

KEYWORD: Alcohol

DIGEST: Applicant is 46 years old and has been drinking since age 18. Between 1976 and March 2003, Applicant consumed alcohol, at times to excess and to the point of intoxication, and, at times, drinking at least 15 beers daily. Applicant was arrested six times between 1979 and 1996. Four of the arrests were for driving under the influence, one was for being drunk in public and interfering with arrest, and the other was for disorderly intoxication. Some of those arrests also included jail time and fines. Based on his lengthy period of excessive consumption of alcohol, it is not now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 03-19126.h1

DATE: 07/15/2005

DATE: July 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19126

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and has been drinking since age 18. Between 1976 and March 2003, Applicant consumed alcohol, at times to excess and to the point of intoxication, and, at times, drinking at least 15 beers daily. Applicant was arrested six times between 1979 and 1996. Four of the arrests were for driving under the influence, one was for being drunk in public and interfering with arrest, and the other was for disorderly intoxication. Some of those arrests also included jail time and fines. Based on his lengthy period of excessive consumption of alcohol, it is not now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On November 19, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline G (Alcohol Consumption). Applicant answered the SOR on December 7, 2004.

Department Counsel submitted the government's written case on January 20, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant on January 20, 2005, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on February 11, 2005. He did not submit additional material in response to the FORM. The case was assigned to me on April 13, 2005.

FINDINGS OF FACT

Applicant admitted all of the factual alcohol consumption allegations contained in the SOR under Guideline G. Those admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is 46 years old and has been employed as an electrical installer senior specialist by a federal defense contractor for the past 13 years.

He has been drinking since age 18. From approximately 1976 to at least March 2003, Applicant consumed alcohol, at times to excess and to the point of intoxication, and at times consuming at least 15 beers daily. He reported that when he attempted to stop drinking on his own "he developed shakiness, stomach discomfort, diaphoresis, sleep difficulties, increased levels of anxiety and 'feel terrible.'"⁽¹⁾ As of August 28, 2001, "he has not had a single day of sobriety for the last 10 years."⁽²⁾

Applicant was arrested in 1979, 1984, 1986, 1989, 1991, and 1996. Four of his arrests were for driving under the influence, one was for being drunk in public and interfering with arrest, and the other was for disorderly intoxication. Some of those arrests also included jail time and fines.

On August 26, 2001, Applicant voluntarily had himself admitted into a hospital for treatment of his excessive alcohol consumption. The physician's consultation assessment is dated August 27, 2001. Also, another physician did a psychiatric assessment of Applicant, and the admitting diagnoses were Alcohol Dependence and Alcohol Withdrawal Syndrome. Applicant then spent seven to ten days in an inpatient program at the hospital. After being released as an inpatient on August 30, 2001, he had six weeks of outpatient counseling. He attended Alcohol Anonymous meetings for about six months.

Applicant continues to consume alcohol, notwithstanding his treatment for Alcohol Dependence. He states:

Since being released from treatment and counseling, I have discovered that I have to limit myself to three to four beers maximum at any one sitting. I have made a personal choice to only drink once to twice weekly and consume no more than three to four beers. I admit that my use of alcohol was excessive prior to treatment and that contributing [sic] to my decision to seek treatment. . . . There is no change in my behavior after consuming three to four beers.⁽³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. 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 sole 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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G - Alcohol Consumption: 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, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline G. Based on all the evidence as a whole, the following Alcohol Consumption Disqualifying Conditions (AC DC) apply in this case: 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*); AC DC E2.A7.1.2.3 (*diagnosis by a credential medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*); AC DC E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*); and AC DC 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*). Applicant has had numerous arrests for driving under the influence, together with the other arrests for being drunk in public and disorderly intoxication, thus showing a history of excessive alcohol consumption which has led to Applicant's questionable judgment, unreliability, and failure to control impulses. He voluntarily admitted himself for alcohol detoxification at a hospital with admitting diagnoses of Alcohol Dependence and Alcohol Withdrawal Syndrome. A medical doctor gave him a psychiatric assessment upon admission on August 26, 2001. I find that he was treated by a credentialed medical professional for alcohol dependence. Moreover, after his physician's diagnoses, Applicant continued to consume alcohol to at least March 19, 2003, notwithstanding his treatment for alcohol dependence. Applicant is at great risk because of his excessive alcohol consumption of unauthorized disclosure of classified information due to carelessness.

I have considered all the Alcohol Consumption Mitigating Conditions (AC MC) under Guideline G and conclude none apply. From approximately 1976 to at least March 2003, Applicant, at times, consumed at least 15 beers daily, sometimes in excess and to the point of intoxication. Pursuant to AC MC E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*), his alcohol-related behavior creates a pattern and is not mitigated. Moreover, Applicant was arrested, jailed, and fined numerous times for alcohol-related incidents between 1979 and 1996. While this period of time could be considered as having occurred a number of years ago, it is not mitigated by AC MC E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*) because there is no indication that in recent times Applicant has remained sober. The record does not support a conclusion that he has modified his drinking behavior. AC MC E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*) does not apply because although he was admitted to a hospital with a diagnoses of Alcohol Dependence and Alcohol Withdrawal Syndrome, and he attended Alcoholic Anonymous meetings for about six month after being released from the hospital in 2001, he continued to drink, at least until March 19, 2003. Thus, pursuant to AC MC 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*), Applicant has not shown in mitigation any positive changes in his behavior in support of sobriety.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant should not have a security clearance. Applicant has not mitigated the security concerns caused by his alcohol consumption. Accordingly, subparagraphs 1.a through 1.j of the SOR are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Alcohol Consumption (Guideline G) AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d Against the Applicant

Subparagraph 1.e Against the Applicant

Subparagraph 1.f Against the Applicant

Subparagraph 1.g Against the Applicant

Subparagraph 1.h Against the Applicant

Subparagraph 1.i Against the Applicant

Subparagraph 1.j Against the Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Item 10, (Documents from Hospital), dated August 28, 2001 at 5.
2. *Id.*
3. Item 12, (Applicant's Sworn Statement, dated March 19, 2003), at 4.
4. ISCR Case No. 96-0277 (July 11, 1997) at 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
6. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
9. *Egan*, 484 U.S. at 531.
10. *Id.*
11. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865 § 7.