

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant was arrested or charged with six alcohol-related incidents between 1999 and October 2005. At the time of his April 2005 public drunkenness charge his blood alcohol content was 0.23. Even though he has reduced his alcohol consumption, no longer associates with college acquaintances, and has changed his priorities in life, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from alcohol consumption. Clearance is denied.

CASENO: 06-23004.h1

DATE: 06/22/2007

DATE: June 22, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-23004
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested or charged with six alcohol-related incidents between 1999 and October 2005. At the time of his April 2005 public drunkenness charge his blood alcohol content

was 0.23. Even though he has reduced his alcohol consumption, no longer associates with college acquaintances, and has changed his priorities in life, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On December 15, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to Alcohol Consumption and Personal Conduct security concerns.

On January 8, 2007, Applicant answered the SOR and stated he did not wish to have a hearing. A File of Relevant Material (FORM) was prepared on March 30, 2007. On May 30, 2007, Applicant responded to the FORM. Department Counsel having no objection to the material submitted by Applicant, the documents were admitted into evidence. On June 6, 2007, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns for Alcohol Consumption and Personal Conduct. Applicant admits to the following: that he consumed alcohol, at times to excess, which resulted in intoxication starting in 1995 and ending in October 2005. In July 1999, Applicant was charged with disorderly conduct, found guilty, and fined \$335. In December 2003 and May 2004, he was charged with public drunkenness, found guilty, and fined approximately \$217 and \$197, respectively. In October 2004, he was cited for having an open container of alcohol, found guilty, and fined \$80. In April 2005, he was charged with public drunkenness with a blood alcohol content (BAC) of 0.23%. He pleaded guilty to the charge and was fined \$218. In October 2005, he was charged with public drunkenness after having consumed 20 beers. He was found not guilty because the incident occurred on private property. His admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 24-year-old systems analysis who has worked for a defense contractor since October 2005 and is seeking to obtain a security clearance. His professor states he is impressed by the level of effort Applicant has put into his classes and toward obtaining his M.S. degree. His professor believes Applicant is a dedicated, determined, reliable and hard-working student. Applicant's supervisor states Applicant has a strong work ethic and has become a dedicated working professional. Applicant often works late to ensure assigned tasks are completed timely. Applicant consistently exceeds his production requirement and has become a valued member of the team. Applicant's priest believes Applicant is an extremely mature and serious person.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant admits he has abused alcohol in the past. Applicant's alcohol usage occurred "periodically to somewhat frequently in high school, and became habitual in college." (Applicant's response to FORM) Applicant states he has "learned to limit my alcohol consumption to social situations and don't consume alcohol nearly to the extent that I have in the past." (Applicant's response to FORM) Applicant has discussed his past alcohol arrests and problems with his priest.

In June 2005, Applicant completed a Questionnaire for Non-Sensitive Positions, Standard Form (SF) 85. (Item 6) Question 14 asked him if he had used marijuana during the previous year. He answered "No" to the question. Applicant interpreted this question to mean was he currently using drugs. He used marijuana during college, but was neither addicted to it nor a habitual user of it. He last used marijuana in late April 2005 or early May 2005. Applicant asserts his action "was purely a mistake of an irresponsible college kid, who blew threw the questionnaire without giving it the attention that it deserved. I regret making this mistake and fully intend to be more attentive and assertive when filling out similar questionnaires." (Applicant's response to FORM)

In October 2005, Applicant completed an SF 86, but this time indicated he had used marijuana from August 2001 to May 2005. (Item 5, page 31) In July 2006, Applicant disclosed his drug use to an investigator to correct the mistake of the omission. The record is silent as to whether he volunteered this information without being asked about his drug usage or if it was in response to a specific inquiry by the investigator.

