

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant, who is 28 years old, has a history of consuming alcohol to excess and to the point of intoxication, and his criminal history raises doubts about his judgment, reliability, and trustworthiness. He failed to mitigate security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. Clearance is denied.

CASENO: 06-22436.h1

DATE: 04/30/2007

DATE: April 30, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-22436
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, who is 28 years old, has a history of consuming alcohol to excess and to the point

of intoxication, and his criminal history raises doubts about his judgment, reliability, and trustworthiness. He failed to mitigate security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. Clearance is denied.

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### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 14, 2006, under the applicable Executive Order<sup>1</sup> and Department of Defense Directive,<sup>2</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Adjudicative Guidelines G (Alcohol Consumption) and J (Criminal Conduct), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Adjudicative Guidelines. On January 8, 2007, Applicant filed a signed response to the SOR. He requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 14, 2007. The FORM contained documents identified as Items 1 through 6.

An undated copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant forwarded five enclosures, which were, in turn, provided to Department Counsel for review on April 2, 2007. The enclosures were identified as Applicant's enclosures 1 through 5. Department Counsel did not object to the admission of Applicant's enclosures. On April 12, 2007, the case was assigned to me for a decision. After a careful review of Applicant's five enclosures, I marked them as exhibits (Ex.) A, B, C, D, and E and admitted them to the record of this case.

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### **FINDINGS OF FACT**

In the SOR, DOHA alleged under Guideline G, Alcohol Consumption, that Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1993 to at least April 2006 (¶ 1.a.); that he was charged with (1) Minor in Possession of Alcohol and (2) False Information to a Police Officer in about February 1999, pled guilty, was fined about \$450, his license privilege was suspended for about one year, and he was placed on probation to August 1999 (¶ 1.b.); that Applicant was arrested in about February 2002 and charged with (1) Disorderly Conduct and (2) Drunk in Public (¶ 1.c.); and that in October 2005, Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol and (2) Blood Alcohol Level .08% or Higher and that he pled No Contest, his driver's license was suspended, he was sentenced to 180 days in jail, suspended, fined

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<sup>1</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

<sup>2</sup>Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

approximately \$1,850, placed on unsupervised probation for three years, and ordered to attend six months of a Driving Under the Influence Program (DUIP) and one Mothers Against Drunk Driving(MADD) meeting (§ 1.d.).

In the SOR, DOHA also alleged that the conduct alleged in §§ 1.b., 1.c., and 1.d. under Guideline G also constituted Criminal Conduct under Guideline J (§ 2.a.); that Applicant was arrested in June 2001 and charged with (1) Concealed Gun in Car and (2) Public Nuisance, pled guilty to the two charges, was fined about \$450, and sentenced to probation and a public work service program (§ 2.b.); and, in December 2005, was charged with Driving When Privilege Suspended or Revoked, was found guilty, and was fined \$375 (§ 2.c.)

Applicant admitted all Guideline G and Guideline J allegations. He provided mitigating information. Applicant's admissions are included herein as findings of fact.

Applicant is 28 years old, unmarried, and employed as an Electronic Technician 1 by a defense contractor. He holds an Associate in Science degree in computer and electronics engineering technology. Applicant submitted and certified an electronic security clearance questionnaire on September 2, 2005. (Item 4.)

In his answer to the SOR, Applicant stated he had not consumed alcohol to excess since October 2005. He further stated he did not recall drinking alcohol in 1993. He provided no evidence in support of his assertions. (Item 3 at 1.) He informed his employer of his October 2005 DUI and his conviction in December 2005 of Driving When Privilege Suspended or Revoked. Pursuant to instructions in the National Industrial Security Manual (NISPOM), Applicant's employer filed adverse information reports. (Item 5, Item 6; Ex. A, Ex. D.)

Applicant submitted a copy of his first offender six-month appointment schedule for participation in a DUIP program. (Ex. B.) He also submitted a certificate of completion, dated February 10, 2006, showing he had completed four days of public service work on December 16, 2005, as directed by the Court in sentencing him for his November 2005 DUI conviction. (Ex. C.) He also submitted a notice of completion certificate showing he had enrolled in a DUIP program on November 29, 2005 and had completed the program on July 10, 2006. (Ex. E.)

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## **POLICIES**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised Adjudicative Guidelines replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R, and they apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued December 11, 2006, the revised Adjudicative Guidelines apply.

The revised Adjudicative Guidelines set forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

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## CONCLUSIONS

### **Alcohol Consumption**

Applicant is 28 years old, and his admitted consumption of alcohol to excess and at times to intoxication spans a period of approximately 13 to 14 years. Excessive alcohol consumption raises security concerns because it often leads to the exercise of questionable judgment or the failure to control impulses, thus raising questions about an individual's reliability and trustworthiness. Guideline G 21.

The record evidence and Applicant's admissions show he was arrested three times between 1999 and 2005 and charged with alcohol-related offenses. After his arrest and No Contest plea for DUI in October 2005, he was directed by the court to enroll in a six-month DUI program. He provided evidence he had completed the program, and he claimed he had not consumed alcohol to excess since October 2005. However, he provided no credible evidence to corroborate his claim of temperate consumption of alcohol.

The alcohol-related conduct alleged in the SOR and admitted by Applicant raises concerns under Disqualifying Condition (DC) 22(a) and (DC) 22(c).<sup>3</sup> His three alcohol arrests away from work raise concerns under DC 22(a). His admitted habitual consumption of alcohol to excess and sometimes to the point of intoxication for approximately 13 to 14 years raises concerns under DC 22 (c).

