

DIGEST: Applicant is 45 years old and has worked as a senior systems engineer for a defense contractor since 1998. In October 1990 and October 2005, he was convicted of driving under the influence (DUI) of alcohol. Since the 2005 conviction, he has not consumed alcohol. Applicant has mitigated the alcohol consumption security concerns. Clearance is granted.

CASENO: 06-21914.h1

DATE: 07/18/2007

DATE: July 18, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-21914
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant is 45 years old and has worked as a senior systems engineer for a defense contractor since 1998. In October 1990 and October 2005, he was convicted of driving under the influence (DUI) of alcohol. Since the 2005 conviction, he has not consumed alcohol. Applicant has mitigated the alcohol consumption security concerns. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 2002, Applicant executed a Security Clearance Application (SF 86).¹ On December 18, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and issued a Statement of Reasons (SOR)² detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) 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. The revised guidelines were provided to Applicant when the SOR was issued.

On January 10, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another administrative judge on February 22, 2007. A Notice of Hearing was issued on April 8, 2007, scheduling the hearing for May 3, 2007. Due to caseload considerations, the case was reassigned to me on April 30, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted three exhibits, Exs. 1-3, and Applicant submitted five exhibits, Exs. A-E. All of the exhibits were admitted into the record without objection. The transcript (Tr.) was received on May 18, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.b through 1.d. Those admissions are incorporated herein as findings of fact. He denied the factual allegation under subparagraph 1.a. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 45 years old and has worked as a senior systems engineer for a defense contractor since 1998. He has held a security clearance in the past. He graduated from college in 1992 with a bachelor's degree in electrical engineering. He was married in 1995 and has a grown stepdaughter.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1980 to at least October 2005. He testified that he has not consumed any alcohol since October 2005.³ He denies the SOR allegation that he continued to consume alcohol to at least August 2006.

¹Ex. 1 (Security Clearance Application, signed on December 12, 2002).

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

³Tr. 72.

In October 1983, while he was in college, Applicant was walking from one apartment to another on campus with an open bottle of beer. Campus police cited him for having an open container of alcohol.⁴ He was convicted of drinking in public and fined \$10.

In October 1990, Applicant was arrested and charged with DUI. He was found guilty, and fined \$350; all but \$100 was suspended. He was ordered to attend an alcohol counseling program and his 90-day jail sentence was suspended.

In October 1993, he was again charged with drinking in public and fined about \$10. He complied with the court order.

In October 2005, Applicant was on an out-of-state business trip. The first day of the trip, he fell down the brow of a ship and suffered a severe sprain to his knee and a deep bruise.⁵ He was given medication. He took a prescribed anti-inflammatory drug, Naproxen.⁶ He was not informed that this drug should not be used when consuming alcohol.⁷ He requested that the job send a replacement for him. A couple of days later, he had dinner with his replacement and some other coworkers.⁸ Applicant had two beers and some rum.⁹ He forgot to give the replacement his business file. Rather than wait until the next day, Applicant drove to the replacement's hotel. He was pulled over by the police because the car's taillights were out. The officer smelled alcohol. Applicant was given a field sobriety test, which indicated he had consumed alcohol.

On October 22, 2005, Applicant was arrested and charged with DUI. He pled guilty and was sentenced to 365 days in jail, 364 days suspended, with the option of eight hours of community service in lieu of jail, placed on five years of unsupervised probation, fined \$5,000, with \$4,000 suspended, ordered to attend an alcohol assessment program, and ordered not to possess or consume alcohol. According to his facility security officer, Applicant's jail term was suspended since he opted for eight hours of community service, which he completed.¹⁰ He completed the court ordered counseling in March 2006, and is currently on supervised probation.¹¹

Applicant was in an outpatient alcohol treatment program for 12 weeks after his 2005 conviction. Twice a week he attended specialized intensive outpatient treatment for group therapy,

⁴*Id.* at 73-74.

⁵*Id.* at 74.

⁶*Id.* at 75; Ex. A (Prescription Naproxen).

⁷*Id.* at 76.

⁸*Id.* at 76-77.

⁹*Id.* at 77.

¹⁰Ex. 2 (Incident Report follow-up, dated November 16, 2006).

