

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 42-year-old employee of a defense contractor who had two alcohol related driving incidents. He did not falsify his June 28, 2005 security application. He mitigated the security concerns raised under the alcohol consumption and personal conduct guidelines. Applicant's eligibility for a security clearance is granted.

CASENO: 06-22710.h1

DATE: 08/27/2007

DATE: August 27, 2007

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|----------------------------------|---|------------------------|
| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) |                        |
| SSN: -----                       | ) | ISCR Case No. 06-22710 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 42-year-old employee of a defense contractor who had two alcohol related driving incidents. He did not falsify his June 28, 2005 security application. He mitigated the security concerns raised under the alcohol consumption and personal conduct guidelines. Applicant's eligibility for a security clearance is granted.

## STATEMENT OF THE CASE

On June 28, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On February 6, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On March 26, 2007, Applicant submitted a notarized response to the SOR, and elected to have an administrative determination (decision on the record). He specified that he did not wish to have a hearing before an administrative judge. However, Department Counsel requested that the case be scheduled for a hearing.<sup>2</sup> The case was assigned to me on June 21, 2007. I scheduled the hearing for July 18, 2007.

The hearing was convened as scheduled on July 18, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government Exhibits (GE 1-6) were admitted without objection. Applicant did not submit any exhibits at the hearing. Applicant testified in his own behalf. At Applicant's request, I left the record open until July 23, 2007. Applicant submitted a packet of information which was marked as Applicant Exhibit (AE A). Department Counsel had no objection to the post hearing submission. The hearing transcript was received on July 27, 2007.

## FINDINGS OF FACT

Applicant admitted to allegations in subparagraphs 1.a, 1.b, and 1.c in the SOR under Guideline G and denied allegations in subparagraphs 1.d, 1.e, and 1.f. He also denied the allegation in subparagraph 2.a under Guideline E.<sup>3</sup> The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor.<sup>4</sup> After high school graduation in 1982, he attended community college courses. He has worked for his current employer for ten years. Applicant submitted a security clearance (SF 86) application on June 28, 2005 and holds a top

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup>After a review of the case file, Department Counsel requested a hearing within 20 days of receipt of Applicant's answer. Applicant was notified that the Government requested a hearing in a letter dated May 15, 2007.

<sup>3</sup>Applicant's Answer to SOR, dated March 26, 2007.

<sup>4</sup>GE 1 (Application for Security Clearance (SF 86), dated June 28, 2005). This was an EPSQ Version 2.2.

secret clearance.<sup>5</sup> Applicant is thrice divorced and has three adult children. He is engaged to be married.<sup>6</sup>

Applicant started drinking in high school. In September 1985, when he was 21 years old, Applicant was arrested and charged with Operating under the Influence of Liquor/Drugs. He was found guilty and his driving license was suspended.<sup>7</sup> He admits consuming alcohol, at times to the point of intoxication, from 1982 to at least June 2006.<sup>8</sup>

Applicant worked steadily in the security field until an accident at work in 1993. He was hit by a generator which damaged three discs in his lower back. He was out of work on Worker's Compensation for about a year and a half. He worked part-time after his recovery until 1996. Since that time he has been with his current employer.<sup>9</sup> In 1997, he received a clearance for Sensitive Compartmented Information (SCI).

On December 22, 2000, Applicant was arrested and charged with Driving While Intoxicated. He received a Probation Before Judgment and was fined approximately \$300. His driver's license was restricted for one year. He attended a Victim Impact Panel. He successfully completed probation on April 4, 2002.<sup>10</sup>

Applicant was not court ordered to alcohol counseling; however, at that time he and his wife were in marriage counseling for his wife's drinking problems. His wife wanted Applicant to accompany her to a neighborhood bar in the evenings. Applicant was having difficulties in his marriage at the time of the 2000 incident. He did not want to reveal the details of his wife's behavior on the night of December 22, 2000. He arrived home early to surprise her, but had a painful experience.<sup>11</sup>

Applicant worked occasionally for a friend as a bouncer in his bar. On December 12, 2002, Applicant visited the bar, but was not actually working that night. When he arrived, the bouncer asked him for his help. The bouncer was attempting to get one unruly person out of the bar. Applicant assisted his friend and saw the man had a gun. At that point, Applicant had not had anything to drink. After the man finally left, Applicant remained in the bar and had two beers and an alcohol shot. The ousted bar patron was identified as an off duty policeman. He returned to the bar and threatened Applicant.<sup>12</sup> When Applicant exited the bar sometime later, the man who had

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<sup>5</sup>*Id.*

<sup>6</sup>Tr.50.

<sup>7</sup>Applicant's Answer, *supra*, note 3 at 1.

<sup>8</sup>*Id.*

<sup>9</sup>Tr. 55.

<sup>10</sup>GE 3 (District Court Traffic System Citation).

