

KEYWORD: Alcohol

DIGEST: Applicant, a 27-year-old employee of a defense contractor, mitigated allegations of alcohol consumption arising from two DUIs during a one-year period in 2005 resulting in conviction and extensive rehabilitation efforts. He established that his efforts have been successful and he has acknowledged his alcohol abuse, provided evidence of actions taken to overcome the problems, and established a pattern of responsible use. He also has shown that his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. Clearance is granted.

CASENO: 06-22656.h1

DATE: 07/23/2007

DATE: July 23, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-22656
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant, a 27-year-old employee of a defense contractor, mitigated allegations of alcohol consumption arising from two DUIs during a one-year period in 2005 resulting in conviction and extensive rehabilitation efforts. He established that his efforts have been successful and he has acknowledged his alcohol abuse, provided evidence of actions taken to overcome the problems, and established a pattern of responsible use. He also has shown that his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. Clearance is granted.

STATEMENT OF CASE

_____On December 27, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 30, 2007, Applicant responded to the allegations and requested a hearing. The matter was assigned to me on March 28, 2007. A notice of hearing was issued on May 8, 2007, for a hearing held on May 30, 2007. Three government exhibits and one Applicant exhibit were admitted into evidence. Applicant and one witness testified on his behalf. The record was left open for 30 days for additional material from Applicant and six documents were received and admitted into evidence without objection. The transcript was received on June 13, 2007.

FINDINGS OF FACT

_____Applicant admitted, with explanation, the seven allegations relating to alcohol consumption. After a complete review of the evidence in the record and upon due consideration of the entire record, I make the following findings of fact:

_____Applicant is a 27-year-old employee of a defense contractor who has worked as a radiology control technician for the past five years. During 2005 he had two DUI arrests arising from drinking to excess. The first occurred in January 2005, when the staff of the bar in which he had been drinking alerted the police when he left. He was stopped by the police and given a sobriety test which showed .23% BAC on the breathalyser. He was fined \$250, required to attend alcohol classes, and lost his driver's license for four months but given a permit to drive to work. He completed the courses in late summer 2005.

The second DUI occurred in December 2005, when he fish-tailed his car on the highway when he saw a police car and the car ended up in a snowbank and would not move. The officer approached, offered help, asked if he had been drinking, and gave him a sobriety test. The test

showed .17% BAC. In April 2006 he appeared in court and pled guilty to DUI. As a result of his accelerated rehabilitation after the first offense, it was taken off his record, so the second offense is regarded as his first offense.

Applicant lost his license as of January 2006 for nine months after the second offense, but in May 2006, when he appeared in court it was extended for one more year and he was not given a permit to drive to work.

As a result of the conviction, Applicant was placed on one-year probation until April 2007, which had terminated at the time of the hearing in this matter. He was required to obtain a drug and alcohol evaluation which he did in June 2007 (Exh. B, 4 and 5). He was also required to perform 100 hours of community service which he has completed (Exh. B, 2 and 3), and to attend a weekend retreat which he has done. He then was required to meet with a counselor once a month for four months and had done so for two of the monthly sessions at the time of the hearing. He will have his driver's license by the end of August after two more aftercare sessions pursuant to state requirements. He also attends two Alcoholics Anonymous meetings per week and will do so for four months. He then goes into the third phase of aftercare which requires him to meet with a counselor every three months for a year. Thus, the state requirements are extensive and spread over a lengthy period of time.

Applicant advised his supervisor, colleagues, and family of his DUIs. His family consists of his parents and a married brother who live a few miles from him. All are supportive of his efforts toward rehabilitation. He has a college education, and purchased a home in June 2005. He has a stable relationship with a girlfriend whom he sees regularly and is supportive of his rehabilitation efforts.

Applicant is well-regarded as a good worker who is reliable and trustworthy by his supervisor and colleagues (Exh. A and Tr. 33-40). He is an hourly employee and his pay has risen from \$16 to \$24 an hour in the five years he has worked for the company. He has had no security violations during that time and has held a security clearance for nearly all of the five years of employment.

Applicant very much regrets the two incidents that led to his arrests and believes he has changed his life. He has matured greatly in the past two years (Tr. 26). The two DUIs were the only legal difficulties he has ever had. He now rarely drinks and, if he does, it is a glass of wine with dinner. He does not drink and drive and will never again do so.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration

of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government initiated this action under the revised adjudicative guidelines (AG) effective September 1, 2007, concerning alcohol consumption under Guideline G. The security concern is that excessive alcohol consumption leads to exercise of questionable judgment and can raise questions about an individual's reliability and trustworthiness (AG 21). The specific concerns include alcohol-related incidents away from work, such as driving while under the influence (AG 22 a). Those concerns were met by establishing the two DUI's of Applicant in 2005.

The mitigating conditions (MC) in the revised guidelines have been expanded while continuing to include those in the old guidelines. These include the fact that so much time has passed and there it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment (AG 23 a), and that the individual acknowledges his alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of responsible use if the person is an alcohol abuser (AG 23 b). I find that Applicant has acknowledged his alcohol abuse, provided evidence of actions taken to overcome the problem, and established a pattern of responsible use under AG 23 (b). Also, the behavior does not cast doubt on his current reliability, trustworthiness, or good judgment which is now an alternative to application of a strict passage of time factor pursuant to AG 23 (a). I find the allegations are mitigated.

Another mitigating condition requires successful completion of alcohol counseling and rehabilitation (AG 23 d). Since the process is still on-going for Applicant and, as required by the state, will be for another year so it is not applicable. Another requires that there be no previous relapse (AG 23 c). Since there was a prior treatment less than a year earlier, this also is inapplicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Based on that analysis, I conclude that Applicant's age at the time of the offences, his record of work stability, his rehabilitation efforts to remedy his alcohol problems, and the unlikelihood of a recurrence, justifies application of the whole person analysis.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge