

KEYWORD: Alcohol

DIGEST: Applicant engaged in underage drinking, and was caught driving under the influence (DUI) within six months of getting his driver's license at age 16. Following the dissolution of his first marriage in 1994/95, Applicant began frequenting dance clubs looking for female companionship, often drinking to intoxication. A 1996 DUI had little impact on his behavior, and in February 1999 he caused an accident involving personal injury while driving drunk. Convicted of felony aggravated battery, Applicant began to appreciate the consequences of drinking and driving. Remarried and in a stable lifestyle since May 2000, Applicant continues to consume alcohol, but in moderation with no evidence of adverse impact on his judgment, reliability, and trustworthiness. His abusive drinking is sufficiently of the past to mitigate the alcohol consumption concerns. Clearance is granted.

CASENO: 02-30630.h1

DATE: 02/02/2005

DATE: February 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30630

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant engaged in underage drinking, and was caught driving under the influence (DUI) within six months of getting his driver's license at age 16. Following the dissolution of his first marriage in 1994/95, Applicant began frequenting dance clubs looking for female companionship, often drinking to intoxication. A 1996 DUI had little impact on his behavior, and in February 1999 he caused an accident involving personal injury while driving drunk. Convicted of felony aggravated battery, Applicant began to appreciate the consequences of drinking and driving. Remarried and in a stable lifestyle since May 2000, Applicant continues to consume alcohol, but in moderation with no evidence of adverse impact on his judgment, reliability, and trustworthiness. His abusive drinking is sufficiently of the past to mitigate the alcohol consumption concerns. Clearance is granted.

STATEMENT OF CASE

On March 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on alcohol consumption (Guideline G).

On March 30, 2004, Applicant, acting *pro se*, responded to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 8, 2004, and pursuant to notice of June 14, 2004, a hearing was scheduled for July 7, 2004. At the hearing, five Government and three Applicant exhibits were admitted. Testimony was taken from Applicant and a coworker of his, as reflected in a transcript of the hearing received on July 20, 2004.

FINDINGS OF FACT

The SOR alleges alcohol consumption (Guideline G) concerns because of alcohol-related criminal incidents in 1987, 1995, 1996, and 1999, and his continued consumption of alcohol to at least August 2002. Applicant admits the factual allegations, and his admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following findings:

Applicant is a 34-year-old composites technician employed by a defense contractor since April 2002. He seeks a secret security clearance for his duties.

Applicant began drinking beer every two or three months at parties with friends as a freshman in high school, usually four to eight beers to intoxication. After attending a party at a friend's house in December 1987, where he consumed six to eight beers, Applicant was stopped for a traffic violation by the local police. Licensed for less than six months at that time, he was charged with driving under the influence (DUI) as his blood alcohol content tested at .18%. He pleaded guilty to the offense and was sentenced to six months probation, 40 hours of community service, and six months suspension of his driver's license. He also took a mandated standard drunk driving course.

After the DUI, Applicant continued to consume alcohol as he had been before the DUI. For the remainder of his high school years, four to six times yearly he attended parties where he drank four to eight beers, but he did not drive a vehicle after drinking as his parents would not allow him to use their vehicle even after his license was restored.

From May 1990 to May 1994, Applicant served on active duty as an aviation electronics technician and structural mechanic in the United States Navy. Married in December 1990, Applicant did not drink very much when his ship was in home port. During the six months of each year when his ship was deployed, Applicant drank to excess about once per month while on liberty with shipmates. Applicant was awarded an honorable discharge from the Navy at the rank of petty officer third class.

Following his separation from the service, Applicant moved back to his native state without his wife and young son (born March 1993).⁽²⁾ Depressed over the dissolution of his marriage, Applicant did not feel like going out and having fun. Consequently, he drank rarely during the latter half of 1994. Early in 1995, Applicant accompanied a friend to a western dance club. He enjoyed it, and began going to the club twice a month to socialize. Applicant consumed beer on those occasions, to intoxication about once every two months or so.

In mid-March 1995, Applicant attended a party with some friends where he drank four to six beers before driving a female companion to her home. While he waited for her to change clothes, he drank three or more beers. Realizing he was too impaired to drive safely, he allowed her to drive them back to the party. En route she lost control of his truck and flipped it into a ditch. He regained consciousness at a local hospital where he was charged with DUI (2nd offense) with a blood alcohol level of .165%. The charge was dismissed in late July 1995 when it was determined he had not been the driver.

Unemployed from about May 1995, Applicant relocated in August 1995 to attend a technical school for aeronautical mechanics. Applicant started going to country dance clubs every two to three weeks where he drank two or three beers. Occasionally, rarely more often than once every other month, Applicant consumed beer to intoxication.

