

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant's underage consumption of alcohol from about age 17 does not raise alcohol consumption concerns where it was in moderate amounts and did not cause social, occupational, or legal problems. Evidence of possession of liquor in public by a minor, conduct punishable by a fine of between \$200 and \$500, is limited to one occasion in August 2001. Clearance is granted.

CASENO: 03-21266.h1

DATE: 05/23/2005

DATE: May 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21266

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant's underage consumption of alcohol from about age 17 does not raise alcohol consumption concerns where it was in moderate amounts and did not cause social, occupational, or legal problems. Evidence of possession of liquor in public by a minor, conduct punishable by a fine of between \$200 and \$500, is limited to one occasion in August 2001. Clearance is granted.

STATEMENT OF THE CASE

On June 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline G, alcohol consumption, and Guideline J, criminal conduct, 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 the Applicant. [\(U\)](#)

On July 8, 2004, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on November 1, 2004. Pursuant to notice dated November 1, 2004, a hearing was convened on November 12, 2004, Applicant having waived the Directive's 15-day notice requirement. At the hearing, three government exhibits were admitted and testimony was taken from the Applicant and her department's superintendent, as reflected in a transcript received on November 22, 2004.

FINDINGS OF FACT

The SOR alleges alcohol consumption and criminal conduct concerns related to Applicant's underage drinking and her arrest in August 2001 for minor in possession of alcohol and motor vehicle violations. Applicant admits consuming beer as a minor, although not currently in the alleged quantity of six to eight beers two weekends per month. She also acknowledges her arrest in August 2001, but denies it constitutes a pattern of criminal activity. Applicant's admissions are accepted and incorporated as findings of fact. After a complete review of the record evidence, I make the following additional findings:

Applicant is a 21-year-old high school graduate who has been employed by a defense contractor since July 2002 in its pipefitter's apprenticeship program. She has a company-granted confidential security clearance and seeks a secret-level security clearance.

Applicant began working part-time at age 16, holding jobs as a cashier at a local fast food restaurant and as a sales clerk for a retailer while she was still in high school. When she was about 17, she began dating a boy two years older than she, and she moved out of her mother's house to live with her boyfriend and his mother. He was a heavy drinker, and she began to consume beer in violation of state law prohibiting underage drinking. They obtained beer from friends and from her boyfriend's older brother. In August 2001, while driving her boyfriend's car, she was pulled over by the police and charged with misuse of plates, no registration or insurance, and possession of alcohol by a minor. Aware there was a 12-pack of beer belonging to her boyfriend's brother lying on the vehicle's rear seat, Applicant thought nothing of it as the beer was unopened. The charges against her were dropped after she provided the court with proof the vehicle was registered.

In April 2002, Applicant's boyfriend was arrested on a complaint by a neighbor that he had broken a window. Her boyfriend, who had been drinking next door, denied any culpability and she believed him. While her boyfriend was being arrested for the offense, Applicant got into a verbal altercation with the police officers. Charged with breach of peace, second degree, and interference with an officer, Applicant was placed on accelerated rehabilitation.

In June 2002, Applicant graduated from high school. She and her boyfriend moved into a basement apartment together. In conjunction with her application for employment with company A, Applicant executed a security clearance application (SF 86) on June 19, 2002. She reported her arrest of that April for breach of peace and interfering with an officer.

In late June 2002, Applicant got into a loud verbal argument with her boyfriend in the parking lot of his mother's

residence. He was intoxicated at the time; Applicant had consumed three or four beers. Responding police took Applicant's boyfriend into custody on two active warrants. Applicant began to shout obscenities at the officers and she was arrested for breach of peace, second degree. At the station, Applicant refused to sign the forms for a \$500 non-surety bond, and she was held overnight. She was given one year unsupervised probation.

In July 2002, Applicant entered the pipefitter's apprenticeship program at company A. In mid-August 2002, her boyfriend was imprisoned for drunk driving and violation of probation for a prior drunk driving offense. He was sentenced to 3 1/2 years in prison. Having consumed in excess of six beers at a sitting in the past, Applicant decreased her drinking after her boyfriend's incarceration as she no longer socialized with the same people.

As of August 2003, Applicant was drinking beer occasionally, fewer than eight beers over the course of a three-day weekend, one or two weekends per month in her residence. The beer was given to Applicant by her boyfriend's 26-year-old sister, with whom she was cohabiting, or their friends. Aware of the laws regarding underage drinking, Applicant used alcohol to relax and because it made her feel good.

On August 22, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent about her arrests and alcohol consumption. Applicant expressed an intent to continue to consume alcohol despite the fact she was underage, but not in any greater quantity. She denied any purchase of beer or attempts to drink at a bar.

In about May 2004, Applicant moved out of the residence she shared with her boyfriend's sister after they had an argument, although they remained friends. In June 2004, Applicant moved into her own place after spending a month at her mother's. As of November 2004, Applicant was still drinking "just a couple of beers" once every couple of weeks when friends (including her boyfriend's sister) visit her or at a family member's house. Aware she is not supposed to drink until she turns 21 in February 2005, Applicant is not personally concerned about her alcohol consumption as she does not have a drinking problem. She intends to continue to drink beer at her present rate. Applicant recognizes her behavior on the occasions of her arrests was very immature and she regrets it.

One of the first young females to enter the pipefitter's department, Applicant is one of the top students in the four-year pipefitter apprenticeship program at company A. At the request of the company, she trained as a radiological worker and is presently assigned to work in the nuclear area where she needs a secret-level clearance. She was chosen by labor relations, her supervisors, and her peers to represent the company at recruiting events because of the positive image she projects. The superintendent of the piping trades, who has supervisory responsibility for 350 employees at company A, is familiar with Applicant's progress in the apprenticeship program and with her appearance at career nights at her former high school and at company A. Aware she engages in underage drinking, he considers Applicant security worthy as he has never seen her impaired nor received any reports of her being impaired at work. He received favorable comments about her performance at the two recruiting events in which she participated.

In Fall 2003, Applicant began working part-time in addition to her full-time work in the apprenticeship program at company A. She worked in a clothing store until August or September 2004, when she began working 4:30 to 10:30 p.m. three days a week at a local restaurant. Self-supporting from a young age, Applicant pays her own bills.

Applicant has stayed in contact with her boyfriend's family. She still feels an emotional attachment to her old boyfriend. He telephones her collect, as frequently as a couple of times per week until she complains to him about the cost, and he has suggested they resume their relationship. She does not consider them to have a relationship at this point, although she expects she will see him following his release from prison in February 2005. She does not intend to renew their relationship unless he can prove to her he does not have a drinking problem and can get a good job. She understands from him that he earned his graduate equivalent diploma and attended Alcoholics Anonymous meetings while in prison.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Concerning the evidence as a whole, the following adjudicative guidelines are most pertinent to this case:

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. (E2.A7.1.1.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. (E2.A10.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines G (alcohol consumption) and J (criminal conduct):

Applicant consumed alcohol as a minor from age 17 (circa 2001) until at least November 2004. However, whereas the government failed to prove that Applicant drank excessively, her drinking does not rise to the level of a Guideline G concern. There is no evidence Applicant had consumed alcohol on the occasion of her arrest in August 2001 for minor in possession of alcohol, which is the only alcohol-related incident alleged in the SOR. While she knew there was an unopened 12-pack of beer in the backseat area of the vehicle she was driving, the beer apparently belonged to her boyfriend's brother. Applicant, who had taken her boyfriend's car to go shopping, had no intent of drinking it.

Apparently conceding that fact, the government argued instead at the hearing that Applicant's breaches of the peace in 2002 are alcohol-related incidents away from work (*see* 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 constitute evidence of consumption of alcohol to the point of impaired judgment (*see* DC E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*). There is no evidence Applicant had consumed alcohol before her arrest in April 2002 when she started arguing with the police as they arrested her boyfriend for breaking a neighbor's window. Applicant admits she had consumed three or four beers before her arrest in June 2002, although not to intoxication. Her breach of the peace and interference with the police, although not condoned, is more likely due to her immaturity (she was only 18) and emotional attachment to her boyfriend with whom she was living at the time. There is nothing in the police report that indicates the officers thought she was under the influence of alcohol. Concerns about potential binge drinking (SOR ¶ 1.b., 6-8 beers about two weekends per month) were adequately answered by Applicant when she clarified at the hearing that the six to eight beers were consumed over the course of a three-day weekend and not in one sitting. Accordingly, SOR ¶¶ 1.a., 1.b., and 1.c. are resolved in her favor.

DC E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, of Guideline J applies because of Applicant's August 2001 minor in possession of alcohol offense. However, although her underage drinking is not condoned, there is no evidence that drinking beer in moderation in private, even by a minor, is a crime under state law. ⁽²⁾

Pertinent mitigating conditions include E2.A10.1.3.1. *The criminal behavior was not recent*, and E2.A10.1.3.2. *The crime was an isolated incident*. Applicant has never attempted to purchase alcohol or misrepresented her age in an effort to procure alcohol. As to whether Applicant possesses the requisite good judgment and maturity that must be demanded of those individuals granted access to classified information, she has performed well in the apprenticeship program and has held a confidential security clearance without adverse incident. She has also projected a positive image for her employer at recruiting events. With Applicant reaching the age of majority in February 2005, there can be no recurrence of the same criminal behavior. SOR ¶ 2.a. is resolved in her favor as well.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Paragraph 2. Guideline J: 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 Applicant. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

1.

2. Section 30-89 of the state's general statutes (Chapter 545 of the Liquor Control Act) provides as follows:

Any minor who possesses any alcoholic liquor on any street or highway or in any public place or place open to the public, including any club which is open to the public, shall be fined not less than two hundred nor more than five hundred dollars. The provisions of this subsection shall not apply to (1) a person over age eighteen who is an employee or permit holder under section 30-90a and who possesses alcoholic liquor in the course of his employment or business, (2) a minor who possesses alcoholic liquor on the order of a practicing physician, or (3) a minor who possesses alcoholic liquor while accompanied by a parent, guardian or spouse, who has attained the age of twenty-one.