

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant drove while under the influence of alcohol on two occasions resulting in her arrested. Her arrests occurred prior to July 2001. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her alcohol consumption and criminal conduct. Clearance is granted.

CASENO: 03-19947.h1

DATE: 03/02/2005

DATE: March 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19947

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant drove while under the influence of alcohol on two occasions resulting in her arrested. Her arrests occurred prior to July 2001. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her alcohol consumption and criminal related conduct. Clearance is granted.

STATEMENT OF THE CASE

On November 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 7, 2004, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On January 18, 2005, Applicant received a complete copy of the file of relevant material (FORM) dated December 29, 2004. On January 19, 2005, Applicant responded to the FORM. On January 25, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant alcohol consumption and criminal conduct. The Applicant admitted being arrested in June 1999 and charged with Driving While Intoxicated (DWI). The charge was *nolle prosequi* following a 12-week diversion program. She admits being arrested for DWI again in July 2001 and for open container in October 2001. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 26 years old, has worked for a defense contractor since June 2003, and is seeking to obtain a security clearance. The Applicant is regarded by those who know her as a dedicated employee, a hard worker, honest, smart, articulate, dependable, conscientious, and a tenacious problem solver.

In June 1999, Applicant, then a college student, was arrested for DWI. She was underage, but went drinking at a club with friends. Her friends were intoxicated and she thought she was sober enough to drive. She was wrong. She was pulled over after the car she was driving hit a curb. Her blood alcohol content (BAC) was .11%. In February 2000, she successfully completed a court ordered alcohol education/treatment program. The charge was *nolle prosequi* following her completion of a 12-week pretrial diversion program.

In July 2001, Applicant was arrested for DWI. She had dinner at her parent's home. With dinner she drank a bottle of wine. She was stopped by the police for weaving when she attempted to drive home. Her BAC was .18%. She was found guilty, sentenced to 30 days in jail (suspended), fined \$600 (\$300 suspended), order to attend Alcohol Safety Action Program (ASAP), her driver's license was suspended for 12 months, and she was sentenced to one year probation. In September 2002, Applicant's case was closed following her successful completion of all requirements. In October 2001, while on probation, Applicant was charged with open container. She was stopped by the police after she had left a bar with a cup of beer. She was held in custody and fined \$10.

In December 2002, Applicant provided a signed, sworn statement (Item 6) in which she stated she was getting intoxicated once or twice a month. As of January 2005, Applicant's consumption of alcohol had changed to the point she rarely consumes alcohol and never to the point of intoxication. In May 2003, she obtained her college degree. She has changed her behavior in ways supportive of sobriety. She is gainfully employed and engaged to be married in May 2005. Her fiancé does not drink to excess.

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

The Government has satisfied its initial burden of proof under Guideline G. A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. The concern is that 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. The issue is whether the record evidence raises a security concern under the applicable guideline, and here it does.

Applicant was arrested twice for DWI. Her BAC at the time of her June 1999 arrest was .11%, and .18% at her July 2001 arrest. The 1999 charge was *nolle prosequi* after she successfully completed an alcohol education/treatment program and 12 week diversion program. She was also arrested for open container when she left a bar with a cup of beer and fined \$10. Disqualifying conditions (DC) 1 (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.*) and 5 (E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment.*) apply.

Applicant's last alcohol related arrest occurred in 2001, which is three and a half years ago. Although not completely abstinent, Applicant now rarely consumes alcohol and never to the point of intoxication. There is no indication of a current problem with alcohol. Mitigating Condition 2. (E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem.*) applies.

Applicant's behavior occurred when she was in college. In May 2003, she obtained her degree. She has changed her behavior in ways supportive of sobriety. She is gainfully employed and engaged to be married in May 2005. Her fiancé does not drink to excess. MC 3 (E2.A7.1.3.3.) Positive changes in behavior supportive of sobriety.) applies. I find for Applicant as to Alcohol Consumption.

The Government has also satisfied its initial burden of proof under Guideline J. The security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Applicant had two DWIs and one arrest for open container. Because of these incidents, DC 1. (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged.*) and 2. (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses.*) apply.

Her last arrest is three and a half years ago and, therefore, is not recent. MC 1 (E2.A10.1.3.1. *The criminal behavior was not recent.*) applies. Her alcohol consumption has been greatly reduced. She is no longer in college, and is now engaged. Changes in her lifestyle make it unlikely her criminal conduct will recur. MC 4. (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.*) Applicant's changes of lifestyle show clear evidence of successful rehabilitation. MC 6 (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation.*)

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Alcohol Consumption: 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

Paragraph 2 Criminal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: 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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.