<sup>11</sup>Tr 59; 60; 63; and 64.

<sup>12</sup>GE 4(Incident Report, dated December 12, 2002); Tr. 68; 69; and 70.

been ousted was waiting for him. The man tried to stop Applicant and his friend from leaving. Applicant used a cell phone and called the police because the man had a gun.

The county police filed a report. When the police responded, they found Applicant and the off duty police officer. There were inconsistent stories in the report about the off duty officer threatening Applicant with his gun. The incident report identified Applicant as the victim who called in to report that an off duty officer pulled a gun on him. Applicant acknowledged that he had a few drinks prior to leaving the bar. No charges were filed after the incident. Applicant told his security officer about the incident as well as his attorney. They both recommended that Applicant not file charges against the off duty police officer.<sup>13</sup>

Applicant was interviewed five times in 2003 and 2004 by NSA for concerns about his alcohol incidents. He volunteered information at the hearing that he was given a polygraph which he did not pass during those interviews. He was adamant that the investigators twisted his words and repeatedly asked the same questions concerning his drinking habits. He recalled that during the time of the interviews, he was working 16 hour days and had to request breaks.<sup>14</sup>

NSA issued an August 25, 2004 Clearance Decision Statement holding that Applicant did not meet the standards for access to NSA/CSS/ SCI under Director of Intelligence Directive (DCID) 6/4, Personnel Security Standards and Procedures Governing Eligibility for Access to SCI.<sup>15</sup> The basis for the decision was alcohol consumption and personal conduct.<sup>16</sup> The report summarizes testimony from Applicant during the various interviews.<sup>17</sup>

At the hearing, Applicant denied drinking during his probationary period in 2000. The clearance decision summarizes that at one point he admitted that and then retracted the statement. The government exhibit from the Motor Vehicle Department does not reflect a violation of that probation.<sup>18</sup> Applicant reported his current drinking habits as perhaps a couple of beers when he shoots pool with his neighbor. His stress was visible when answering repeated questions about his consumption of alcohol. He did not want to relive the very negative experience that he had during the NSA interviews when answering questions during a polygraph.<sup>19</sup> He was adamant in that his words were taken out of context and misused. He credibly explained that the interviews were overbearing and that he was told to answer questions in a certain manner so that he could pass the polygraph.

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<sup>13</sup>*Id.*

<sup>14</sup>Tr. 61.

<sup>15</sup>GE 5(Clearance Decision Statement, dated August 25, 2004).

<sup>16</sup>The decision also listed criminal conduct based on the arrest for DWI in 2000.

<sup>17</sup>Applicant voiced his disagreement with certain facts in the decision. Specifically, he denies that he violated his probation or that he drove while intoxicated during that probation.

<sup>18</sup>GE 3, *supra* note 10.

<sup>19</sup>Tr. 93.

When Applicant completed his security clearance questionnaire on June 28, 2005, he responded “No” to question 32: **Your Investigation Record-Clearance Action** To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? (Note: An administrative downgrade or termination of a security clearance is not a revocation.)

Applicant denied that he intentionally falsified his security application. He did not fill out the electronic form for his clearances. He also does not recall the 2005 form. When he is out in the field, his security manager handles the forms. Applicant states there have been clerical errors before in his paperwork. Applicant stated at NSA they updated paperwork every year and typically he just signs his name to it. He read the question at the hearing and stated that he checks with his security manager before answering any questions. He recalls the April 2003 security application form as his last. Many times Applicant just signed the signature page. He does not have access to EPSQ. He does not have a copy of the 2005 form. He believes he filled it out while he was on the road. Thus, he may have faxed the information and not seen the completed form at all.

Applicant still consumes alcohol in moderation. He reports that the amount varies as to whether he is having dinner out or shooting pool in a club. He drinks about twice a month (sometimes beer or wine or whiskey). During his marriage counseling, he was given specific alcohol assessments for alcohol dependency and the physician found that Applicant did not meet the criteria for alcohol dependence. Applicant attended meetings with his second wife who was a member of Alcoholic Anonymous. He does not drink and drive. He does not drink every day. Applicant now lives in a different state. He is no longer in a marriage where alcohol play a major role. He does not frequent bars due to his demanding work schedule.

Applicant enjoys his current position and is very committed to its success. He is a well respected employee and a valued member of the team. He maintains a professional appearance and sets a good example to the other staff. He displays a high degree of proficiency and professionalism in his work. He has received many letters of appreciation and accommodation.<sup>20</sup> He has excellent rapport with his customers and his work exceeds expectations.<sup>21</sup> His most recent Performance Appraisal (2005) rates him as a superior employee.<sup>22</sup>

## POLICIES

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.”<sup>23</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and

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<sup>20</sup>AE A (Letters of Appreciation 1999 through 2000).

<sup>21</sup>AE A (Performance Appraisals from 1999 through December 27, 2005).

