

KEYWORD: Alcohol

DIGEST: Applicant has successfully mitigated the security concern raised by his history of excessive alcohol consumption. His alcohol-related incidents are not recent, and although he continues to consume alcohol, he does so in moderation. He is no longer a problem drinker. Clearance is granted.

CASENO: 02-29615.h1

DATE: 02/17/2005

DATE: February 17, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29615

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant has successfully mitigated the security concern raised by his history of excessive alcohol consumption. His alcohol-related incidents are not recent, and although he continues to consume alcohol, he does so in moderation. He is no longer a problem drinker. Clearance is granted.

STATEMENT OF THE CASE

On April 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G for alcohol consumption. Applicant responded to the SOR on May 27, 2004, he admitted all the factual allegations in subparagraphs 1.a - 1.h, and requested a hearing.

Department Counsel indicated he was ready to proceed on July 23, 2004. On July 27, 2004, this case was assigned to me to conduct a hearing. On August 17, 2004, a notice of hearing was issued scheduling the hearing for September 8, 2004. Applicant appeared with counsel and the hearing took place as scheduled. The transcript was received September 23, 2004. Issuing a decision in this case was delayed due a heavy caseload.

FINDINGS OF FACT

After a thorough review of the record, I make the following findings of fact:

Concerning the SOR allegations in general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of all the factual events alleged in the SOR.

Applicant is a 47-year-old man and a native-born U.S. citizen. He is employed as a carpenter for a defense contractor that provides services to a U.S. Air Force Station (AFS) located in a relatively remote area of the U.S. He has worked at this AFS, in one capacity or another, for more than 20 years, and he has held a security clearance for many years. Applicant requires a security clearance to enter secured areas of the AFS to perform carpentry work.

Applicant's first marriage ended when his wife passed away. His second marriage of about nine years ended in divorce in 1998. He is the father of three children, two adult children from his first marriage and a minor child from his second marriage. Applicant is now involved in a steady relationship with a woman. His girlfriend has abstained from drinking alcohol since about 1984.

The background investigation in this case revealed Applicant has a history of excessive alcohol consumption. Applicant admits to SOR allegations as described here. He admits to subparagraph 1.a, which alleges he has consumed alcohol, at times to excess and to the point of intoxication, from approximately 1973 to at least May 2002. He admits to subparagraph 1.b, which concerns his arrest in June 1975 for possession of alcohol by a minor where he was found guilty and fined \$50.00. He admits to subparagraph 1.c, which concerns his arrest in October 1997 for drunk driving (actual physical control while under the influence of alcohol) where he pleaded guilty and was sentenced to 10 days in jail, suspended, and fined \$300.00 (*See Exhibit 3 for details*). He admits to subparagraph 1.d, which concerns his arrest in August 1998 for drunk driving (driving while under the influence of alcohol-second offense within five years) where he pleaded guilty and was sentenced to 30 days in jail (26 days suspended) and ordered to pay a fine and fees of \$650.00 (*See Exhibit 4 for details*). He admits to subparagraph 1.e, which concerns an October 2001 alcohol-related incident at work where he tested positive for the presence of alcohol in his system. He admits to subparagraph 1.f, which concerns his inpatient treatment during October-November 2001 where he received a diagnosis of alcohol dependence from a person described as an LADC, which I presume means licensed alcohol and drug counselor (*See Exhibit 5 at page 10 for diagnostic summary*). He admits to subparagraph 1.g, which concerns his outpatient treatment or counseling during November 2001-February 2002, and thereafter, attending AA meetings was recommended. He admits to subparagraph 1.h, which concerns his consumption of alcohol notwithstanding his inpatient treatment for alcohol dependence.