One evening in July 1996, Applicant drank around five beers while dancing and socializing with friends. En route home he was stopped at a random sobriety checkpoint and arrested for misdemeanor DUI as he exhibited blood shot eyes, slurred speech, staggered gait, and an odor of alcohol on his person. The charge was amended to driving while impaired as his blood alcohol content tested at .09%. Applicant pleaded guilty to the amended charge in January 1997, and was sentenced to six months in jail (suspended), 40 hours of community service, DUI school, a \$500 fine plus costs, and six months loss of license. Applicant also underwent a required alcohol evaluation where he was assessed as a social drinker who abused alcohol on occasion. Although determined not to suffer from alcoholism, Applicant was still advised to refrain from alcohol consumption and to be very careful about amounts consumed if he did drink.

In February 1997, Applicant earned his certificate as an aircraft structural mechanic. Over the 1997/98 time frame, Applicant worked as a repair assembler for a local company and then as a structural mechanic for a large airplane manufacturer. His consumption of alcohol averaged two to three times a month at dance clubs and social gatherings, four to eight beers in a given evening.

In early February 1999, Applicant visited a friend of his residing in a nearby state. Applicant drank seven or eight beers in a short period of time, sharing a pitcher of beer with his friend and the latter's fiancée while bowling and then imbibing three or four more at a dance club. On leaving the club, Applicant took a wrong turn. Several miles down the road he turned around. Not familiar with the roads, he proceeded westbound in an eastbound lane, striking one vehicle before hitting another oncoming car head on, causing an accident with minor personal injury.⁽³⁾ Applicant was charged with aggravated battery (severity level 5 person felony), DUI with a blood alcohol content .168% (class B misdemeanor), and driving while suspended (class B nonperson misdemeanor).⁽⁴⁾ In May 1999, the aggravated battery charge was amended to aggravated battery with a deadly weapon (severity level 8). In August 1999, the DUI and driving while suspended charges were dismissed in return for Applicant pleaded guilty to aggravated battery, level 8-person felony. Applicant was sentenced in September 1999 to nine months in prison (suspended), fines and costs of \$684.50, 40 hours of community service, 10 hours of drug/alcohol classes, and he was placed on supervised probation for two years with 30 days to be spent in country jail. Following a restitution hearing in October 1999, Applicant was ordered to pay \$1,573.42 in restitution for the victim's out of pocket costs to satisfy the loan obligation on the vehicle that had been totaled in the accident. After serving the first 13 days of his jail term on the weekends, Applicant decided to remain in jail during the work week to complete his incarceration. He reported to his immediate lead that he would not be unable to report for work, but was terminated from his job in November 1999 for violating company policy of more than three days of consecutive absence without authorization.

In February 2000, he underwent a court-ordered alcohol assessment where he was found not to have a drinking problem, but to have shown poor judgment where drinking and driving were involved. Advised that he was using alcohol "like liquid courage" when out with groups of people, Applicant was told he needed to re-evaluate the way in which he approached drinking. The February 1999 incident shocked Applicant into realizing there were consequences to his drinking, "that there was more to it than trying to go out and have a good time."

In May 2000, Applicant married his current wife, a woman almost 15 years his senior with three sons of her own born in 1979, 1981, and 1996, and he moved to his present locale where he began working as an installer in the aviation industry. He met his spouse over the Internet. In April 2001, Applicant was discharged from his probation for the February 1999 felony aggravated battery.

In April 2002, Applicant began working for his current employer. Needing a secret clearance for his duties as a composites technician building antennas for fighter aircraft, Applicant completed a security clearance application on May 1, 2002, on which he was candid about his alcohol-related offenses and job termination from a previous employment for violation of the company policy on absenteeism. Concerning his felony conviction for aggravated battery, Applicant indicated since the February 1999 incident he has not driven a vehicle after consuming alcoholic beverages, drinks rarely these days, and has a healthy family life since remarrying.

On August 16, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his alcohol consumption and drunk driving. Applicant acknowledged that "[d]uring the turbulent time following [his] divorce and unwanted separation from [his] son, [he] at times acted in a careless and unwise manner while out with friends." Applicant related that he now leads a responsible life, consuming alcohol only five or six times since February 1999 and not to excess.

Sometime during the latter half of 2003, Applicant consumed four beers at his stepson's wedding reception. As of July 2004, Applicant was continuing to consume alcohol on rare occasion, never more than two or three beers, at restaurants, at home with his spouse, or at barbeques with friends. It had been "several weeks" since he ingested any alcohol. He does not keep alcohol in the house but will purchase a 12-pack of beer if expecting guests. Applicant realizes his ability to stop drinking was diminished whenever he was in an environment where he was out having a good time, "wrapped up in a world that [he] thought revolved around female companionship." He has not been intoxicated since the incident in February 1999. His social life consists of spending time with his wife and young stepson. Applicant does not believe he has an alcohol problem at present. Remorseful for the shame he caused his family, Applicant consciously avoids situations that could get him in trouble with drinking.

In his two plus years on the job for the defense contractor, Applicant has proven to be a dependable and productive employee who requires little supervision. His production supervisor considers him a strong contributor and valuable

asset to the organization. A close friend who also works as a composites technician for the defense contractor has not observed Applicant to be intoxicated in the four years he has known him.

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. The President has 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

GUIDELINE G

Alcohol Consumption

The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

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; (E2.A7.1.2.1.)

Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)

Conditions that could mitigate security concerns include:

The problem occurred a number of years ago and there is no indication of a recent problem; (E2.A7.1.3.2.)

Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guideline G:

A security concern is raised by Applicant's repeated drunk driving offenses, and by his abusive relationship with alcohol when out socializing at dance clubs from 1995 to 1999. Those to whom classified information is entrusted must be relied on to safeguard this material both during business and non-business hours. The ingestion of alcohol to intoxication is incompatible with this duty due to the obvious potential for intentional or inadvertent disclosure when one is under the influence. Applicant committed his first DUI as a 16-year-old with less than six months of driving experience and engaged in underage abusive drinking on occasion throughout the remainder of high school. Yet this early abuse of alcohol can reasonably be attributed to immaturity and peer influences, especially where he refrained from drinking to excess during his four years in the Navy except during deployments when on liberty with shipmates. Of greater concern is his use of alcohol after he was divorced from his first wife and began frequenting country dance clubs in search of female companionship. Although he did not consume alcohol to excess on a daily basis or even every time he went out dancing, he clearly drank on repeated occasions (*viz.* the DUIs) leading to significant impairment. The 1995 DUI charge was dismissed because he was not the driver. He exhibited good judgment in recognizing that he could not drive safely, but his blood alcohol content of .165% confirms his intoxication on that occasion. In July 1996,

he exhibited sufficient indicia of alcohol impairment when stopped at a sobriety checkpoint to be arrested for DUI, and he was convicted of driving while impaired. The February 1999 drunk driving is especially egregious, not only because it caused personal injury to another (fortunately for him minor) but also because it followed an alcohol assessment where he was advised to refrain from drinking altogether or to at least be careful about his consumption. Although there is no evidence Applicant has ever allowed alcohol to negatively influence his work performance, disqualifying conditions (DC) E2.A7.1.2.1. (alcohol-related incident away from work) and E2.A7.1.2.5. (binge consumption to the point of impaired judgment) must be considered.

In mitigation, there is no evidence of any alcohol-related incident since February 1999. Applicant testified credibly that the incident, which despite his repeated drunk driving led to his first incarceration, "shook him to the core." Admittedly late in recognizing the serious consequences to drinking to excess, Applicant has refrained from driving after drinking, although not from all involvement with alcohol. In response to the Government's concerns about his continued consumption (SOR 1.g.), Applicant submits he does not abuse alcohol, imbibing "on a rare occasion" at most two or three beers when socializing with friends or at a restaurant with his spouse. In determining whether Applicant's ongoing consumption of alcohol presents a security risk, it is noted that nothing in the Directive or Executive Order 10865 prohibits drinking per se. Consumption that does not lead to occupational, social, or legal impairment is not in and of itself disqualifying unless it follows a diagnosis of alcoholism or alcohol abuse by a credentialed medical professional or licensed clinical social worker on staff of a recognized treatment program.⁽⁵⁾ Evaluated after the 1996 and 1999 drunk driving offenses, Applicant was determined to have a tendency to abuse alcohol when he got together with groups of people at a club or at a party, using it "like liquid courage." Absent a clear diagnosis of alcohol abuse or alcoholism by a qualified substance abuse professional, a negative inference of ongoing abuse is not warranted solely from the fact that he is still drinking. However, Applicant bears a particularly heavy burden to overcome his serious DUI history.

After considering all the evidence of record, I conclude Applicant's attitude toward his drinking and his lifestyle have changed sufficiently to conclude he is likely to maintain the sobriety he has enjoyed since February 1999. Candid with the Government about his abuse history, Applicant has not sought to minimize his responsibility for his actions. He expressed sincere remorse about the shame he brought upon himself and his family and consequently, a desire to avoid any circumstances that could lead to a recurrence. With his remarriage in May 2000, Applicant removed himself geographically from the environment where he drank to excess and from the need to go to bars and clubs for female companionship. He has maintained a stable lifestyle with no evidence of excessive consumption for five years. Security clearance decisions are not intended to punish an applicant for past wrongdoing, but instead involve an assessment of future risk of the exercise of questionable judgment. Given there is no indication of a recent problem (*See* E2.A7.1.3.2.), and the positive changes in behavior supportive of sobriety (*See* E2.A7.1.3.3.), favorable findings are returned with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. of the SOR.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: 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.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. Applicant and his first wife were granted a final decree of divorce in May 1995.
3. The report of the arresting officer (Ex. A) indicates Applicant was cooperative and remorseful.
4. Applicant had a valid driver's license in his home state as well as insurance coverage on his vehicle. (Tr. 34).
5. The consumption of alcohol without regard to amount imbibed or impact on judgment is security disqualifying in its own right where there is a diagnosis of alcoholism by a credentialed medical professional and it follows completion of an alcohol rehabilitation program. (*See* E2.A7.1.2.6.) However, it is noted that if an individual has been diagnosed as suffering from alcohol abuse by a credentialed medical professional or licensed clinical social worker on staff of a recognized treatment program, he or she is required to abstain completely from alcohol for at least 12 months under mitigating condition E2.A.7.1.3.4.