Under Guideline G, there are four conditions that could apply to Applicant's disqualifying conduct. An applicant might mitigate disqualifying conduct under Mitigating Condition (MC) 23(a) of Guideline G if he provided credible evidence to show that *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*. An applicant might also mitigate disqualifying conduct under MC 23(b) by acknowledging *his or her alcoholism or issues of alcohol abuse, provid[ing] evidence of actions taken to overcome this problem, and. . . establish[ing] a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*.

If an applicant *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*, he might be able to provide evidence of mitigation under MC 23 (c). Finally, MC 23(d) might apply if *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*.

Applicant's admitted excessive use of alcohol covers a period of 13 to 14 years. The record reflects three alcohol-related arrests: in 1999, 2002, and 2005. Thus, his disqualifying behavior was not infrequent, and his most recent arrest occurred less than two years ago. Applicant failed to provide credible evidence that the conduct was not habitual, unlikely to recur, and did not lead to concerns about his current reliability, trustworthiness, and good judgment. While he provided evidence he had completed a six-month DUI program, as ordered by the court, he failed to acknowledge his issues of alcohol abuse or to provide credible evidence of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser). Accordingly, I conclude that MC 23(a) and MC 23(b) are inapplicable.

Applicant provided no credible evidence he was participating, as an employee, in a counseling or treatment program and making satisfactory progress. He failed to provide evidence to show he had no previous treatment for alcohol dependence or abuse and no history of relapse. While he provided evidence he had successfully completed a six-month DUI program, he failed to provide evidence of a demonstrated pattern of modified consumption or abstinence in accord with treatment recommendations. Additionally, he failed to show participation in a recommended program of aftercare or to provide evidence of a favorable prognosis. Accordingly, I conclude MC 23(c) and MC 23(d) are inapplicable.

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<sup>3</sup>DC 22(a) reads: "alcohol-related incidents away from work, such as driving while under the influence, 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." DC 22(c) reads: "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."

## **Criminal Conduct**

The record in this case shows that Applicant was arrested in 1999, 2002, and 2005 for alcohol-related criminal conduct. In 2001, he was arrested, charged, and pled guilty to (1) Concealed Gun in Car and (2) Public Nuisance. In October 2005, as a result of his arrest and no contest plea to a charge of DUI, his driver's license was suspended, he was sentenced to 180 days in jail (suspended), placed on three years of unsupervised probation, fined, and ordered to attend a six-month DUI program. In December 2005, he was charged, found guilty, and fined for Driving When Privilege Suspended or Revoked.

Criminal conduct creates a security concern because it raises doubts about an individual's judgment, reliability, and trustworthiness. Additionally, it raises doubts about a person's ability or willingness to comply with laws, rules, and regulations. Applicant's admitted criminal activity raises security concerns under Disqualifying Conditions (DC) 31(a) and 31(d)<sup>4</sup> of Guideline J.

Only one mitigating condition under Guideline J might apply to the facts of Applicant's case. Applicant's admitted criminal conduct might be mitigated under Mitigating Condition (MC) 32(a) if he provided credible evidence to show that *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*. Applicant's criminal activity is recent. After the court suspended his driver's license as a part of his sentence for DUI in October 2005, and placed him on three years of unsupervised probation, Applicant then drove on a suspended license, raising serious doubts not only about his reliability, trustworthiness, and good judgment but also about his ability to follow laws, rules, and regulations. Applicant failed to provide credible evidence under MC 32(a) to mitigate the criminal conduct alleged in the SOR. No other MCs apply.

## **Whole Person Analysis**

In addition to evaluating the disqualifying and mitigating conditions under each guideline, an administrative judge must thoroughly consider and review of all available reliable information about the appellant, past and present, favorable and unfavorable, to arrive at a balanced decision. DoD Regulation 5200.2-R, Appendix 8, describes this process of scrutiny and evaluation as "the whole person concept." The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant's admissions and the record evidence establish he began consuming alcohol to excess as a minor. He continued his excessive consumption of alcohol until at least 2005. He received and completed alcohol counseling. After the counseling, he returned to the use of alcohol and provided no credible evidence that his use of alcohol is now responsible or recommended by the health

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<sup>4</sup>DC 31(a) reads: "a single serious crime or multiple lesser offenses." DC 31(d) reads: "individual is currently on parole or probation."

professionals who treated him in the DUIP program. He provided no credible evidence to support a conclusion that he is reliable, trustworthy, and merits a security clearance.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA’s Appeal Board states that an administrative judge, in deciding an Applicant’s security worthiness, “must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*.” I have considered the record as a whole and have evaluated Applicant’s conduct under the whole person concept of the Directive. I conclude that Applicant has neither rebutted nor mitigated the security concerns raised by the allegations in the SOR, and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

**FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline G.: AGAINST APPLICANT

- Subparagraph 1.a.: Against Applicant
- Subparagraph 1.b.: Against Applicant
- Subparagraph 1.c.: Against Applicant
- Subparagraph 1.d.: Against Applicant

Paragraph 2.: Guideline J.: AGAINST APPLICANT

- Subparagraph 2.a.: Against Applicant
- Subparagraph 2.b.: Against Applicant
- Subparagraph 2.c.: 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.

Joan Caton Anthony  
Administrative Judge