

KEYWORD: Alcohol

DIGEST: Applicant was twice convicted of drinking driving related offenses in 1984 and 1997. Part of the sentence following his second conviction required him to attend an outpatient alcohol treatment program, which he did from November 1998 to April 1999. He stopped drinking for six to eight months after completing this program and began drinking again. In June 2003, he self-referred to an intensive outpatient alcohol treatment program and has been alcohol free for one year. Additionally, he has held a top secret clearance for 25 years while making substantial and significant contributions to the defense industry. He has successfully mitigated security concerns pertaining to past alcohol consumption. Clearance is granted.

CASENO: 02-16274.h1

DATE: 04/29/2005

DATE: April 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16274

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Donald V. Feeley, Esq.

SYNOPSIS

Applicant was twice convicted of drinking driving related offenses in 1984 and 1997. Part of the sentence following his second conviction required him to attend an outpatient alcohol treatment program, which he did from November 1998 to April 1999. He stopped drinking for six to eight months after completing this program and began drinking again. In June 2003, he self-referred to an intensive outpatient alcohol treatment program and has been alcohol free for one year. Additionally, he has held a top secret clearance for 25 years while making substantial and significant contributions to the defense industry. He has successfully mitigated security concerns pertaining to past alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 18, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on December 8, 2003, and elected to have a hearing before an administrative judge.

On February 25, 2004, the case was assigned to me. On March 15, 2004, Counsel for Applicant entered a notice of appearance. On March 31, 2004, DOHA issued a notice of hearing scheduling the case for April 30, 2004. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered seven documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant offered two documents, which were admitted without objection as Applicant Exhibits (AE) A and B. DOHA received the transcript on May 11, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 50-year-old unmarried man, and has on occasion supported a woman with which he has had a long-standing relationship. He has no dependents. He suffers from the latent effects of poliomyelitis, which he contracted at 1 ½ years of age. He has flaccid paralysis of his right leg and residual weakness in his left leg and walks with the assistance of crutches.

Since 1980, Applicant has been employed as an engineer in the defense industry. He has been with his current employer since June 1996. Since 1980, he has continuously held a top secret clearance without incident, a period of approximately 25 years. He holds a bachelor of science degree with a major in physics, and master of science degree in theoretical astrophysics. He was recently inducted into a highly competitive technical fellowship program within his company as an associate technical fellow. He has also published several highly technical and recognized papers in his area of specialization.

Applicant consumed alcohol from approximately 1978 until at least April 2003, SOR ¶ 1.a.

On March 25, 1984, Applicant was arrested for driving under the influence. He was found guilty, fined, and his driver's license was suspended for six months, SOR ¶ 1.b.

On February 17, 1998, Applicant was found guilty of driving while impaired following his arrest on December 6, 1997. His driver's license was suspended for six months, was awarded fines totaling \$505.00, loss of driving privileges for six months, and was required to attend 12 hours at Intoxicated Driver Resource Center, SOR ¶ 1.c.

Applicant attended outpatient treatment at an alcohol treatment center from November 2, 1998 to April 26, 1999, SOR ¶ 1.e. He was referred to this program by the Intoxicated Driver Resource Center, see above. His initial diagnosis was DSM 305.0, Alcohol Abuse. Applicant had a satisfactory attendance record, a satisfactory participation level and kept an overall satisfactory attitude while in treatment. He also attended the required Alcoholics Anonymous meetings as part of treatment. His discharge diagnosis was DSM 305.0, Alcohol Abuse/Partial Remission. GE 3.

Applicant ceased consuming alcohol for six to eight months after he completed this program. He had hoped among other things that if he stopped drinking, his post-polio symptomology would improve, but it did not. GE 5. Applicant then resumed his "normal after-work habit of having several drinks . . . after dinner." Tr. 25.

On June 18, 2003, Applicant self-admitted to the same alcohol treatment center he previously attended from 1998 to 1999. His initial diagnosis was DSM 303.90, Alcohol Dependence. This diagnosis was not performed by a credentialed medical professional, which was conceded by the government. Applicant successfully completed an intensive outpatient program and afterwards completed relapse prevention and continued care programs. He attended follow-up Alcoholics Anonymous meetings and worked with his sponsor utilizing the 12-step program. He was discharged on February 17, 2004, and his discharge diagnosis was DSM 303.93, Alcohol Dependence in Remission. AE A.

Applicant has not had a drink since once week before he entered the program, which was June 18, 2003. Tr. 25-26. At the time of his hearing, he had completed six weeks short of a year of total sobriety. Tr. 36.

At the conclusion of the evidentiary portion of the hearing, the government stated that SOR ¶¶ 1.d. and 1.f. had been mitigated to their satisfaction.

Applicant is a highly valued, trusted and experienced employee. He is viewed by his superior as being responsible, trustworthy and possessing integrity. He has a distinguished record of 25 years of significant contributions to the defense industry and national defense.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline G - Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol from approximately 1978 until at least 2003, that he had two drinking driving related offenses in 1984 and 1997, was arrested for driving on a suspended license in 1998, attended outpatient treatment at an alcohol treatment center from November 1998 to April 1999, the same alcohol treatment center following an evaluation of alcohol dependence recommended Applicant attend an outpatient program, and that despite this evaluation, Applicant continued to consume alcohol (¶¶ 1.a. through 1.g). *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. Directive ¶ E2.A7.1.1.

The Government established its case under Guideline G by Applicant's admissions and evidence submitted as to ¶¶ 1.a. through 1.f. However, Applicant denied ¶ 1.g. He further supported his denial by un rebutted evidence. Additionally, the government stated upon the conclusion of the evidence that Applicant had mitigated ¶¶ 1.d. and 1.f. I concur with this assessment. The remaining allegations, however, give rise to Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, . . .*).

The remaining evidence establishes Applicant had a drinking driving offense in March 1984, approximately 20 years ago, a drinking driving offense in December 1997, approximately seven years ago, and that as a result of the 1997 drinking driving offense, he was required to attend an outpatient alcohol treatment program, which he did from November 1998 to April 1999. Following completion of that program, he stopped drinking for approximately six to eight months and then resumed drinking.

In June 2004, Applicant self-admitted to the same alcohol treatment center where he was treated from 1998 to 1999. Although diagnosed as alcohol dependent during intake, such diagnosis was not completed by a credentialed medical professional as defined by the Directive ¶ E2.A7.1.2.3. In February 2004, he completed the program and fully complied with all requirements of the program. At the time of the hearing, he had been alcohol-free for almost one year.

Applicant's two drinking driving offenses give rise for concern, however, they occurred 20 and seven years ago, respectively. To Applicant's credit and highly commendable on his part, he self-referred to an alcohol treatment center. Since seeking help, he has done everything within his means to modify his lifestyle and engage in behavior supportive of sobriety.

These facts trigger Alcohol Consumption Mitigating Conditions (AC MC) E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*); and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). Applicant was able to recover from a series of rather unfortunate events that would have been difficult for most individuals to overcome.

Applicant has a demonstrated track record of 25 years of outstanding service as an engineer employed by the defense industry, who has made countless contributions to the national defense. During those 25 years, he has held a top secret clearance. I found his testimony credible and found his self-referral for outpatient treatment commendable. Furthermore, he has successfully overcome the life-long permanent disability he sustained after contracting polio as a young child.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶ 1.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.-1.g: 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 continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.