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline G: Alcohol Consumption

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 potential Alcohol Consumption Disqualifying Conditions (AC DC) in this case are 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 abuser or alcohol dependent*), 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*), AC DC 22(d) (*diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), and AC DC 22(f) (*relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*).

Applicant received alcohol rehabilitation treatment in 1996. He remained sober for a number of years, and then had a series of relapses, followed by hospitalization, treatment and additional relapses. Applicant was hospitalized in 2004, and again in 2005, after he drank denatured alcohol. He attended alcohol rehabilitation programs on at least four occasions in 2004 and 2005. He was diagnosed by M.D.'s as alcohol dependent in 2004 and 2005. He was convicted of OWI in January 2006, after he crashed his car while intoxicated. All of the above listed Alcohol Consumption Disqualifying Conditions are established. I do not find sufficient evidence for a finding that Applicant was admitted for treatment in January 2004. SOR ¶ 1.c is concluded in Applicant's favor.

There are three potential Alcohol Consumption Mitigating Conditions (AC DC) in this case, AC DC 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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), AC DC 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)*), and AC DC 23(d) (*the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, 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*).

Applicant has remained sober for more than 16 months. He attends AA and has a sponsor. He completed a relapse prevention counseling program from December 2006 to March 2007, and received a good prognosis of recovery from his addiction counselor if he continues to use the tools he gained and stays connected to his sober support system. Because of Applicant's repeated history

of treatment and relapses, I find he has not been sober long enough to establish any of the alcohol mitigating conditions.

Guideline H: Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Applicant abused Vicodin and received a diagnosis by an M.D., of opiate abuse. This raises Drug Involvement Disqualifying Conditions (DI DC) ¶ 25(a) (*any drug abuse*); DI DC 22(d) (*diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*), and DI DC 25(e) (*evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*), and DI DC 25(g) (*any illegal drug use after being granted a security clearance*).

The Drug Involvement Mitigating Conditions (DI MC) to consider in Applicant's case are DI MC 26(a) (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), DI MC 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*); DI MC 26(c) (*abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended*), and DI MC 26(d) (*satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse and a favorable prognosis by a duly qualified medical professional*).

Applicant's Vicodin use came after a doctor prescribed it for pain. He took his Vicodin, but also took his wife's Vicodin without a prescription, and without her knowledge. Applicant has not established that the Vicodin was prescribed for a "severe or prolonged illness." On several occasions, Applicant received treatment for his opiate abuse and then relapsed and used again. Applicant did not submit sufficient information to establish any of the Drug Involvement Mitigating Conditions.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered every finding of fact and conclusion discussed above.

Applicant received alcohol rehabilitation treatment in 1996, and remained sober until about 2004. Between January 2004 and January 2006, Applicant had a number of relapses. He received

treatment on at least four occasions, and returned to drinking after each program. Applicant was hospitalized on two occasions after he drank denatured alcohol. He was also abusing prescription pain medication. He took his own Vicodin and stole his wife's medication. Vicodin contains hydrocodone, an opiate and a Schedule III controlled substance. Applicant committed a federal crime when he took his wife's medication. His last relapse culminated in his crashing his car while intoxicated. Applicant mentions in his response to the SOR, a series of one-day relapses. The medical records show Applicant drinking on a number of occasions, over a period of at least several weeks, if not months. Applicant was either downplaying his drinking or in denial, either of which is a cause of concern.

I also considered Applicant's military service. He has a long and stable employment record, and has held a security clearance for many years.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his alcohol consumption and drug involvement.

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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Paragraph 2. Guideline H: AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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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.

Edward W. Loughran
Administrative Judge