

KEYWORD: Alcohol

DIGEST: Applicant is a 25-year-old employee of a defense contractor. He has three alcohol-related incidents, including two convictions for driving while intoxicated in 2004 and 2005. Applicant received counseling and has returned to drinking alcohol without further incident. Applicant has not established a sufficient pattern of responsible, incident-free drinking to mitigate the security concerns raised by his alcohol consumption. Clearance is denied.

CASENO: 06-23003.h1

DATE: 07/17/2007

DATE: July 17, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-23003
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
EDWARD W. LOUGHRAN**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 25-year-old employee of a defense contractor. He has three alcohol-related incidents, including two convictions for driving while intoxicated in 2004 and 2005. Applicant received counseling and has returned to drinking alcohol without further incident. Applicant has not established a sufficient pattern of responsible, incident-free drinking to mitigate the security concerns raised by his alcohol consumption. Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 5, 2006, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing, and elected to have a hearing before an administrative judge. The case was assigned to me on May 22, 2007. A Notice of Hearing was issued on June 1, 2007, scheduling the hearing for June 25, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered eight exhibits that were marked as Government Exhibits (GE) 1 through 8, and admitted without objections. Applicant testified and offered three exhibits that were marked Applicant Exhibits (AE) A through C, and admitted without objections. DOHA received the hearing transcript (Tr.) on July 3, 2007.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 25-year-old employee of a defense contractor. He attended college for several semesters, and attended a technical school which provides computer related certifications. He is not married, but is in a stable relationship. Applicant has no children.<sup>2</sup>

Applicant first started drinking alcohol when he was about 17 years old. In May 2002, Applicant was charged with unlawful possession of alcohol by a person less than 21 years of age. He was 20 years old at the time. He received a deferred disposition, and served 50 hours of community service, after which the charge was dismissed.<sup>3</sup>

Applicant described his alcohol consumption while in college at one to three times a week. He drank primarily beer and occasionally liquor. He would drink five to ten, and sometimes fifteen, beers in an evening. At the time, he did not consider it to be binge drinking. In reflection, he now believes his drinking at that time did constitute binge drinking.<sup>4</sup>

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

<sup>2</sup>Tr. at 18; GE 1.

<sup>3</sup>Tr. at 15, 21, 28-30; Applicant's response to SOR; GE 3.

<sup>4</sup>Tr. at 22-24.

Applicant left college in December 2001. Applicant stated his drinking declined after he left college to about one to three times per month.<sup>5</sup>

Applicant was cited on October 2, 2002, and charged with reckless driving, a misdemeanor. Alcohol was not a factor in this incident. Applicant was found guilty on October 21, 2002, and sentenced to a \$100 fine and \$66 in costs, and his driver's license was restricted or suspended for a period.<sup>6</sup>

Applicant was cited on November 10, 2002, and charged with driving without a license endorsement, a misdemeanor. Applicant was driving a motorcycle. He had a driver's license, but did not have a motorcycle license endorsement. Alcohol was also not a factor in this incident. Applicant was found guilty on January 22, 2003, and sentenced to a \$25 fine and \$7 in costs.<sup>7</sup>

Applicant was arrested on about January 4, 2004, and charged with driving while intoxicated (DWI). Applicant's blood alcohol concentration (BAC) was .10%. Applicant was found guilty and sentenced on February 3, 2004, to a suspended 30-day jail sentence, a \$300 fine and \$164 in costs, 48 hours community service, enroll in a 10 week alcohol safety program, attend a victim's impact panel, and his driver's license was restricted for a year.<sup>8</sup>

Applicant successfully completed the court ordered alcohol safety program. He did not drink alcohol for the year after his conviction.<sup>9</sup>

Applicant testified he drank alcohol for the first time after his 2004 conviction on about February 19, 2005. He once again drove after drinking alcohol. Applicant testified he believed he drank three beers and four drinks. He was arrested, and charged with DWI, second offense within five years. His BAC was .13%. Applicant pled guilty to the amended charge of DWI, first offense. He was sentenced on May 17, 2005, to 90 days in jail, with 80 days suspended, a \$1,000 fine and \$211 in costs, enroll in an alcohol safety program, his driver's license was restricted for a year, and he was required to install an interlock device on his car and pay for the monitoring.<sup>10</sup>

Applicant started treatment with a licensed clinical psychologist on February 25, 2005. An initial diagnostic evaluation was performed the same day. The psychologist wrote in a Treatment Progress Report dated May 10, 2005, that Applicant "presented an alcohol abuse problem of moderate severity that is directly related to single lifestyle socialization, identity concerns and

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<sup>5</sup>Tr. at 25-26.

<sup>6</sup>Tr. at 30-31; GE 4. This information and other criminal activity not alleged, are not considered for disqualifying purposes, but may be considered in assessing Applicant's credibility, when analyzing the "whole person," and the potential application of mitigating conditions.

<sup>7</sup>Tr. at 31-32; GE 5.

<sup>8</sup>Tr. at 32-35; Applicant's response to SOR; GE 6.

<sup>9</sup>Tr. at 15, 26.

