

KEYWORD: Alcohol; Drugs

DIGEST: Applicant is a 25-year-old employee of a defense contractor who has a history of illegal drug use as recent as 2005. He has several alcohol related arrests and continues to consume alcohol. He has not received any counseling or treatment for drugs or alcohol. He failed to mitigate the security concerns raised under drug involvement and alcohol consumption guidelines. Applicant's eligibility for a security clearance is denied.

CASENO: 06-19958.h1

DATE: 07/19/2007

DATE: July 19, 2007

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| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 06-19958 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 25-year-old employee of a defense contractor who has a history of illegal drug use as recent as 2005. He has several alcohol related arrests and continues to consume alcohol. He has not received any counseling or treatment for drugs or alcohol. He failed to mitigate the security concerns raised under drug involvement and alcohol consumption guidelines. Applicant's eligibility for a security clearance is denied.

## STATEMENT OF THE CASE

On November 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (Drug Involvement) and Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On January 11, 2007, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on April 18, 2007. Applicant received a complete file of relevant material (FORM) on April 24, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.<sup>2</sup> The case was assigned to me on June 28, 2007. Applicant did not submit additional information.

## FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline H and Guideline G.<sup>3</sup> The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 25-year-old employee of a defense contractor. After graduation from high school, he attended college until 2005. He has worked for his current employer since April 2005. Applicant is not married.<sup>4</sup> He completed a security clearance (SF 86) application on June 16, 2005.<sup>5</sup>

During his college years, Applicant consumed alcohol to the point of intoxication numerous times between 1998 and 2006. He was hospitalized for alcohol poisoning in 1999. He was charged with Underage Possession of Alcohol on September 8, 2000. He was fined \$130 and his driver's license was suspended for one month.<sup>6</sup>

On April 7, 2002, Applicant was arrested, and charged with Appearing in Public Intoxicated and Obstructing Justice. Applicant pleaded no contest to a charge of Appearing in Public Intoxicated

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup>The government submitted five items in support of its contentions.

<sup>3</sup>Item 3 (Applicant's Answer to SOR, dated January 11, 2007).

<sup>4</sup>Item 1 (Applicant's Security Clearance application, dated June 16, 2005).

<sup>5</sup>*Id.*

<sup>6</sup>Item 3 *supra* at note 3.

and Obstructing Justice. He paid \$80 in fines and was sentenced to 100 hours of community service and placed on probation for one year.<sup>7</sup>

On August 23, 2002, Applicant was charged with Underage Possession of Alcohol. He pled no contest and his case was under advisement for 12 months. He was sentenced to 50 hours of community service and ordered to donate \$500 to a charity.<sup>8</sup>

Although he has never been arrested for drug use, he admits using marijuana from 1998 until 2004. During that time, he purchased and sold marijuana. Applicant used ecstasy in 1999-2000. In 2000-2001, Applicant used and purchased acid and mushrooms. From November 2003 until at least February 2005, Applicant used cocaine.

From 2002 until 2004, Applicant purchased and used two different prescription drugs illegally. Applicant admitted that he would like to try absinthe if given the opportunity. He admits that the alcohol and drugs have impacted his work and family life. He also acknowledged that his work performance was adversely impacted after graduating from college due to alcohol consumption.

Applicant enjoys his current position. He has been out of college for 18 months. He maintains that he has not driven under the influence of alcohol for at least eight months. He also maintains that he has not used drugs for at least 18 months. He continues to consume alcohol but in a controlled environment.<sup>9</sup>

## 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.”<sup>10</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

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<sup>7</sup>Item 4 (Federal Bureau of Investigation Record, obtained October 11, 2005).

<sup>8</sup>*Id.*

<sup>9</sup>Item 3 *supra* at note 3.

<sup>10</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

“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.”<sup>11</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>12</sup> 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 voluntariness of participation; (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.<sup>13</sup>

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.<sup>14</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>15</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>16</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>17</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G and Guideline H of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

**Guideline G (Alcohol Consumption) The Concern:** *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.*

Applicant has several arrests for alcohol-related incidents. He consumed alcohol to the point of intoxication numerous times between 1998 and 2006. Applicant was hospitalized for alcohol poisoning. Thus, Alcohol Consumption Disqualifying Condition (AC DC) AG ¶ 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*

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<sup>11</sup> Directive, ¶ E2.2.1.

<sup>12</sup> Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

<sup>13</sup> *Id.*

<sup>14</sup> Directive, ¶ E3.1.14.

<sup>15</sup> Directive, ¶ E3.1.15.

<sup>16</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>17</sup> Directive, ¶ E2.2.2.

*diagnosed as an alcohol abuser or alcohol dependent; AC DC AG ¶ 22 (b) alcohol-related incident 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; AC DC AG ¶ 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, apply.*

After considering the Alcohol Consumption Mitigating Conditions AC MC AG ¶ 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 or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; AC MC AG ¶ 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); AC DC AG ¶ 23 (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; AC DC AG ¶ 23 (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare. . . I find that none of them apply.*

Applicant has not received counseling or any treatment for his alcohol use. He continues to use alcohol. He drank for more than eight years to the point of intoxication.

Applicant has not sustained his burden of proof in this case for Guideline G. Granted he was in college when this happened, but since he graduated from college he engaged in the same behavior. Since he has not made significant behavioral changes and still consumes alcohol, the likelihood of this conduct recurring is high. This places him in a position where there is a possibility that he could divulge classified information.

**Guideline H (Drug Involvement) The Concern:** *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 judgement and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.*<sup>18</sup>

In this matter, the government provided substantial evidence that Applicant used and sold marijuana, cocaine and other drugs for a period of more than eight years until 2005. He admits he would use absinthe in the future if provided the opportunity. Consequently, Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(a) *any drug abuse*, and DI DC ¶ 25(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Drug Involvement Mitigating Condition (DI MC) AG ¶26 (a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.* It does not apply because he was using cocaine until 2005 and smoking marijuana in 2004.

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<sup>18</sup>AG ¶ 24.



In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a security clearance. Clearance is denied.

Noreen A. Lynch  
Administrative Judge