



Department of Defense Directive 5220.6, dated January 2, 1992, as revised by Adjudicative Guidelines (AG) made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant. The SOR indicated that based on excessive alcohol consumption (Guideline G), 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On June 21, 2007, Applicant provided his response to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on August 6, 2007. On the same day, this case was set for hearing on September 12, 2007. The Government submitted five exhibits. In addition to his testimony, one witness provided testimony on Applicant's behalf. Applicant submitted one exhibit.<sup>1</sup> The transcript (Tr.) was received on September 26, 2007.

### **FINDINGS OF FACT**

The SOR has nine allegations under the alcohol consumption guideline. Applicant admitted all factual allegations.

Applicant is 42 years old. He has been married for 23 years, and has two teenage children. From 1983 to March 2004, Applicant served in the United States Air Force (USAF) in aircraft maintenance. Since April 2004, Applicant has been employed in a similar position with a defense contractor as an aircraft helper. He seeks a secret level clearance.

Subparagraphs 1.a. through 1.e. (February 1995 to November 2003) reveal incidents where Applicant used alcohol and then was involved in traffic infractions or disorderly conduct. During the period, Applicant's drinking was primarily on the weekend when "I would normally stay up all – most of the day on a Friday until early hours of the morning drinking and then sleeping the rest of the day. Then I would feel guilty because the whole weekend was gone." (Tr. 44) On February 20, 1995, Applicant was 30 or 31 years of age, and in the USAF. While studying for an exam that would qualify him for promotion, he talked himself into drinking excessively, and recalled being involved in an altercation at the non-commissioned officer's club. He was charged with disorderly conduct and breach of the peace. (subparagraph 1.a.) Applicant believes he lost rank as a result of this incident rather than the incident outlined in subparagraph 1.c.

Subparagraphs 1.b. and 1.c. reference the same alcohol-related incident. On May 10, 2000, Applicant was arrested and charged with driving while under the influence of alcohol (DUI, subparagraph 1.b.). He pled no contest to the charge and was fined \$816.00, sentenced to six months probation, 50 hours of community service, and his license was suspended for 6 months. As a result of the May 10, 2000 DUI, Applicant received an Article 15, and was required to attend an alcohol and drug program for 6 months. (Subparagraph 1.c.) While Applicant did not believe he was

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<sup>1</sup> Applicant's character exhibit (AE A, one page) was returned to him at the hearing so he could make copies for all parties. On September 13, 2007, Applicant's witness transmitted the two page exhibit (one page cover statement identifying exhibit, and one page character statement) to Department Counsel by facsimile. The entire exhibit (three pages in length), including the cover letter from Department Counsel, is received in evidence.

intoxicated enough to be arrested for DUI, he did think he was over the limit.<sup>2</sup>

After consuming an unknown amount of alcohol on November 19, 2003 (subparagraph 1.e.), Applicant was backing his car out of a parking lot and recalled running over an object that he thought was the curb. After pleading no contest leaving the scene of an accident involving property (subparagraph 1.d.), he was fined.

Following his conviction for leaving the scene of an accident, Applicant advised his chain of command in November 2003 that he had a alcohol problem. After receiving a diagnosis of alcohol dependence, he enrolled in a 30-day inpatient treatment program (subparagraph 1.f.) that he successfully completed. Following his treatment, he testified he participated in AA in 2004 and 2005 about three or four times a week. (Tr. 32-33) He testified he started relapsing after he stopped attending AA and his discharge (June 2004) from the military, with his first relapse occurring a few months after his discharge. (Tr. 34). Applicant has had about one relapse every six months with his last relapse occurring in September 2006 (subparagraph 1.h.) in the company of his brother. (Tr. 35)

In September 2006, Applicant wanted stop drinking alcohol as his brother had done three years ago. So he traveled to his brother's home to learn about how to reach lasting sobriety. Though his brother was drinking alcohol along with Applicant during their meeting, the brother was trying to persuade Applicant to stop drinking. At his brother's recommendation, Applicant attended a church service. Applicant also received a large amount of antabuse from his brother that he has been taking regularly. (Tr. 37)<sup>3</sup> He indicates he has missed only one church service since September 2006. His wife currently attends church with him. At his wife's urging and because of stress associated with the security clearance investigation, Applicant resumed AA approximately three months ago. (Tr. 36) He intends to continue with his church participation, and to maintain lifetime involvement with AA. Applicant does more work in the yard. In addition, he jogs and lifts weights on a regular basis to become healthier.

DOHA requested Applicant obtain a substance evaluation. On February 5, 2007, Applicant was interviewed by a licensed mental health counselor and certified addictions professional. (subparagraph 1.i.) In obtaining his drinking history, she learned his last alcohol consumption was in September 2006, as he had informed DOHA. (GE 2) She stated that based on an interview in which she learned he was not in any sort of support group, "this concerns me as [a] person addicted to alcohol never recovers but is said to be in "recovery." Most need some type of support group or counseling to maintain abstinence." In view of Applicant's history of alcohol abuse, the counselor recommended outpatient counseling to address abstinence issues such as relapse, triggers, and updated research. (AE A)

The program manager for Applicant's employer testified he met Applicant in 2001 when Applicant was in the USAF working as an aircraft technician. The manager recalled Applicant has

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<sup>2</sup> Having recalled the examination of Applicant on this issue, I find Applicant was referring to the legal limit of alcohol in his blood stream.