<sup>22</sup>*Id.*

<sup>23</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”<sup>24</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>25</sup> An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.<sup>26</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>27</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>28</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>29</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>30</sup>

## CONCLUSIONS

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

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<sup>24</sup> Directive, ¶ E2.2.1.

<sup>25</sup> Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

<sup>26</sup> *Id.*

<sup>27</sup> Directive, ¶ E3.1.14.

<sup>28</sup> Directive, ¶ E3.1.15.

<sup>29</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>30</sup> Directive, ¶ E2.2.2.

**Guideline G (Alcohol Consumption) The Concern:** *Excessive alcohol 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.*<sup>31</sup>

In this matter, the government provided substantial evidence that Applicant was arrested in 1985 and 2000 for alcohol related driving incidents. Consequently, Alcohol Consumption Disqualifying Condition (AC DC) AG ¶22(a) (*alcohol-related incidents away from work, such as driving 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. Applicant admitted that he consumed alcohol, at times to excess and to the point of intoxication, from 1982 to at least 2006. Thus, AC DC AG ¶21(b) (*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*) arguably applies.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Alcohol Consumption Mitigating Condition (AC MC) AG ¶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*). There are no "bright line" rules for determining when conduct is "recent." The determination must be based on "a careful evaluation of the totality of the record within the parameters set by the directive."<sup>32</sup> If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."<sup>33</sup> AC MC ¶23 (a) has some applicability in this case. Applicant was found guilty of DUI in 1985 when he was 21. He did not have any alcohol driving incidents until 2000 when he was in a marriage crisis. He was given a Probation Before Judgment and successfully completed probation. His alcohol use was in part due to the extreme emotional distress created by his wife's problems with alcohol. The incident in 2002 was noted because he called the police when he felt threatened. No charges were filed. Thus, the last alcohol driving incident was seven years ago. While other emotional crisis may possibly occur in the future, he is not in that marriage. He has changed his drinking habits and does not drink and drive. His past conduct does not cast doubt on his current reliability, trustworthiness or good judgment. The whole person analysis, *infra*, provides additional discussion of mitigating circumstances

**Guideline E (Personal Conduct) The Concern** *Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*

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<sup>31</sup>AG ¶ 21.

<sup>32</sup>ISCR Case NO. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

<sup>33</sup>*Id.*

Applicant completed his security clearance application on June 28, 2005. The government established that Applicant omitted a material fact from his SF 86 when he answered “no” to question 32. He denies, however, that he deliberately falsified his answer to this question. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred. An administrative judge must determine whether there is direct or circumstantial evidence concerning an applicant’s intent or state of mind at the time the omission occurred.<sup>34</sup> For Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar forms used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) to apply, the government must establish that Applicant’s omission, concealment or falsification in his answer was deliberate.

Applicant credibly testified that he does not recall the 2005 security form and that he usually signs the form and his security officer transmits the data if Applicant is in the field. He was also credible in his statement that he checks with his security officer before he answers any questions because he understands the importance of them. He has gone through the process a number of times and did not have a copy of the 2005 application form prior to the investigation that began in 2006. At the hearing, he looked at the question and stated he would check with his security officer before answering it because it talks about suspension or revocation and he believes it was a downgrade because he still has a clearance. I find that he did not intentionally falsify his answer to this question.

### **Whole Person**

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person’s life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant was candid in his demeanor and testimony at the hearing. He acknowledged that he did not want a hearing because he had gone through the NSA interviews and had his words taken out of context. He was forthright in acknowledging anxiety at this hearing because he has responded to all the interviews and questions concerning his past behaviors truthfully and it is still an issue. He still is upset when he recalls the failed polygraph and the circumstances of the questioning.

He has completed his alcohol probation and does not have a diagnosis. He does not drink and drive. He is no longer in the marriage that contributed to the 2000 alcohol incident. He has a top secret clearance and enjoys his work. He has letters of appreciation and commendations over the years. Despite his prior crisis in his marriage in 2000, he continued to perform in his work. He never

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<sup>34</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

mishandled classified information and continued to work on a regular basis. His circumstances have changed and his life is devoted to work. He works long hours and lives a quiet life. Although he admits that he still drinks alcohol, his description is such that it really depends on circumstances as to whether he drinks or how much. He is adamant that he does not drink and drive. He no longer works as a bouncer for his friend. In fact, he lives in another state.

I have considered all the evidence and the “whole person” in evaluating Applicant’s security clearance determination. Applicant has mitigated the government’s concern pertaining to his alcohol consumption and his personal conduct.

**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: | FOR APPLICANT |
| Subparagraph 1.a-1.f:     | For Applicant |
| Paragraph 2. Guideline E: | FOR APPLICANT |
| Subparagraph 2.a.         | For Applicant |

**DECISION**

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

Noreen A. Lynch  
Administrative Judge