

KEYWORD: Alcohol

DIGEST: Forty-seven-year-old Applicant's alcohol consumption resulted in five arrests during a 12-year span for a variety of alcohol-related charges, four of which were followed up by court action. Despite registering a blood/alcohol content of 0.16 or above on breathalyzers on two occasions, and being convicted, Applicant denied being intoxicated during any of the incidents. While the most recent arrest may have occurred in 1999--over five years ago--and he attended a number of alcohol education and counseling programs, he continues to consume varying quantities of alcohol. He does not have a good understanding of his motivation for still drinking alcohol and denies having a current problem with alcohol, although he now concedes that he may have had one in the past. Clearance is denied.

CASENO: 03-20005.h1

DATE: 02/25/2005

DATE: February 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20005

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-seven-year-old Applicant's alcohol consumption resulted in five arrests during a 12-year span for a variety of alcohol-related charges, four of which were followed up by court action. Despite registering a blood/alcohol content of 0.16 or above on breathalyzers on two occasions, and being convicted, Applicant denied being intoxicated during any of the incidents. While the most recent arrest may have occurred in 1999--over five years ago--and he attended a number of alcohol education and counseling programs, he continues to consume varying quantities of alcohol. He does not have a good understanding of his motivation for still drinking alcohol and denies having a current problem with alcohol, although he now concedes that he may have had one in the past. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated June 21, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on September 20, 2004. A notice of hearing was issued that same date, and the hearing was held on October 7, 2004. During the hearing, nine Government exhibits, six Applicant exhibits, and the testimony of the Applicant, were received. The transcript (Tr.) was received on October 19, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to alcohol under Guideline G (subparagraphs 1.a. through 1.g.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor seeking to retain a TOP SECRET security clearance, which was previously granted to him in May 1996.

Applicant is an alcohol abuser whose alcohol of choice is beer.⁽¹⁾ He started consuming alcohol when he was 17-years-old,⁽²⁾ but that early alcohol consumption was undistinguished as to quantity and frequency.⁽³⁾ Applicant served as an enlisted man on active duty with the U.S. Air Force from October 1979 until September 1983, and in about 1982, his daily consumption generally consisted of one six-pack of beer.⁽⁴⁾ Following his discharge in 1983, and continuing until 1995, his consumption consisted of a six-pack of beer every two days.⁽⁵⁾ It purportedly decreased in 1995 to a 12-pack of beer every four or five days, and remained unchanged until about 1999.⁽⁶⁾ He abstained for about one year in 1999,⁽⁷⁾ but eventually resumed his consumption of alcohol to a point where a 12-pack of beer will generally last him four or five days.⁽⁸⁾ Applicant's current level of alcohol consumption, which has been relatively stable since he resumed drinking,⁽⁹⁾ is about one six-pack of beer per four days to a week.⁽¹⁰⁾ Sometimes he consumes beer on a daily basis, sometimes every other day, and sometimes he will have two beers at a time.⁽¹¹⁾

Over the span of a decade, Applicant's consumption of alcohol has led to his involvement in alcohol-related incidents resulting in arrests. In June 1987, after consuming an unspecified quantity of alcohol at a bar and returning home, Applicant and his then-wife got into a domestic dispute during which he kicked her and fought with police officers.⁽¹²⁾ He was arrested, but the charges were subsequently dismissed.⁽¹³⁾

Nearly 2½ years later, in November 1990, after spending several hours drinking at a night club,⁽¹⁴⁾ Applicant was heading home when he was arrested and charged with driving while intoxicated (DWI) and careless driving.⁽¹⁵⁾ He was convicted of both charges and sentenced, in part, to complete a First Offenders Program and attend a Victim's Impact Panel.⁽¹⁶⁾

In November 1992, Applicant was arrested and charged with DWI, careless driving, and no insurance.⁽¹⁷⁾ He was convicted of DWI and sentenced, in part, to: 90 days imprisonment (with 88 days suspended), attend alcohol counseling, and six months supervised probation.⁽¹⁸⁾ The remaining charges were deferred prosecution.⁽¹⁹⁾

