

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a ballistic technician for a defense contractor. He has held a security clearance while working for his employer for over 20 years. He has four arrests for driving while intoxicated in the last 15 years. His employer is aware of the arrests. He has not had an alcohol-related incident with law enforcement in eight years. Applicant did receive counseling after his last arrest for driving while intoxicated but he has not been classified as an alcohol abuser. He has curtailed his drinking in the last year but he continues to drink approximately 18 beers a week. Applicant is a habitual drinker. Clearance is denied.

CASENO: 03-19024.h1

DATE: 03/04/2005

DATE: March 4, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19024

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

Candace Le'I, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a ballistic technician for a defense contractor. He has held a security clearance while working for his employer for over 20 years. He has four arrests for driving while intoxicated in the last 15 years. His employer is aware of the arrests. He has not had an alcohol-related incident with law enforcement in eight years. Applicant did receive counseling after his last arrest for driving while intoxicated but he has not been classified as an alcohol abuser. He has curtailed his drinking in the last year but he continues to drink approximately 18 beers a week. Applicant is a habitual drinker. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 4, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 9, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 9, 2004. He admitted all but one of the allegations under Guidelines G and denied the allegation under Guideline E. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 21, 2004. Department Counsel was prepared to proceed with the case on October 22, 2004, and the case was assigned to another administrative judge on November 1, 2004, and reassigned to me on December 8, 2004. A notice of hearing was issued on January 13, 2005, and the hearing was held on February 9, 2005. Four government exhibits, three Applicant exhibits, and the testimony of the Applicant and one Applicant witness were received during the hearing. The transcript was received on February 17, 2005.

### **FINDINGS OF FACT**

Applicant is an unmarried 40-year-old machine-shop ballistic technician for a defense contractor. He has held a security clearance since 1984 when he started working with his employer. His defense contractor employer is aware of his alcohol-related arrests since the employer had to approve work release programs after his convictions. His employer considers him a good worker. Applicant submitted a security clearance application on January 18, 2001, to continue his security clearance. (1)

Applicant was arrested and convicted for driving while intoxicated in 1990, 1992, 1995, and 1997. He attended some alcohol counseling and education classes as a result of the 1992 and 1995 convictions. For the 1997 conviction, Applicant was sentenced to 90 days' confinement which was served on work release. (2) He was required to attend court ordered alcohol counseling in a 26 week non-resident program and attend an alcohol program during the two year probation period. He completed the non-resident program. He attend the counseling sessions during probation but did not fully participate in the program. He has not been classified as an abuser of alcohol. It was recommend that he stop drinking because he had a pattern of drinking. (3) He continued to drink alcohol while in the alcohol program and while under probation. (4) From 1997 to early 2004, Applicant's alcohol consumption on average was four to five beers a day, with potentially more on week-ends. He was intoxicated about once a month during this time when he drank more that four or five beers in a day. (5) In 2004, a friend died in a drug and alcohol-related incident which altered his alcohol consumption habits. Now, Applicant drinks less but consumes on average a few beers a day for about 18 beers a week. Some days he drinks none and other days more than a few beers. He has no encounters with law enforcement for any reason, to include alcohol-related, since 1997. Since early 2004, he has not been intoxicated and does not presently attend any alcohol abuse programs. He does not drink at work but only after work and on week-ends (6)

Applicant only listed his arrest and conviction in 1997 for driving while intoxicated in response to question 24 on his security clearance application which asked if he had been charged with or convicted of any alcohol related offenses. (7) Applicant completed the form answering a few questions each day over a week and was confused because of the number of questions on the form asking for offenses in the last 7 years. He did certify the accuracy of the form. (8)

## **POLICIES**

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." (9) 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 judgement, 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." (10) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and

circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(11)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(12)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>(13)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(14)</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(15)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(16)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(17)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(18)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(19)</sup>