<sup>3</sup> Applicant realizes that the smart decision would be to obtain a medical diagnosis before taking any more antabuse medication, though he thought the counselor who furnished the February 2007 evaluation, would provide him with a prescription for the antabuse. (Tr. 37,40)

been an employee of their employer since April 2004. In the period, the manager has found Applicant to be an outstanding aircraft helper, demonstrating professionalism in all elements of his job. In the summer of 2007, the manager and Applicant were socializing with a large group. The manager recalled Applicant was drinking alcohol, but did not appear to have an alcohol-related problem that evening. (Tr. 56)

Having carefully evaluated the evidence as a whole, including the demeanor and conduct of Applicant, I find Applicant's testimony to be credible. Though he understands the negative implications of using antabuse without a prescription, he intends to resolve this problem swiftly by seeking the appropriate medical help so the drug will be available for him should a doctor determine a continuing need.

### **POLICIES**

The AG contains disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Alcohol Consumption (AC)**

Excessive alcohol consumption inevitably leads to questionable judgment and may also raise doubt about a person's reliability and trustworthiness.

### **CONCLUSIONS**

Excessive alcohol consumption generally leads to acts of poor judgment that establishes doubt concerning an individual's reliability and trustworthiness. The acts of poor judgment may occur at work or away from work. The facts and circumstances of this case make the following

disqualifying conditions (DC) applicable: AC DC 22.a. (*alcohol-related incidents away from work*); 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. (*evaluation by a duly qualified medical professional 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*) The nine factual allegations show three alcohol-related incidents (AC DC 22.a.) in which Applicant admitted he had consumed too much. In February 1995, he talked himself into drinking and not only lost a promotion-in-rank he was studying to qualify for, but also his current rank. In May 2000, Applicant received both civil and military punishment for drinking too much alcohol. In November 2003, after consuming an unknown amount of alcohol, Applicant displayed poor judgment by causing damage to property and leaving the scene of the accident. During the time span the incidents occurred, Applicant was engaged in binge drinking (AC DC 22.c.) where he would start drinking on Friday until early Saturday morning, and basically sleep for the rest of the weekend.

Shortly after the November 2003 offense, Applicant approached his chain of command and agreed to 30 days of inpatient treatment. Applicant's diagnosis of alcohol dependence (AC DC 21.d.) was followed by successful completion of the treatment program in December 2003. After his discharge from treatment, Applicant recalled no relapses during his participation in AA until around September 2004. Then, he began to have one relapse (AC DC 21.f.) about every six months with the last one occurring with his brother in September 2006.

Having weighed and balanced the entire record regarding Applicant's binge consumption of alcohol, there are two mitigating conditions that are potentially applicable under the AC guideline. The first is AC MC 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*) The second condition is AC MC 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)*) Given Applicant's pattern of alcohol use between 1995 and 2003, the passage of only one year of sobriety since September 2006 does not qualify under the time element of AC MC 23.a., even though Applicant's relapses have been infrequent since his treatment in December 2003. Furthermore, the infrequent relapses also raise lingering doubts into the depth of Applicant's determination to remain sober in the future. The limited mitigation that accrues to Applicant's benefit under AC MC 23.a. is based on the good judgment he exercised in September 2006 in seeking help with his alcohol problem while finding out how his brother had accomplished three years of sobriety.

AC MC 23.b. applies in part as Applicant acknowledges his alcohol dependence, and he has provided meaningful evidence that shows he is trying to overcome the problem. The church involvement and AA participation are working for Applicant to strengthen his recovery. While Applicant's misuse of a prescription drug demonstrates poor judgment because he did not receive the drug by prescription, Applicant has credibly testified he intends to seek medical advice so that he can use the drug legally. Even with the antabuse, church involvement, and AA however, the pattern of abstinence is not long enough under AC MC 23.b.

In addition to the enumerated disqualifying and mitigating conditions, I have considered the

circumstances of this case under the whole person concept of the Directive. Applicant's excessive consumption of alcohol raises serious trustworthiness concerns. Between 1995 and November 2003, Applicant was between 30 and 38 years of age, and sufficiently mature to be fully responsible for his conduct. Though there were short periods of abstinence, there is little or no evidence Applicant took any substantive action to remedy his drinking problem until November 2003. However, he exercised good judgment by voluntarily seeking and completing inpatient treatment in December 2003. His good judgment continued after treatment with his participation in AA for about nine months in 2004 before encountering his first relapse. Though the relapses have been infrequent, they still cause security concerns. However, the concerns are sufficiently neutralized by Applicant taking the appropriate steps to help himself beginning in the meeting with his brother in September 2006. The meeting with his brother caused Applicant to stop drinking and discover how religion an antabuse could work in his recovery as it had worked in his brother's recovery. Since September 2006, Applicant has watched his relationship with his wife become healthier as their arguments have dramatically decreased. She persuaded him to resume his participation in AA. She regularly accompanies him to church which he has missed only once since September 2006. He does not want to lose her after 23 years of marriage or his 21-year career in airplane maintenance, and finally realizes he has to stay with AA to strengthen his recovery. Applicant also regularly jogs and lifts weights to improve his health. The time he used to spend drinking is utilized productively in sprucing up the yard around his house. In viewing the totality of the circumstances, Applicant's rehabilitative efforts, though less clear in September 2006, are firmly in place at the present time. Based on Applicant's church involvement and AA participation, the behavioral changes and regular contact with his brother, it is my predictive decision under the whole person concept that Applicant's credible efforts to maintain his sobriety will keep his excessive alcohol consumption safely in the past.

**FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Alcohol Consumption, Guideline G): FOR THE APPLICANT.

Subparagraph a.	For the Applicant.
Subparagraph b.	For the Applicant.
Subparagraph c.	For the Applicant.
Subparagraph d.	For the Applicant.

Subparagraph e.	For the Applicant.
Subparagraph f.	For the Applicant.
Subparagraph g.	For the Applicant.
Subparagraph h.	For the Applicant.
Subparagraph i.	For the Applicant.

**DECISION**

In light of all the circumstances presented by the record in this case, it clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Paul J. Mason  
Administrative Judge