In July 1997, after spending an unspecified period of time at a bowling alley with two friends,⁽²⁰⁾ sharing six 32 to 40-ounce pitchers of beer, and personally consuming about 32 to 80 ounces of beer, Applicant was driving one friend home, when he was stopped at a police check point. According to the police officer, Applicant had the strong odor of alcohol, slurred his speech, and had bloodshot eyes.⁽²¹⁾ Applicant admitted having consumed two beers.⁽²²⁾ He was administered a field sobriety test, which he failed.⁽²³⁾ He then took a breathalyzer test and it registered a blood/alcohol content of 0.16.⁽²⁴⁾ Applicant was arrested and charged with DWI, careless driving, and no insurance.⁽²⁵⁾ He was released on his own recognizance and ordered not to use alcohol.⁽²⁶⁾ Applicant contends he never received the summons because it was sent to the wrong apartment.⁽²⁷⁾ He subsequently failed to appear in court as directed, and a bench warrant was issued for his arrest.⁽²⁸⁾ The warrant was subsequently cancelled⁽²⁹⁾ when the case was merged into another action involving Applicant and alcohol.

Two years later, in July 1999, after spending the evening at a birthday party for a friend at a nightclub consuming an unspecified quantity of alcohol,⁽³⁰⁾ on an empty stomach,⁽³¹⁾ Applicant was driving home when he was again stopped by the police. He was observed driving at an excessive speed and weaving, and almost struck another vehicle or object.⁽³²⁾ According to the police officer, Applicant had the fair odor of alcohol covered up by cigarettes, slurred his speech, and had bloodshot watery eyes.⁽³³⁾ Applicant admitted having consumed three beers.⁽³⁴⁾ He failed a field sobriety test.⁽³⁵⁾ Applicant was arrested and administered a breathalyzer test that registered a blood/alcohol content of 0.17 and 0.16.⁽³⁶⁾ He was charged with DWI (3rd offense), speeding, and failure to maintain a traffic lane.⁽³⁷⁾ The 1997 and 1999 charges were joined together, and Applicant pled guilty to the DWI (3rd offense).⁽³⁸⁾ The remaining charges were dismissed.⁽³⁹⁾ He was sentenced, in part, to: 364 days imprisonment (with 334 days suspended), complete an alcohol treatment program and alcohol counseling, and 334 days of supervised probation.⁽⁴⁰⁾ Applicant's operator's license was revoked for 10 years.⁽⁴¹⁾

Over the years, Applicant has undergone a variety of alcohol education, counseling, and treatment programs and sessions. In 1990, following his initial alcohol-related incident, he attended a 12-week first offender's program that consisted of weekly education and individual counseling sessions.⁽⁴²⁾ In 1992, following the second alcohol-related incident, he attended an identical program.⁽⁴³⁾ In 1993-94, of his own volition, he attended the program again.⁽⁴⁴⁾ During October 1999 until March 2000, following his most recent alcohol-related incident, he attended a court-mandated outpatient counseling and education program.⁽⁴⁵⁾ That three-phased program consisted of, in part, the Alcoholics Anonymous (AA) 12-step program,⁽⁴⁶⁾ relapse prevention education, and group counseling.⁽⁴⁷⁾ While he no longer attends AA, he continues to talk to his AA sponsor about three times per week.⁽⁴⁸⁾ He cannot recall the serenity prayer.⁽⁴⁹⁾ Despite having attended the aforementioned programs, Applicant continues to drink alcohol for reasons he⁽⁵⁰⁾

cannot explain. In March 1996, Applicant stated he did not anticipate any future alcohol-related problems and denied having a problem with alcohol.⁽⁵¹⁾ He currently denies having an alcohol problem,⁽⁵²⁾ but now concedes that he may have had one in the past as evidenced by his DWI arrests.⁽⁵³⁾ He denies ever being advised to abstain.⁽⁵⁴⁾

During the evening before the hearing, Applicant consumed one beer.⁽⁵⁵⁾

Applicant married his third wife in 2004. He has been employed by the same government contractor since September 1994, and is currently serving as a logistics technician-shipping/receiving coordinator. His supervisors consider Applicant to be dependable, respectful, punctual, and professional.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 individual'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 or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Alcohol Consumption - Guideline G: 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 could mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽⁵⁶⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded those standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's

allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline G. Commencing at some point in 1987 or prior thereto, and continuing periodically until at least May 2003, Applicant exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by abusing alcohol. His alcohol consumption resulted in five arrests for alcohol-related incidents (1987, 1990, 1992, 1997, and 1999), four of which were followed up by court action. These incidents and the conduct which contributed to the incidents fall within Alcohol Consumption Disqualifying Condition (AC DC) 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 AC DC E2.A7.1.2.5. (*habitual or binge consumption of alcohol to the point of impaired judgment*). Because there is no evidence that alcohol had any impact on his job performance and activities, there does not appear to be any justification to apply AC DC E2.A7.1.2.2. (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*).

Following several of the incidents, the courts mandated he undergo alcohol assessments, education, and counseling. He did so, and even attended an additional program on his own as a refresher. The absence, however, of evidence of any alcohol-related evaluation or diagnosis precludes application of AC DC E2.A7.1.2.3. (*diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*) or AC DC E2.A7.1.2.4. (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*).

Applicant continues to be in denial as to his problem and continues to minimize the characterization of his use of alcohol consumption, both as to quantity and frequency. On at least two occasions he lied to the police when he acknowledged having consumed minimum quantities of alcohol. In 1997, he admitted having two beers and in 1999, it was three beers. In both instances, his breathalyzer results belied the inaccuracy of his statements. Applicant has denied being intoxicated during any of the alcohol-related incidents, yet he consumed enough alcohol to be considered intoxicated.

There may be some recent changes in Applicant's alcohol consumption, and he may have, in fact, decided to remain sober. He even abstained for an unspecified period in 1999, but eventually resumed drinking alcohol. Those purported

changes would fall within Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*). However, while the most recent arrest may have occurred in 1999--over five years ago--and he attended a number of alcohol education and counseling programs, he continues to consume varying quantities of alcohol. He does not have a good understanding of his motivation for still drinking alcohol and denies having a current problem with alcohol. He now concedes that he may have had one in the past as evidenced by his DWI arrests. Under these circumstances, it is too recent to apply AC MC E2.A7.1.3.2. (*the problem occurred a number of years ago and there is no indication of a recent problem*).

Under the evidence presented, I possess little confidence that Applicant's alcohol abuse will not recur. Moreover, Applicant's consistent denial of the existence of an alcohol problem despite the alcohol-related incidents, as well as his minimization of alcohol consumption, indicate Applicant does not yet have a full understanding of the situation. Even with new purported intentions and an unspecified period of sobriety, more time is simply necessary.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors under the Adjudicative Process, I find that Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. through 1.g. of the SOR are concluded against Applicant

For the reasons stated, 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 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

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 a security clearance for Applicant. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 2 (Statement, dated May 8, 2003), at 3.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*; Tr., at 38-39.

7. Tr., at 38-39.

8. Government Exhibit 2, *supra* note 1, at 3.

9. Tr., at 54.

10. Tr., at 36, 45, 54.

11. Tr., at 54-55.
12. Tr., at 32-34, 46.
13. Government Exhibit 3 (Federal Bureau of Investigation Identification Record, dated November 30, 1999), at 2.
14. Tr., at 26-27.
15. Response to SOR, dated June 21, 2004.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. Tr., at 30.
21. Government Exhibit 5 (Police Department DWI Offense Report, dated July 4, 1997), at 1.
22. *Id.*
23. Government Exhibit 2, *supra* note 8, at 2.
24. *Id.*; Government Exhibit 5, *supra* note 21, at 2.
25. Response to SOR, *supra* note 15.
26. Government Exhibit 8 (Court File-Order Setting Conditions of Release, dated July 4, 1997), at 2-3.
27. Government Exhibit 2, *supra* note 8, at 2.
28. Government Exhibit 8 (Court File-Bench Warrant, dated September 2, 1999).
29. *Id.*
30. Tr., at 31.
31. Government Exhibit 2, *supra* note 8, at 2.
32. Government Exhibit 4 (Police Department DWI Offense Report, dated July 25, 1999), at 1.
33. *Id.*
34. *Id.*
35. Government Exhibit 2, *supra* note 8, at 2.
36. Government Exhibit 4, *supra* note 32, at 2.
37. Government Exhibit 6 (Court File-Criminal Complaint, dated July 25, 1999), at 1.
38. Government Exhibit 6 (Court File-Plea and Disposition Agreement, dated September 3, 1999).
39. *Id.*

40. Government Exhibit 6 (Court File-Judgment and Sentence, dated September 3, 1999), at 1-2.
41. Tr., at 36.
42. Tr., at 49.
43. Tr., at 50.
44. Tr., at 51.
45. Tr., at 52-55.
46. Tr., at 41.
47. Applicant Exhibits A-C (Applicant's calender of events for phases I through III, undated); Tr., at 21-22.
48. Tr., at 40.
49. Tr., at 41.
50. Tr., at 56.
51. Government Exhibit 9 (Statement of Subject, dated March 19, 1996), at 1.
52. Tr., at 39.
53. Tr., at 39.
54. Tr., at 40.
55. Tr., at 36.
56. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).