

KEYWORD: Alcohol

DIGEST: Applicant, a 29-year-old engineer, had three criminal charges relating to or as a result of alcohol use, while a university student. The latest was in 2001. They were mitigated by passage of time and change of lifestyle. Clearance in granted.

CASENO: 02-28937.h1

DATE: 04/26/2005

DATE: April 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28937

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

**APPEARANCES**

**FOR GOVERNMENT**

Erin C.Hogan, Esq. , Chief Deputy Department Counsel

Candace Le'i, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 29-year-old engineer, had three criminal charges relating to or as a result of alcohol use, while a university student. The latest was in 2001. They were mitigated by passage of time and change of lifestyle. Clearance in granted.

### **STATEMENT OF CASE**

On March 10, 2004, 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 under the Directive 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 April 19, 2004, Applicant responded to the allegations, and requested a hearing. The matter was assigned to me on December 22, 2004. A notice of hearing was issued on January 13, 2005, and a hearing was held on February 23, 2005. Four government exhibits and 14 Applicant exhibits were admitted into evidence. The Applicant testified. The transcript was received on March 8, 2005.

## FINDINGS OF FACT

After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 29-year-old employee of a defense contractor who had alcohol-related offenses in 1997, 1998, and 2001. Applicant admitted all of the specific allegations relating to his alcohol related incidents, but denied drinking to excess since 2002 when his professional career as a mechanical engineer began after college graduation.

Applicant over-indulged in alcohol as a high school student and while in college. In 1997 he was charged with after hours consumption of alcohol and fined \$50.00. A year later he was charged with driving while intoxicated and given Probation Before Judgment, placed on a one year supervised probation, fined \$355.00 and ordered to enroll in and complete an alcohol class which he did with Mothers Against Drunk Driving (MADD).

Applicant's last encounter with law enforcement occurred when he was a few months short of college graduation in 2001. He was arrested on his campus after an out-of-town basketball game against a traditional rival. Some disorderly celebrations occurred after the game. Applicant had watched the game on television in a bar, consumed several beers, and was walking home when he came upon a campus bonfire. He went towards the bonfire to see what was happening. Unbeknownst to him the area had been the site of a campus riot and police had dispersed the crowd but were present. He approached a policeman who pointed a weapon at him. Applicant flexed his muscles and was shot several times with a pepper ball gun, arrested and charged with second degree assault, resisting arrest, failure to obey a lawful order, and disorderly conduct. He admits the incident and states that it was a totally stupid thing to do. The charges were placed on the inactive docket and no action was ever taken.

Since graduation three months after the 2001 arrest, Applicant has been successfully employed by a company doing contract work on government programs. He is well regarded by his employer, his colleagues, family, and friends (Exhs. A-N). He has not had any further incidents involving alcohol or criminal activity since 2001. He has changed his lifestyle, become a home-owner, and drinks only an occasional beer at social events.

## 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 has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol under Guideline G. This relates to excessive alcohol consumption (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence or other criminal incidents. (E2.A7.1.2.2.) Itigating factors could include the fact that the problem occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

All three incidents occurred over four years ago. While Applicant should have learned from the first two incidents and

the MADD counseling that drinking could lead to legal problems, he did get involved in the 2001 incident. He did not learn the lesson and the last incident was the most egregious of the three incidents. However, even that one is now over four years old and his record since that time is clear of any incidents that might call his judgment into question. He has been gainfully employed in his profession with the same company since college graduation and has become a stable member of his community. From the documents presented at the hearing and the testimony of the Applicant, I conclude that enough time has elapsed and sufficient changes in his lifestyle have occurred that the mitigating factors are applicable.

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. Applicant is an impressive person of talent who has risen in his company to a responsible position. He expresses regret for his conduct. After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's overall record of good conduct justifies a finding that 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

Subparagraph 1.d.: For Applicant

## **DECISION**

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

Charles D. Ablard

Administrative Judge