In April 2005, Applicant was arrested for public drunkenness having a BAC of 0.23%. Applicant saw this arrest as an eye opening experience. He was nearing the end of this college experience and decided he needed to create a more positive future for himself. He vowed to change his life. In October 2005, he returned to his college to attend a football game. He consumed 20 beers and was again arrested for public drunkenness. Applicant saw his arrest as a wake-up call. It made him realize he was "screwing up (his) life and jeopardizing (his) future." (Item 4, page 2)

In January 2006, Applicant started on his Masters Degree in electrical engineering while working full time. In June 2006, he was promoted. In July 2006, his work performance was good enough for him to be allowed to work 10 hours of overtime per biweekly period. His work quality continued to improve and he was approved for 32 hours of overtime per biweekly period. In the Spring of 2007, due to his work performance he was approved for the maximum overtime per biweekly period of 40 hours.

Also in June 2006, he moved into his own apartment and is now paying \$1,279 per month rent. He also pays for his schooling from his salary. In March 2006, Applicant met a woman and is now engaged to be married in July 2007.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward

making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Alcohol Consumption and Personal Conduct._____

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption, Guideline G. A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. Excessive alcohol consumption is of concern because it often leads to the exercise of questionable judgment, criminal conduct, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. The record evidence raises a security concern under this guideline.

Between July 1999 and October 2005, Applicant was arrested or cited six times for alcohol-related incidents. The majority of the arrest occurred when Applicant was a college student. It is

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

noted at the time of his April 2005 arrest Applicant's BAC was 0.23%, which is very high. Disqualifying conditions (DC) a (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other criminal incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*) and c (*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*) apply.

None of the Mitigating Conditions (MC) apply. MC 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*) does not apply. It has only been a year and a half since his last arrest, his conduct was not infrequent, and the drinking did not occur under such unusual circumstances that it is unlikely to recur even though he no longer associates with his college friends.

Applicant acknowledges he has had issues of alcohol abuse in the past. However, MC b (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides 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)*) does not apply because the record is silent as to Applicant's current use. Applicant states he has learned to limit his alcohol consumption to social situations and do not consume alcohol nearly to the extent that he did in the past. From that statement it is impossible to conclude he has established "responsible use" of alcohol.

Applicant has talked to his priest about his past arrests and alcohol incidents, but the record fails to establish these talks are a counseling or treatment program. Therefore MC c (*the individual 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*) and MC 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 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*) do not apply.

Applicant has denied being cited with an alcohol violation in June 1999. The record fails to establish this event occurred. I find for Applicant as to SOR 1.b.

Because of the six alcohol-related incidents, the last of which occurred less than two years ago, and because none of the mitigating conditions apply, I find against Applicant as to Alcohol Consumption.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information on his June 2005 SF 85 poses a serious potential risk to the nation's

security precautions. DC a (*deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

On the June 2005 SF 85, Question 14, Illegal Drugs, asked a straight forward question: in the last year, had the Applicant used or possessed illegal drugs, which included marijuana. Even though Applicant had last used in late April or early May 2005 he answered “no” to the question. He says this was not an intentional falsification and he was not trying to mislead. Applicant interpreted the question to ask if “he currently used drugs.” He says it happened because he was an irresponsible college kid, who blew threw the questionnaire without giving it the attention that it deserved. Having used marijuana a month to six weeks prior to completion of the questionnaire, the event should have been sufficiently fresh in his mind to disclose it. The wording is clear and unambiguous.

In October 2005, four months after completing has SF 85, he completed an SF 86, but this time indicated he had used marijuana from August 2001 to May 2005. Before completing this questionnaire he had not been confronted about his drug usage. MC a (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) applies. I find for Applicant as to the personal conduct security concerns.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant’s age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant’s voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

Although Applicant’s evidence of rehabilitation is insufficient at this time, this decision should not be construed as a determination that Applicant cannot or will not attain the state of reform and rehabilitation necessary to justify the award of a security clearance. Should Applicant be afforded an opportunity to reapply for a security clearance in the future and he continues on his present course with no future adverse alcohol related incidents, he may well demonstrate persuasive evidence of security worthiness. But that time has not yet arrived. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, the Alcohol Considerations security concern is resolved against the Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Alcohol Consumption:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Paragraph 2 Personal Conduct: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all 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.

Claude R. Heiny
Administrative Judge