

KEYWORD: Alcohol

DIGEST: Applicant, age 39, is a senior software engineer for a federal contractor, and has a history of alcohol abuse, including two alcohol related traffic arrests since 1997. Notwithstanding the completion of an alcohol treatment program in 2000, he continued to drink. However, since March 2002, Applicant has been alcohol free, has been cited by his employer for meritorious service, and has provided evidence mitigating the security concerns raised under Guideline G (alcohol consumption). Clearance is granted.

CASENO: 02-13857.h1

DATE: 02/17/2005

DATE: February 17, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13857

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, age 39, is a senior software engineer for a federal contractor, and has a history of alcohol abuse, including two alcohol related traffic arrests since 1997. Notwithstanding the completion of an alcohol treatment program in 2000, he continued to drink. However, since March 2002, Applicant has been alcohol free, has been cited by his employer for meritorious service, and has provided evidence mitigating the security concerns raised under Guideline G (alcohol consumption). Clearance is granted.

STATEMENT OF THE CASE

On August 23, 2004, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption.

In a sworn written statement, dated September 8, 2004, Applicant answered the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on November 1, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by December 1, 2004. Applicant objected to the FORM and submitted another sworn statement with attached exhibits dated November 11, 2004. The case was previously assigned to another administrative judge on July 29, 2004, but was reassigned to me on February 1, 2005, due to caseload considerations.

FINDINGS OF FACT

Applicant has admitted 4 of 5 factual allegations pertaining to alcohol consumption under Guideline G as stated in the SOR. These admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a 39-year-old senior software engineer and has worked for a federal contractor since 1998.⁽²⁾ He is a married father of two step-children.

Applicant has a history of alcohol abuse. He was arrested on November 24, 1996, and charged with DUI with a blood alcohol of .147% and .162%. He was found guilty and sentenced to 1 year's supervised probation, ordered to attend a county DUI school, attend a victim awareness program, complete 40 hours community service, fined \$492.50 and had his driver's license revoked for 6 months.⁽³⁾ He was diagnosed as alcohol dependent after successfully completing a basic outpatient substance abuse treatment program.⁽⁴⁾ On January 21, 2000, Applicant was arrested for driving while intoxicated with a blood alcohol content of .08%. After a guilty plea he paid a total of \$1,646.00 in fines and court costs, performed 40 hours of community service, completed a 4 month DUI program, spent 48 hours in jail, had his driver's license restricted for 90 days, and he was placed on 3 years unsupervised probation.⁽⁵⁾

In response to the FORM, Applicant submitted a sworn statement stating that he continued drinking intoxicating beverages until February or March 2002; that he has abstained from alcohol consumption since March 2002; that he attends Alcoholics Anonymous (AA) meetings; that he spends his evenings at home with his family; admits that he is an alcoholic; and attached his employee work appraisal and commendations.⁽⁶⁾ His annual employee evaluation for the period April 1, 2003 to April 1, 2004, indicates that he met or in some instances, exceeded expectations. The portion entitled "Compliance with Safety, Security, Ethics and Training Requirements" is checked "Yes".⁽⁷⁾ There were no deficiencies noted. Copies of 4 achievement awards were also attached, including a memorandum that one of the awards included a \$500 cash bonus.⁽⁸⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁹⁾ 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 ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will

continue or recur in the future. 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 SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline G (alcohol consumption).

Under Guideline G (alcohol consumption), excessive alcohol consumption is a security concern because it 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. Directive, ¶ E2.A7.1.1. One who shows he cannot manage the intoxicating effects of alcohol in a responsible manner may be prone to inadvertent disclosures of sensitive or classified information. Such conduct may also indicate a more general lack of trustworthiness or good judgment.

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁰⁾ for an Applicant to either receive or continue to have access to classified information. The government bears an 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.⁽¹¹⁾

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 judgment, 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.⁽¹²⁾

CONCLUSIONS

Department Counsel has presented sufficient evidence to establish a *prima facie* case for disqualification under Guideline G. The Applicant has a history of alcohol related incidents and arrests. The arrest records, the clinical

evaluations, as well as the Applicant's own admissions in the Answer, and his sworn statements, fully support the SOR allegations. The following Guideline G disqualifying conditions apply. Directive, ¶ E2.A7.1.2.1. *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or their criminal incidents related to alcohol use*; and Directive, ¶ 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*. The government alleges that Directive ¶ 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*, applies, but the record does not contain sufficient evidence to determine if the diagnosis was by a "credentialed" medical professional. Therefore, this disqualifying condition does not apply.

Applicant's position in his sworn statements is that his use of alcohol stopped in March 2002. Most significant is his admission that he is an alcoholic. He is attending AA meetings and recognizes the importance of peer support that AA furnishes. He is spending time with his family instead of drinking. His employer's performance evaluator states: "[He] has accomplished his tasks in a timely manner.... He is committed and dedicated to getting his tasks done.... [He] is a great team player. He is always willing to come in and work with anyone at anytime. He has the respect of his peers, and management and is a pleasure to work with." ⁽¹³⁾ I find that Applicant has satisfied the following mitigating conditions. ¶ E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem*. ¶ E2.A7.1.3.3. *Positive changes in behavior supportive of sobriety*. ¶ E2.A7.1.3.4. *He participates frequently in Alcoholics Anonymous and has abstained from alcohol for a period of at least 12 months*. I conclude Guideline G for the Applicant.

I have carefully weighed all of the evidence. And I have applied the disqualifying and mitigating conditions listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive ¶6.3, as called for by a fair and commonsense assessment of the record before me as required by Directive ¶ E2.2.3. These facts lead me to conclude that Applicant has the ability to protect classified information and to exercise the requisite good judgment and discretion expected of one whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

FORMAL FINDINGS

Formal Findings regarding each SOR allegation as required by Directive ¶ E3.1.25 are 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

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.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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.

2. Item 4 (*Security Clearance Application dated July 12, 2002*) at 1 and 4.

3. Item 7 (*Ticket, police report and court documents relating to arrest of November 24, 1996*) at 1-8.

4. Item 8 (*Alcohol Dependence Diagnosis dated June 2, 1997*).
5. Item 6 (*Ticket, police report and court documents relating to arrest of January 21, 2000*) at 1-31.
6. Item 9 (*Sworn statement dated November 11, 2004, with attachments*) at 2-3.
7. *Id.*, at 4-8.
8. *Id.*, at 10-14
9. Directive, Enclosure 2.
10. See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).
11. See *Egan*, 484 U.S. at 528,531.
12. See *Egan*; Directive ¶ E2.2.2.
13. Item 9, *supra*, at 7-8.