

KEYWORD: Alcohol

DIGEST: Applicant is an employee of a defense contractor. Applicant had three off-duty, alcohol-related incidents, specifically: driving under the influence of alcohol in 1997; driving under the influence of alcohol in 2002; and negligent driving after consuming alcohol in 2003. She completed a court-ordered alcohol treatment program, but she did not present any evidence of a favorable prognosis or an established pattern of responsible drinking. Considering all the evidence, I conclude Applicant has not met her burden of demonstrating that it is clearly consistent with the national interest to grant her a security clearance. Clearance is denied.

CASENO: 06-19339.h1

DATE: 08/29/2007

DATE: August 28, 2007

In re:)	
)	
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-----)	ISCR Case No. 06-19339
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL J. BRESLIN**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq. Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an employee of a defense contractor. Applicant had three off-duty, alcohol-related incidents, specifically: driving under the influence of alcohol in 1997; driving under the influence of alcohol in 2002; and negligent driving after consuming alcohol in 2003. She completed a court-ordered alcohol treatment program, but she did not present any evidence of a favorable prognosis or an established pattern of responsible drinking. Considering all the evidence, I conclude Applicant has not met her burden of demonstrating that it is clearly consistent with the national interest to grant her a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On November 18, 2004, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (the "Directive"), as amended; and the new adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. On February 28, 2007, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under the Directive, Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on April 9, 2007. She elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated May 22, 2007. On May 24, 2007, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On June 14, 2007, Applicant received the FORM. She did not submit any additional materials within the specified 30-day period. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant denied the allegation in ¶ 1.a, and admitted the remaining allegations in the SOR. (Item 3.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 55 years old. (Item 4 at 1.) She is a janitor for a defense contractor. (*Id.* at 2.) She has two adult children, and is currently separated from her second husband. (*Id.* at 3-4.)

Police officers arrested Applicant in August 1997 and charged her with Driving Under the Influence. (Item 3 at 1; Item 5 at 3.) She pleaded guilty to the charge. The court sentenced her to 12 months probation and ordered her to attend Alcoholics Anonymous (AA) classes. (Item 3 at 1.) Applicant attended the required treatment classes. (Item 5 at 2.)

On August 24, 2002, local police officers arrested Applicant and charged her with operating a motor vehicle with a blood-alcohol content more than .08%, and driving, or attempting to drive, while under the influence of alcohol. (Item 3 at 1-2.) The court found her guilty of the offense. Her sentence included 18 months probation, and she was required to install an interlock device on her vehicle for 12 months. (Item 3 at 2.) Complying with the court-order, Applicant began an intensive, 36-week, alcohol counseling program in about September 2002. (Item 3 at 2; Item 5 at 2.)

In early 2003, authorities arrested her for Driving Under the Influence of Alcohol. (*Id.*) She had consumed alcohol before driving that day. The authorities later charged her with the lesser offense of Negligent Driving. (*Id.*) The case was resolved when the Motor Vehicle Administration ordered her to install an interlock device for an additional six months and to continue alcohol counseling. (*Id.*)

She completed the court-ordered program in about June 2003. Applicant did not provide evidence of successful rehabilitation, or a favorable prognosis by a treating health-care provider.

Applicant admits that she continues to consume alcohol on a monthly basis, that she drinks to intoxication occasionally, and that she last drank to the point of intoxication in November 2006. (Item 5 at 1.) She no longer attends meetings of AA or a similar organization, nor does she take medication to help her abstain from alcohol. (*Id.*)

POLICIES

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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” (AG, ¶ 2.) An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 extent to which participation is voluntary; (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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully 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

Paragraph 21 of the new adjudicative guidelines explains the security concerns relating to 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.” (AG, ¶ 21.)

The adjudicative guidelines set out some potentially disqualifying conditions that could raise security concerns. Under ¶ 22(a), it may be disqualifying where the evidence reveals “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” The evidence reveals three alcohol-related incidents away from work: driving under the influence of alcohol in 1997; driving under the influence of alcohol in 2002; and negligent driving after consuming alcohol in 2003. The available evidence raises this potentially disqualifying condition.

Paragraph 22(c) may arise where there is evidence of “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.” The available evidence indicates Applicant’s excessive use of alcohol is sporadic—not habitual. Similarly, the evidence does not establish that her alcohol intake rises to the level of “binge consumption.” I conclude the evidence does not raise this potentially disqualifying condition.

The guidelines also set out conditions that could mitigate security concerns arising because of alcohol consumption. Paragraph 23(a) is a factor for consideration where,

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.

The available evidence shows alcohol consumption excessive enough to generate security concerns between about 1997 and 2003—a period of about six years. By comparison, it has only been about four years since her last off-duty alcohol related incident, and less than one year since her last reported incident of intoxication. I am not persuaded that a sufficient amount of time has passed to raise this potentially mitigating factor. Furthermore, Applicant had off-duty alcohol-related incidents on several occasions over several years. I conclude the behavior is not “infrequent,” nor has Applicant presented any evidence indicating the behavior is unlikely to recur. I conclude this potentially mitigating condition does not apply.

Under ¶23(b), it may be mitigating where “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).” Applicant admitted the specific allegations regarding off-duty, alcohol-related incidents, but she did not address the larger question of whether she is alcohol dependent or an alcohol abuser. She indicated she attended the 36-week alcohol treatment program, but did not provide evidence indicating she has established a pattern of responsible drinking. The available evidence does not raise this potentially mitigating condition.

Paragraph 23(d) provides that security concerns may be mitigated where:

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.

As noted above, Applicant completed the court-ordered treatment program, but she did not provide proof that she established a pattern of modified consumption or that she received a favorable prognosis from a qualified care provider. This potentially mitigating condition is not a factor for consideration.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the “whole person” concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of national security. I considered the nature, extent, and seriousness of the conduct. Applicant's admissions reveal a pattern of excessive alcohol consumption, covering a period of about six years

when she was between about 46 and 52 years old. Apparently she completed an alcohol treatment program, but she did not present any evidence of a favorable prognosis or an established pattern of responsible drinking. For this reason, I cannot assess the extent of her rehabilitation or another pertinent behavioral change, or determine the likelihood of continuation or recurrence. Considering all the evidence, I conclude Applicant has not met her burden of demonstrating that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

Michael J. Breslin
Administrative Judge