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline G (Alcohol Consumption), a security concern exists because excessive alcohol consumption leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risks of unauthorized disclosure of classified information due to carelessness.<sup>(20)</sup> Applicant's consumption of alcohol brings this matter under Alcohol Consumption Disqualifying Conditions E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence. . .*); and E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired*

*judgment*). Applicant admits to four driving while intoxicated convictions, even though the last was almost eight years ago. He admits to habitually drinking to the point of intoxications and impaired judgment until at least early 2004. Applicant relies heavily on the facts that he has not had an alcohol related incident with law enforcement in the last eight years and that he has moderated his drinking habit since early 2004. The fact he has not been arrested in eight years for an alcohol related incident and has moderated his drinking in the last year does not lessen security concerns based on his continued drinking habits. Applicant may have reduced his alcohol consumption in the last year but he still drinks and is a habitual drinker. He continues to drink even though told to stop drinking because of a pattern of alcohol use. Because of the convictions and his continued habitual drinking, I conclude the disqualifying conditions have been established. [\(21\)](#)

The Alcohol Consumption Mitigating Conditions to be considered for Applicant are Alcohol Consumption Mitigating Condition E2.A7.1.3.1 (*the alcohol related incidents do not indicate a pattern*); E2.A7.1.3.2 (*the problem occurred a number of years ago and there is not indication of a recent problem*); and E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). Applicant has not mitigated the security concerns for Alcohol Consumption. The four driving while intoxicated offenses in seven years and Applicant's continued consumption of alcohol indicates a pattern of alcohol problems. While the last arrest for driving while intoxicated happened in 1997, Applicant has a present habit of consuming alcohol every day and week indicating a security concern with alcohol consumption. While Applicant has cut back on his beer drinking in the last year, there is still a continued consumption of alcohol and no positive changes in behavior that support Applicant's claims of sobriety.

Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. [\(22\)](#) Applicant listed only one and not all four alcohol related offenses on his security clearance application. He was confused since most of the questions on the security clearance application asked for incidents in the last 7 years and not for all incidents as did question 24 for alcohol-related incidents. Applicant's employer knew of all four incidents and the convictions are a matter of public record. There was no incentive for Applicant to not reveal the incidents. Personal Conduct Disqualifying Condition E2.A5.1.2.3 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*) requires a finding of falsification with an intent to defraud or deceive the government. I conclude Applicant did not deliberately conceal or omit all of his alcohol related incidents with an intent to deceive and the disqualifying condition is not established.

I carefully considered all of the circumstances in light of the "whole person" concept to reach a fair, impartial, and commonsense decision. I conclude Applicant is not eligible for access to classified information.

### **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, Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all of the circumstances presented in 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.

Thomas M. Crean

Administrative Judge

1. Applicant Exhibit A (Employer's Letter of Recommendation, dated January 6, 2005); Tr. 23, 31.
2. Government Exhibit 2 (Applicant's statement, dated March 25, 2003), at 1.
3. Tr. 31-35.
4. Government Exhibit 2, *supra* at 3.
5. Government Exhibit 2, *supra*, at 3; Tr. 26.
6. Government Exhibit 2, *supra*, at 3, Tr. 37.
7. Government Exhibit 1 (Security Clearance Application, SF 86, dated January 18, 2001).
8. Government Exhibit 2, *supra*, at 4; Tr. 19-25.
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
11. Directive ¶ E2.2.1.
12. *Id.*
13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
14. *See* Exec. Or. 10865 § 7.
15. Directive ¶ E3.1.14.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
19. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
20. Directive ¶ E2.A7.1.1.

21. I did not consider if Applicant is a binge drinker since neither Department Counsel nor Applicant defined the term "binge drinking" as used in Alcohol Consumption disqualifying Condition Directive ¶ E2.A7.1.2.5. The term is defined in various Department of Health and Human Services, Substance Abuse & Mental Health Services Administration (SAMHSA) publications as consuming five or more drinks on the same occasion (i.e. within a few hours) on at least one day in a 30 day period. Applicant's consumption of alcohol may have classified him as a binge drinker.

22. Directive ¶ E2.A5.1.1.