¹¹*Id.*

education, and case management.¹² During the treatment period, he attended 36 Alcoholic Anonymous (AA) meetings. He also passed several random Breathalyzer tests and two random urine drug screens.¹³ His diagnosis at discharge was Alcohol Abuse, in remission, made by a licensed clinical social worker at a center for alcohol and drug specialized outpatient programs.¹⁴

Six witnesses testified at the hearing, and they all provided written character reference letters.¹⁵ The first witness is Applicant's supervisor and he has a top secret clearance.¹⁶ He first met Applicant in 1993 and they continued their friendship through the years. At work, the witness sees Applicant every day and they have been deployed together overseas.¹⁷ They have both a personal and professional relationship.¹⁸ Applicant called him within 24 hours of his DUI arrest in 2005.¹⁹ This witness believes Applicant's actions that evening were a mistake and a misjudgment.²⁰ He continues to endorse Applicant for a security clearance because after that 2005 incident, Applicant no longer drinks alcohol.²¹

The second witness has been Applicant's coworker since 1994.²² They see each other daily, which includes social interactions away from the job.²³ He testified that Applicant is a "very honest and forthright person, very trustworthy."²⁴ He has never seen Applicant intoxicated and stated that he has not witnessed Applicant having a drink since his 2005 incident.²⁵

¹²Ex. B (Discharge Summary, dated June 6, 2006).

¹³*Id.*

¹⁴*Id.* at 2.

¹⁵Tr. 19; Ex. D (Character Reference Letters).

¹⁶Tr. 17.

¹⁷*Id.*

¹⁸*Id.* at 20.

¹⁹*Id.* at 23.

²⁰*Id.* at 25.

²¹*Id.* at 24.

²²*Id.* at 28.

²³*Id.* at 31.

²⁴*Id.* at 32.

²⁵*Id.* at 33.

The third witness has worked for five years as a security officer at Applicant's place of employment and has known him during that entire period.²⁶ She was familiar with the SOR and stated: "I think he's [Applicant] very responsible. I don't think he is a cause for any national security concern at all. I've seen a lot worse as a security officer."²⁷ She monitored him to make sure he complied with the court's orders, which he did.²⁸

The fourth witness, Applicant's brother, reported that in their frequent family visits, he has seen his brother drink but has never seen him intoxicated or impaired.²⁹ Both his wife and sister testified and they both believe that the 2005 incident was an aberration and not typical of the behavior of Applicant.³⁰

POLICIES

"[N]o one has a 'right' to a security clearance."³¹ 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."³² 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."³³ 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.³⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁵ 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

²⁶*Id.* at 39.

²⁷*Id.* at 41.

²⁸*Id.*

²⁹*Id.* at 49.

³⁰*Id.* at 45-52, 54-64.

³¹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³²*Id.* at 527.

³³Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

³⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁵*Id.*; Directive, ¶ E2.2.2.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.³⁶

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 listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

Alcohol consumption is a security concern because “excessive 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.)

In 1983 and 1993, Applicant was charged with drinking in public. In 1990 and 2005, Applicant was charged with DUI. All of his alcohol-related offenses show a pattern of misusing alcohol. Thus, Alcohol Consumption Disqualifying Condition ¶ 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*) applies.

Various factors can mitigate alcohol consumption security concerns. His first offense for DUI occurred in 1990. He was fined, his jail sentence was suspended, and he was ordered to attend alcohol counseling, which he did. About 15 years later, he had another DUI. He pled guilty to that charge. He was ordered to attend alcohol counseling and not to possess or consume alcohol. His facility security office monitored him and made sure he completed his court-ordered sentence. He attended an outpatient alcohol treatment for 12 weeks. He also attended 36 AA meetings. His diagnosis of alcohol abuse, in remission, was made by a licensed clinical worker, at a center for alcohol and drug specialized outpatient programs. Moreover, he has not had an alcoholic drink since the October 2005 DUI. Consequently, Alcohol Consumption Mitigating Conditions ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provided 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 ¶ 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 accordant 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*) apply. Applicant has mitigated the Government’s case. Allegations 1.a through 1.d of the SOR are found for Applicant.

I have considered all the evidence in the case. I have also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant has had a drinking history since from 1980 to at least October 2005. He had been drinking

³⁶Exec. Or. 10865 § 7.

responsibly, except for his two DUIs. However, the DUIs were 25-years apart. Applicant testified credibly about his remorse for his 2005 drinking infraction. He followed the court-ordered directive and has abstained from alcohol since October 2005. Based on the evidence of record, it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge