

DATE: July 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23159

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Nygina Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has abused alcohol for nearly 30 years, and has one alcohol-related arrest. He has engaged in habitual binge drinking, consuming for several years as much as a case of beer a day. He currently drinks an average at least four mixed drinks per sitting at least four times weekly. He has also twice undergone alcohol counseling and treatment for alcohol abuse, and was able to stop drinking after each for up to five years. However, each time he eventually resumed drinking, quickly exceeding his previous consumption levels. Applicant suspects he has a drinking problem, but does not intend to permanently stop or modify his alcohol consumption. He has failed to mitigate the security concerns under Guideline G. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 2003 the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline G (Alcohol Consumption). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On February 27, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on March 21, 2003, and, on March 28, 2003, DOHA issued a Notice of Hearing setting this case to be heard on April 15, 2003. All parties appeared as scheduled and the Government presented three exhibits (GE 1 through 3), which were admitted as evidence without objection. Applicant relied on a letter attached to his Answer, which was included in the record without objection, his own testimony, and the testimony of two other witnesses. DOHA received the transcript (Tr) on April 23, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 1.a, 1.b, and 1.d. Accordingly, those allegations are entered as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 49-years-old and works as a systems analyst for a defense contractor. He began drinking alcohol in 1973 when he was 19-years-old. He grew up in a dysfunctional home where his step-father mentally and physically abused him. Drinking was Applicant's way of coping with his troubles. As a young man, Applicant's drink of choice was beer, which he consumed at the rate of about six 12-ounce beers several times a week. From 1973 until 1976, he was a member of a religious cult that frowned on drinking, yet Applicant continued to drink at this rate after work. Applicant considered this amount of drinking to be "moderate." From 1976 to 1984, Applicant's tolerance for alcohol increased to the point where he would drink as many as 24 beers a day. ⁽²⁾

In June 1984, Applicant was arrested, charged and convicted of Driving Under the Influence of Alcohol. Before trial, on advice of his lawyer, he enrolled in an alcohol counseling program. ⁽³⁾ After his conviction, he was awarded probation for one year and ordered to continue alcohol counseling for six months. From 1984 until 1989, Applicant did not consume alcohol; however, he resumed drinking to help him deal with various problems at work and in his personal life. His alcohol consumption quickly escalated to the point he was drinking 12 beers a day and a half-pint of liquor two or three times a week as well. ⁽⁴⁾

Around 1989 or 1990, Applicant went to work for a defense contractor on an island in the Caribbean supporting a Navy engineering program. Alcohol was prevalent during off-duty hours ⁽⁵⁾ and Applicant's drinking became such a problem that he was "tricked" into entering a seven-week alcohol treatment program there. Applicant avers that he thought he was to be seen for seizures he suffered periodically, but he was, in fact, admitted for alcohol counseling. While he denies excessive alcohol use at the time, as discussed above he also acknowledges his consumption was about 12 beers a day after he resumed drinking in 1989. ⁽⁶⁾

In 1992, Applicant moved back in with his parents for about two years. He sought counseling for depression and treatment for his seizures. He reduced his drinking and was generally happier. However, in 1994, when he moved to the area where he now lives and works, his drinking increased because he was depressed about his employment conditions. ⁽⁷⁾

Since about October 1998, Applicant stopped drinking beer, preferring instead straight shots of tequila or mixed drinks such as vodka and orange juice. He drinks almost daily at a rate of about four or five drinks per sitting. He usually drinks for three to five hours after work, and intersperses his drinks with water or iced tea. At times, Applicant has also consumed four or five straight shots of tequila at a bar after work, driven home and had four or five more shots of tequila to help him get to sleep. ⁽⁸⁾ On special occasions, Applicant has far exceeded his normal alcohol consumption. For example, he has gone to Super Bowl parties expecting to drink so much that "it will be clear [he is] not going anywhere that day." ⁽⁹⁾

Applicant last drank alcohol on Friday, February 21, 2003, consuming three or four mixed drinks. The following Monday, Applicant was seen by a doctor who recommended he stop drinking. The doctor was apparently concerned about Applicant's weight (in excess of 300 pounds), his high blood pressure, and an adverse test result on his liver related to excess alcohol consumption. ⁽¹⁰⁾

Applicant thinks he has "somewhat" of a drinking problem, and has been concerned about his alcohol use for the past year. ⁽¹¹⁾ He also thought he had a drinking problem when he was arrested for DUI in 1984, but his concern waned after he went to counseling and stopped drinking until 1989. ⁽¹²⁾ Overall, however, Applicant does not feel alcohol is a significant problem because he is overweight and is able to absorb more alcohol than most people, and he never feels he is intoxicated. Applicant equates being intoxicated to having difficulty walking straight or being nearly incoherent. ⁽¹³⁾

Applicant's history of substance abuse also includes significant use of illegal drugs (marijuana, cocaine, LSD, hashish, amphetamines, and PCP) from 1973 until at least 1998. His use of hashish, PCP, LSD, and amphetamines was extensive, but ended when he was in his mid- to late-20s. He continued to use marijuana and cocaine in significant amounts, engaging in small-scale dealing to support his personal usage. He estimates he spent about \$2,500.00 on cocaine up to 1998. ⁽¹⁴⁾

Applicant's company and government managers hold him in high regard. They have praised his work ethic and determination. There have been no alcohol-related concerns in the five years he has held his current job, and they have not observed any adverse alcohol-related conduct by Applicant in their social interactions with him outside the workplace.

POLICIES

The Directive sets forth adjudicative guidelines ⁽¹⁵⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline G (Alcohol Consumption).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁶⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁷⁾ 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 judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁸⁾

CONCLUSIONS

Guideline G (Alcohol Consumption). Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.⁽¹⁹⁾

The Government has established its case under Guideline G by showing that Applicant was arrested for DUI in 1984 and that he regularly consumes alcohol to the point of intoxication. On special occasions he has engaged in binge drinking, and his drinking history includes excessive amounts of alcohol consumption on a routine basis. Applicant claims that because he can drink more than the average person without experiencing any overt signs of intoxication he does not have a problem. I disagree. Applicant drinks a lot of alcohol on a near daily basis by anyone's standard. The fact that he can walk a straight line and does not have trouble speaking does not mean his judgment is not impaired. Indeed, he admits that sometimes he waits a half-hour or so before he leaves his favorite bar for the drive home because he may feel a little unstable from drinking.⁽²⁰⁾ He fails to appreciate the more fundamental point that driving home after drinking his usual four or five drinks reflects poorly on his judgment. Guideline G Disqualifying Condition (DC) 1⁽²¹⁾ and DC 5⁽²²⁾ apply here.

By contrast, none of the Guideline G Mitigating Conditions apply. While he has recently stopped drinking for a few weeks before the hearing, it is clear he did so only in response to the SOR. Likewise, his doctor's visit was motivated solely by the immediacy of this security clearance determination. Make no mistake, I recognize he has made an effort towards changing his drinking habits and should be encouraged to continue in this regard, if for no other reason than to avert serious health problems. However, in light of his extensive history of alcohol abuse, two months of sobriety does not sufficiently mitigate the disqualifying information available to the government. Applicant has been drinking heavily for most of his life, and previous periods of sobriety far longer than this have ended with Applicant resuming his drinking as much as or more than what he drank before abstaining. Further, he will only commit to abstinence from alcohol for the near future, and, based on statements he made during his background investigation, he will likely continue to drink as he has in the past.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Under this rubric, I have also considered the fact that Applicant abused several illegal drugs as well as alcohol, a legal drug. I can only conclude that he is likely to continue to engage in some form of substance abuse - most likely alcohol - in such a way as to undermine the government's confidence in his ability to safeguard classified information. I conclude Guideline G against the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Alcohol Consumption (Guideline G): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 2.
3. GE 1; Tr., p. 53.
4. Id.
5. Tr., p. 40, 61-62
6. GE 2.
7. Id.
8. GE 2, GE 3, Tr. p. 29, 33 - 38, 56.
9. Tr., p. 54.
10. Answer (attachment); Tr., p. 51 - 52.
11. GE 2; Tr., p. 34.
12. Tr., p. 34.
13. Tr., p. 39 - 40.
14. GE 2. Applicant's nearly 30-year-long history of drug use is not alleged in the SOR, but I have included it in my findings of fact as essential to a determination of his suitability for a security clearance under the "whole person concept" and directly related to what appears to be a general tendency to substance abuse throughout his adult life.
15. Directive, Enclosure 2.
16. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
17. *See Egan*, 484 U.S. at 528, 531.
18. *See Egan*; Directive E2.2.2.
19. Directive, E2.A7.1.1.
20. Tr., p. 39.

21. E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

22. E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;