

SYNOPSIS

The Applicant's last alcohol related incident, having 08% or more by weight of alcohol in his blood while driving a motor vehicle (DUI), occurred nearly three years ago, in May of 2004. He now drinks alcohol only about "once a month," and never to the point of intoxication. Furthermore, a certified Substance Abuse Counselor avers that the Applicant is not now "or has ever been alcohol dependent." He also has the unqualified support of his supervisors and colleagues. This last incident, plus a September 2001 alcohol related incident involving Public Intoxication, "does not cast doubt on the . . . [Applicant's] current reliability, trustworthiness, or good judgement." Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On October 16, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on December 11, 2006.

The case was received by the undersigned on February 2, 2007. A notice of hearing was issued on February 15, 2007, and the case was heard on March 13, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on March 23, 2007. The issues raised here are whether the Applicant's past Alcohol Consumption militates against the granting of a security clearance. [The Applicant admits subparagraphs 1.b. and 1.c.; but denies any excessive alcohol consumption subsequent to his May 2004 DUI arrest, which is alleged in subparagraph 1.a.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 36 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline G - Alcohol Consumption

1.a. The Applicant started to consume alcohol in about 1987, his senior year in high school (TR at page 19 lines 19~21). This underage drinking continued through college, when he would drink "once or twice a week, on weekends or maybe at a party" (TR at page 20 lines 15~20). The Applicant's "drinking habits slowed down in the 90's. Right after college, . . . [he] got married and

. . . was working a full-time job” (TR at page 21 lines 14~22). He drank alcohol “[m]aybe twice a month” (*Id*). He drank to the point of intoxication about “once a year” (TR at page 22 lines 11~16).

1.b. In September of 2001, the Applicant was arrested and subsequently charged with Public Intoxication (Government Exhibit (GX) 1 at page 7). He went to a concert, had a few beers, he and his “group . . . started getting fairly rowdy,” which resulted in his arrest (TR at page 23 line 14 to page 24 line 4). The Applicant was fined, and placed on probation for six months (TR at page 24 line 20 to page 25 line 7).

1.c. In May of 2004, the Applicant was arrested and subsequently pled Nolo Contendere to a DUI (GX 2). He was at a “Memorial Day weekend . . . party with co-workers,” and had too many “rum and cokes” to drink (TR at page 25 line 19 to page 26 line 20). He was pulled over by the “Highway Patrol” (*Id*). He was fined about \$1,400, ordered to attend six Alcoholics Anonymous meetings, and placed on probation for 36 months (GX 2). As a result of this DUI incident, the Applicant changed his lifestyle (TR at page 27 lines 19~24). He no longer socializes with those friends, and he only consumes alcohol about “once a month,” and then not to the point of intoxication (TR at page 27 line 19 to page 33 line 5).

Mitigation

A certified Substance Abuse Counselor avers that the Applicant is not now “or has ever been alcohol dependent” (Applicant’s Exhibit (AppX) G).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in Enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline G (Alcohol Consumption) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's admitted Alcohol Consumption is evidenced by two alcohol related convictions, one in 2001 for Public Intoxication, and the last one for DUI in May of 2004. The first disqualifying condition under Alcohol Consumption is therefore applicable he has had "alcohol-related incidents away from work, such as driving while under the influence, . . . disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." However, this is countered the first mitigating condition as "so much time has passed [nearly three years] . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Here, his supervisors and colleagues speak most highly of his character, credibility and trustworthiness (AppXs A~F). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable Decision under the "whole person concept." Mitigation is shown. Guideline G is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus met the mitigating conditions of Guideline G, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline G.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:

FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola
Administrative Judge