In his hearing testimony, Applicant attributed his two drunk driving offenses in 1997-1998 to a period of heavy drinking tied to financial struggles and domestic discord with his then wife. He abstained from alcohol from October 2001 until he completed the outpatient program in February 2002. Applicant now limits his consumption of alcohol, and his beverage of choice is beer. He currently drinks beer one to two times per week. He does not go to bars, and he typically has a beer or two with dinner. If he is out for dinner and driving, he limits himself to one or two beers. If he is not driving, he may have two to four beers with dinner. He does not usually drink on weekends because he spends that time with his girlfriend who does not drink alcohol. After his discharge from the inpatient treatment center, Applicant was again suspected of being under the influence of alcohol at work. Applicant was taken to a local hospital where he tested negative. Applicant has attended AA meetings in the past, but stopped going because he believed the meetings were not confidential in the small-town environment where he lives. Applicant possesses a valid driver's license issued by his state of residence.

Four co-workers testified on Applicant's behalf. None of these gentlemen have ever seen Applicant impaired or under the influence of alcohol while he was working at the AFS. In particular, one witness who has 31 years of experience in security or law enforcement matters, and who is now the project manager for the law enforcement/security contract at the AFS, has never had any official contact with Applicant due to an alcohol-related incident or concern.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. The applicable security guideline here is Guideline G for alcohol consumption.⁽²⁾

BURDEN OF PROOF

The only 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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against them.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under 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. The concern is that excessive 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. In other words, the issue is not whether Applicant is a risk to the national security of the U.S. Instead, the issue is whether the record evidence raises a security concern under the applicable security guideline, and here it certainly does.

Based on the record evidence as a whole, the government established its case under Guideline G. Applicant has engaged in excessive alcohol consumption over years with negative consequences. The juvenile offense in 1975 and the two drunk driving offenses in 1997-1998 qualify as alcohol-related incidents away from work. ⁽¹²⁾ Likewise, testing positive for alcohol while at work in October 2001 qualifies as an alcohol-related incident at work. ⁽¹³⁾ And Applicant's history of alcohol consumption includes times when he drank to the point of intoxication and beyond. ⁽¹⁴⁾ These circumstances raise a security concern about Applicant's suitability for access to classified information.

The remaining DC under the guideline do not apply, however, for the following reasons. First, DC 3 ⁽¹⁵⁾ does not apply because Applicant's diagnosis of alcohol dependence made in October-November 2001 was not made by a credentialed medical professional. The diagnosis was made by a licensed alcohol and drug counselor, and no evidence was presented showing the person was a credentialed medical professional. Second, DC 4 ⁽¹⁶⁾ does not apply because there is no evidence showing the person who made the diagnosis was a licensed clinical social worker. And third, DC 6 ⁽¹⁷⁾ does not apply using the same reasoning that DC 3 is inapplicable-the diagnosis was not made by a credentialed medical professional.

I have reviewed the mitigating conditions under the guideline and conclude two apply in Applicant's favor. First, MC 2 ⁽¹⁸⁾ applies in Applicant's favor because the last alcohol-related incident took place in October 2001, which is about three years ago (October 2001-September 2004 when the record closed), and he has had no other alcohol-related incidents since then. Second, MC 3 ⁽¹⁹⁾ applies because Applicant has made positive changes by reducing or limiting his alcohol consumption. Specifically, he abstained from alcohol for a period of months and now limits his beer drinking to levels that can fairly be described as moderate. Moreover, he has had no other alcohol-related incidents away from or at work, and in that sense, the proof is in the pudding, as this shows he is no longer a problem drinker. This conclusion is supported not only by Applicant's statements, but by the four co-workers who have never seen Applicant impaired or under the influence of alcohol while working at the AFS. In addition, Applicant has sufficient motivation to remain free from problems involving alcohol due to his relationship with his girlfriend who has abstained from alcohol since 1984. To sum up, I conclude Applicant's problems linked to alcohol are in the past, and so, he has successfully mitigated the security concern. Accordingly, Guideline G is decided for Applicant.

To conclude, Applicant has met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline G: For the Applicant

Subparagraphs a - h: For the Applicant

DECISION

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

Michael H. Leonard

Administrative Judge

1. 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).

2. Attachment 7 to Enclosure 2 of the Directive.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. 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.
13. E2.A7.1.2.2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.
14. E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of intoxication.
15. E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.
16. E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.
17. E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.
18. E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem.
19. E2.A7.1.3.3. Positive changes in behavior supportive of sobriety.