<sup>10</sup>Tr. at 35; Applicant's response to SOR; GE 7.

immaturity.”<sup>11</sup> There was no finding of alcohol dependence. Applicant received court approval for this counseling in lieu of the traditional alcohol safety program. Applicant was seen in individual counseling at 32 sessions, through May 1, 2006. Applicant remained abstinent during this period. The psychologist noted Applicant displayed excellent attitude, participation, and involvement,<sup>12</sup> and that:

Throughout counseling [Applicant] was fully cooperative and compliant with his treatment plan. He remained abstinent from alcohol and he achieved his treatment goals. Specifically, [Applicant] established a non-drinking socialization and recreational pattern with effective strategies for emotional need fulfillment and he successfully resolved identity issues as delineated in the May 10, 2005 Treatment Progress Report. [Applicant] successfully completed his individual therapy intervention with good realized gains and a good longer term prognosis.<sup>13</sup>

As part of his treatment Applicant also attended Alcoholics Anonymous meetings. Applicant has not attended any Alcoholics Anonymous meetings since his treatment ended.<sup>14</sup>

Applicant was charged on July 20, 2005, with driving under revocation/suspension. He was found guilty of the amended charge of no driver’s license, a misdemeanor. Applicant was sentenced to a \$100 fine and \$66 in costs.<sup>15</sup>

Applicant has returned to drinking alcohol. He estimates his current consumption at once or twice a month. His usually will have two to three beers. On about two occasions he drank five beers. Applicant denies driving after drinking any amount of alcohol since his last DWI.<sup>16</sup>

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>17</sup> 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

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<sup>11</sup>AE A.

<sup>12</sup>AE B.

<sup>13</sup>AE C.

<sup>14</sup>Tr. at 40-41.

<sup>15</sup>GE 8.

<sup>16</sup>Tr. at 42-44.

<sup>17</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

access to such information.”<sup>18</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>19</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>20</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>21</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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 clearance.<sup>22</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance 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 the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline G: Alcohol Consumption**

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.

The potential Alcohol Consumption Disqualifying Conditions (AC DC) in this case are AC DC 22(a) (*alcohol-related incidents away from work, such as driving while under the influence,*

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<sup>18</sup>*Id.* at 527.

<sup>19</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>20</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>21</sup>*Id.*; Directive, ¶ E2.2.2.

<sup>22</sup>Exec. Or. 10865 § 7.

*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), AC DC 22(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), AC DC 22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence), and AC DC 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).*

Applicant's charges of possession of alcohol by a person less than 21 years of age, and two DWIs establish AC DC 22(a). Applicant admitted his drinking at one point constituted "binge drinking." AC DC 22(c) is established. I accept the report by Applicant's licensed clinical psychologist as a diagnosis of alcohol abuse. AC DC 22(d) is established. I do not find that Applicant's return to drinking in moderation constitutes a "relapse." AC DC 22(f) has not been established.

There are three potential Alcohol Consumption Mitigating Conditions (AC DC) in this case, AC DC 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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)*, AC DC 23(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))*, and AC DC 23(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).*

Applicant has three alcohol-related incidents, including two DWIs. His last DWI was in February 2005. He continues to drink alcohol. Because of his number of incidents of poor judgment, I am unable to make an affirmative finding that Applicant's alcohol incidents are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AC DC 23(a) does not apply.

Applicant acknowledged his issues of alcohol abuse. He provided evidence of actions taken to overcome his problem. Applicant did not drink for the year after his first DWI. He did not drink again from February 2005 through at least May 2006. He has returned to drinking alcohol, but without any adverse incidents. There is no evidence of irresponsible use. Applicant has established a pattern of responsible use. I find AC DC 23(b) is applicable, but Applicant does not merit as much consideration under this mitigating condition because of the relatively short duration of the pattern of responsible use.

Applicant successfully completed outpatient counseling and has received a favorable prognosis by a duly qualified medical professional. In order to receive full application of AC DC 23(d), Applicant must also demonstrate a clear and established pattern of modified consumption in accordance with treatment recommendations. This mitigating condition would appear to require more than AC DC 23(b), which only requires an applicant to establish a pattern of responsible use,

as opposed to a clear and established pattern of modified consumption. I found the former; I do not find the latter. Based upon Applicant's record of remaining abstinent for about a year, and then committing another DWI, as well as his incidents of poor judgment, I do not find that Applicant's current period without an alcohol-related incident is sufficient to qualify as a clear and established pattern of modified consumption. AC DC 23(d) is partially applicable.

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant has three alcohol-related incidents, including two DWIs. He complied with all court requirements, including alcohol counseling. He has abused alcohol, but is not alcohol dependent. Applicant's licensed clinical psychologist gave him a favorable prognosis. He has returned to drinking alcohol without further incident.

When I consider the evidence in light of the adjudicative process factors, I also considered Applicant's other involvement with the law, and specifically how they relate to the allegations in the SOR. When Applicant committed his first DWI, his underage possession of alcohol charge had already been dismissed, but he had two non-alcohol related misdemeanor traffic convictions. He committed his second DWI about 13 ½ months after his first DWI, and only a few weeks after the court restrictions were lifted. Applicant's driver's license was again restricted for a year after his second DWI. Within a few months of his second DWI conviction, Applicant was charged with driving under revocation/suspension, and ultimately convicted of the misdemeanor charge of no driver's license. It appears Applicant has developed a pattern of committing a criminal act, complying with court ordered requirements, and then lapsing into unlawful behavior. Applicant has not been incident-free long enough to show the presence of rehabilitation. Without an extended pattern of incident-free conduct, it is too early to conclude this pattern will not continue. The likelihood of continuation or recurrence of incidents of questionable judgment remains significant.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his alcohol consumption.

### **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
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

Edward W. Loughran  
Administrative Judge