

KEYWORD: Criminal Conduct; Alcohol

DIGEST: Applicant has a history of six alcohol-related arrests and charges over a fifteen-year period spanning 1987 and 2000. These arrests and charges resulted in convictions, jail time, fines, supervised probation and suspended driving privileges. After receiving inpatient treatment for diagnosed alcohol dependence in 1987, he returned to abusive drinking and two additional alcohol-related incidents. Since incurring his sixth DuI arrest and conviction in 2000, he has continued to drink. Applicant's most recent restorative efforts in curtailing his drinking, while encouraging, are not accompanied by any updated diagnosis and prognosis and are insufficient to enable safe predictive assessments about Applicant's ability to avoid recurrent alcohol abuse in the foreseeable future. Clearance is denied.

CASENO: 02-20115.h1

DATE: 03/15/2005

DATE: March 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20115

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of six alcohol-related arrests and charges over a fifteen-year period spanning 1987 and 2000. These arrests and charges resulted in convictions, jail time, fines, supervised probation and suspended driving privileges. After receiving inpatient treatment for diagnosed alcohol dependence in 1987, he returned to abusive drinking and two additional alcohol-related incidents. Since incurring his sixth DuI arrest and conviction in 2000, he has continued to drink. Applicant's most recent restorative efforts in curtailing his drinking, while encouraging, are not accompanied by any updated diagnosis and prognosis and are insufficient to enable safe predictive assessments about Applicant's ability to avoid recurrent alcohol abuse in the foreseeable future. Clearance is denied.

STATEMENT OF CASE

On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 28, 2004 and requested a hearing. The case was assigned to me on September 24, 2004, and was scheduled for hearing on October 28, 2004. A hearing was convened on October 28, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on two witnesses (including himself) and three exhibits. The transcript (R.T.) of the proceedings was received on November 5, 2004.

SUMMARY OF PLEADINGS.

Under Guideline J, Applicant is alleged to have (a) been arrested for alcohol-related offenses (mostly for DuIs) in 1987 (twice), 1989, 1990 (twice) and pleaded guilty to DuI offenses in each instance.

Under Guideline G, Applicant's DuI alcohol-related offenses are incorporated by reference. Additionally, he is alleged to have (a) received alcohol treatment at a substance abuse center in his home state from April 1997 to May 1997, where he was diagnosed upon both admission and discharge with alcohol dependence and (b) continued to consume alcohol after treatment. For his response to the SOR, Applicant admitted each of the allegations covered by Guidelines J and G.

FINDINGS OF FACT

Applicant is a 57-year old power switchboard operator for a defense contractor who seeks a security clearance. The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to alcohol at the age of 15. By 1984, he was consuming alcohol (mostly whiskey, but generally all types of alcoholic beverages) on a nearly daily basis, while denying he was an alcoholic. He continued to consume alcohol daily between 1984 and 1987.

In 1987 Applicant was involved in two accidents within a short space of three months (*viz.*, in January 1987 and again in May 1987). His first arrest occurred in January 1987 after an accident in which he injured a woman motorist. Applicant was arrested and charged with DuI and later pleaded guilty to the offense. He was fined \$250.00, sentenced to six months in jail (suspended), ordered to serve 48 hours in jail, and had his driver's license suspended for one year.

Three months later (in April 1987), Applicant was arrested for his second DuI offense following a two-car accident and transported to a local police station in an intoxicated state. To this offense, he pleaded guilty. The sentencing court fined him \$500.00, ordered him to complete 20 hours of public service work for the city, and sentenced him 11 months, 29 days (suspended all but 48 hours).

Believing he needed help with his alcohol problem, Applicant went to his supervisor at the time for assistance. Acting on the treatment recommendations of his supervisor, Applicant enrolled in an inpatient substance abuse treatment center in April 1987. Upon admission to the substance abuse center, Applicant was diagnosed as alcohol dependent and

prescribed an inpatient treatment regimen that included individual and group therapy and participation in the 12-step program administered by Alcoholics Anonymous (AA). Applicant successfully completed his 28-day inpatient program with an improved diagnosis and prognosis and was counseled to participate in aftercare and AA meetings following his discharge and to abstain from alcohol (*see ex. 13*).

Following his inpatient discharge in May 1987, Applicant continued to regularly participate in aftercare and AA meetings for about six months, during which time, he abstained from alcohol. As his aftercare and AA participation tapered to nothing over the first six months following his inpatient discharge, Applicant slipped back into drinking, light initially, but steadily accelerated back to daily consumption (R.T., at 42-43). He can't explain why he stopped going to AA (with his last meeting occurring in 1994) or why he resumed his drinking.

In April 1989, Applicant was arrested and charged with DuI (3rd offense) and carrying a weapon for the purpose of being armed after he was stopped and searched by arresting police (*see ex. 10*). He plead guilty to DuI, as a consequence of which he was fined \$500.00, sentenced to jail for 11 months and 29 days (all but 10 days suspended), ordered to complete 50 hours of community service, and prohibited from driving in the state for one year.

Applicant continued to drink regularly after his third alcohol-related offense (about a fifth of whiskey a day), and incurred two more alcohol-related offenses in 1990. In April 1990 he was arrested for DuI (4th offense) and driving with a revoked license, for which he was found guilty on both counts in June 1990 (*see ex. 8*). As a result of his DuI conviction, he was fined \$400.00 plus court costs, sentenced to jail for 11 months and 29 days (all but 20 days suspended), and had his driver's license suspended for a year. Applicant was sentenced to six months jail confinement (all but 48 hours suspended), fined \$50.00 and ordered to pay court costs on his driving on a revoked license conviction.

In a fifth alcohol-related offense, this one just one month late (in May 1990), Applicant was arrested and charged with DuI and driving with a revoked license, for which he pleaded guilty to a DuI second offense and driving with a revoked license. He was sentenced in June 1990 to jail for 11 months and 29 days for this offense (all but 45 days suspended) on his DuI conviction, ordered to pay \$750.00 to a designated drug fund, plus \$166.00 in court costs, and placed on probation for one year (*see answer; R.T., at 39*). In addition, he was fined \$25.00 plus court costs for his driving with a revoked license.

Following his 1990 DuI arrests, Applicant ceased drinking altogether. For the first three years he relied on his AA attendance to reinforce his abstinence. But after he and his wife moved to the country in 1993, he couldn't find an easily accessible AA chapter and quit attending AA meetings in 1993. Still, Applicant was able to sustain his sobriety for another four years without the aid of AA or a sponsor (R.T., at 46-47). His sustained sobriety enabled him to achieve favorable results concerning alcohol-related allegations in a previous administrative hearing over his security clearance suitability (*see ex. 13*).

Applicant resumed his drinking in 1997, beginning with a glass of wine or two most nights after work. He maintained this drinking pattern for several years before increasing his drinking to regular daily consumption in 2000 after his wife left him (R.T., at 29).

In July 2000, Applicant was arrested in connection with his sixth alcohol-related offense: DuI and unlawful possession charges. He had been drinking with friends during an outing at the river and drank too much (*see ex. 2*). Later in court, he pled guilty to DuI and was fined \$350.00, sentenced to 11 months and 29 days in jail (all but three days suspended) and ordered to perform 100 hours of public service work.

After his 2000 DuI arrest, Applicant quit drinking for about six months (R.T., at 50). He resumed his drinking, however, in January 2001. Even after promising the DSS agent who interviewed him in 2002 (*see ex. 2*) that he would return to AA and stop drinking, he continued his drinking. For the three years spanning 2001 and 2004, he consumed one-half to a pint of whiskey a day (R.T., at 50-51). After being advised by his treating physician in 2004 that he should limit his alcohol to no more than a glass of wine a day, he stopped consuming whiskey altogether and now restricts his alcohol intake to one glass or so of red wine a day (R.T., at 51-52). He has never been counseled by his supervisor or any management representative of his current employer and last consumed hard liquor (*viz.*, a pint of whiskey) about a month ago (R.T., at 56-57).

Applicant is well regarded by his supervisor and coworkers who consider him reliable and trustworthy in the exercise of his tasked employment responsibilities (R.T. at 68).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a switchboard operator for a defense contractor with a history of recurrent alcohol abuse and diagnosed alcohol dependence. His six documented alcohol-related incidents over a 14-year period, reinforced by his continued drinking in the face of numerous DuI incidents and dependence diagnosis, reflect alcohol abuse by Applicant and documented proof of his having a recurring problem with alcohol.

Applicant's history of alcohol-related incidents, habitual consumption and dependence diagnosis reflect both a recent pattern alcohol abuse and a dependency problem that are security significant. On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption are applicable: 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*), E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional*), E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of intoxication*), and 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*).

To his credit, Applicant did seek treatment following his second DuI offense in 1987 and for several months after discharge stayed with his prescribed regimen of aftercare, AA participation and sustained abstinence. But after several months of sobriety, he slipped back into regular drinking and turned away from both his after care and AA meetings. Applicant's return to abusive drinking was followed by two additional DuI incidents in 1989 and 1990 before he acknowledged his addiction and recommitted himself to self-imposed abstinence and adherence to the tenets of the 12-step program of AA. His efforts were persuasive enough to convince DOHA in 1991 to allow him to keep his security clearance (*see ex. 14*).

While he was able to maintain his sobriety for almost seven years following the second of his two 1990 DuIs, Applicant's eventually returned to abusive drinking and became involved in his sixth and last DuI in 2000. His abstinence commitments following his 2000 DuI ceased after only six months and were replaced by abusive daily drinking. Even after promising the DSS agent who interviewed him in 2002 that he would return to AA and cease drinking, he continued his drinking at abusive levels. Only in the last six months has he cut back on his drinking (generally confining himself to a glass of wine a day upon the recommendations of his nutritionist).

To what extent Applicant can continue to drinking responsibly is unclear; since Applicant has not seen fit to obtain an updated diagnosis and prognosis from a credentialed physician or substance abuse counselor. Applicant's lack of any meaningful AA involvement in recent years, continued drinking and failure to furnish a favorable diagnosis and prognosis preclude application of any of the mitigating conditions of the Guidelines. His renewed commitment to controlled drinking does reflect positive changes in behavior supportive of sobriety, and for these efforts Applicant is to

be commended. Favorable views of his progress from work colleagues who know him are also helpful in gauging the strength of his recovery.

All in all, though, Applicant's mitigation efforts to date reflect too little sustained commitment to sobriety to conclude he is no longer at risk to recurrent abusive drinking in the foreseeable future. Without demonstrated abstinence and a favorable prognosis, it would be imprudent to relax the time requirements of Guideline G's E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) or credit Applicant generally with successful rehabilitation at this point in his still ongoing recovery.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the commitment and systems support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by subparagraphs 1.a through 1.f as incorporated in subparagraph 2.b of Guideline G and the separate alcohol treatment allegation covered by subparagraph 2.a of the Guideline.

While Applicant's six alcohol-related incidents and dispositions (covered by allegation 2.b) are neither isolated nor aged when grouped as a pattern, they require separate consideration under the Adjudicative Guidelines covering criminal conduct. The charges and dispositions reflect mistakes of judgment which are security significant. The Appeal Board has repeatedly stated that the government can prove an applicant's engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Two disqualifying conditions of the Guidelines covering criminal behavior apply: E2.A10.1.2.1 (*Allegations or admission of criminal conduct*) and E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*).

Applicant's minimal restorative efforts are insufficient to facilitate safe predictive judgments at this time about his avoiding recurrent alcohol-related incidents in the future. His probative showing is not enough, as such, to enable him to mitigate concerns associated with his alcohol-related judgment lapses. So, while Applicant may claim some benefit of one of the mitigating conditions of the Guidelines (*viz.*, E2.A10.1.3.6 1 (*The criminal behavior was not recent*)), it is premature to credit him with the mitigation benefits of E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.f of Guideline J.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge