

KEYWORD: Alcohol

DIGEST: The Applicant's last alcohol related incident, Driving Under the Influence of Alcohol with a blood/alcohol content of .08% or more (DUI), occurred nearly three years ago, in October of 2004. Since his last DUI, he has "considerably cut down on . . . [his] consumption of alcohol." A Clinical Psychologist avers that the Applicant's "potential for substance dependency is relatively low." A retired Navy Captain testified most favorably on behalf of the Applicant. The Applicant Facility Security Officer (FSO) also recommends that the Applicant "regain his clearance." Mitigation is shown. Clearance is granted.

CASENO: 06-22534.h1

DATE: 08/28/2007

DATE: August 28, 2007

In Re:	)	
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	)	
-----	)	ISCR Case No. 06-22534
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esquire, Applicant's Counsel

## SYNOPSIS

The Applicant's last alcohol related incident, Driving Under the Influence of Alcohol with a blood/alcohol content of .08% or more (DUI), occurred nearly three years ago, in October of 2004. Since his last DUI, he has "considerably cut down on . . . [his] consumption of alcohol." A Clinical Psychologist avers that the Applicant's "potential for substance dependency is relatively low." A retired Navy Captain testified most favorably on behalf of the Applicant. The Applicant Facility Security Officer (FSO) also recommends that the Applicant "regain his clearance." Mitigation is shown. Clearance is granted.

## STATEMENT OF THE CASE

On November 29, 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 January 3, 2007.

The case was received by the undersigned on March 29, 2007. A notice of hearing was issued that same date, and the case was heard on April 25, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence, and called one witness to testify on his behalf. The transcript (TR) was received on May 4, 2007. The issues raised here are whether the Applicant's past Alcohol Consumption militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations; but denies excessive alcohol consumption subsequent to his last DUI, and admits to receiving only 96 hours of community service as a result of that last DUI.]

## 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 27 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. Prior to his last arrest for DUI in October of 2004, the Applicant consumed alcohol on "four to five nights a week, five to six beers on an outing, if not more" (TR at page 36 lines 10~18). Subsequent to this last arrest, the Applicant attended a "DUI Program," and now consumes alcohol "once a week, two beers on an outing" (TR at page 37 lines 8~11). He may have consumed "three

beers on an outing since – since 2004,” but he has not consumed alcohol to the point of intoxication (TR at page 37 lines 12~22).

1.b. In October of 2004, the Applicant was arrested, and subsequently charged, in part, with DUI (Government Exhibit (GX) 2). He pled no contest to the charge; and as part of his sentence, he performed 96 hours of community service, and attended a DUI Program (*Id.*, and TR at page 30 line 20 to page 31 line 14).

1.c. In November of 2003, the Applicant was arrested, and subsequently charged, in part, with DUI (GX 2). He pled no contest to the charge; and as part of his sentence, he was fined \$1,700, and attended a DUI Program (*Id.*, and TR at page 31 line 15 to page 33 line 25).

In April of 2007, the Applicant was evaluated by a Clinical Psychologist (Applicant's Exhibit (AppX) M). That Clinical Psychologist avers, in part, the following:

The results of the psychological questionnaires utilized to provide more objective information regarding . . . [the Applicant's] substance abuse potential strongly suggests **his potential for substance dependency is relatively low**. Additionally, the absence of any familial history of substance abuse reduces . . . [the Applicant's] risk of addiction. [The Applicant's] use of alcohol was likely supported by the "positive social interactions" which he experienced when drinking, and he apparently is now aware of that co-occurrence.

. . . The potential for his becoming a security risk on the basis of substance abuse or dependency is not viewed, on the basis of the information available, to be any greater than that for any other person using alcohol **appropriately and socially** (*Id.*, emphasis supplied).

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## 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.

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## CONCLUSIONS

The Applicant's admitted Alcohol Consumption is evidenced by two DUI's, one in November of 2003, and the last one in October 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." The third disqualifying condition is also applicable, as there was "binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." However, these are countered the first and second mitigating conditions 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;" and "the individual acknowledges his . . . issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . responsible use."

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 former supervisor, a retired Navy Captain, his FSO, and a colleague speak most highly of his character, credibility and trustworthiness (TR at page 20 line 24 to page 28 line 5, and AppXs J and N). 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.

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**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.

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**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