

KEYWORD: Alcohol

DIGEST: Applicant has a history of excessive consumption of alcohol, resulting in three alcohol-related incidents between 1982 and 1994. Since then, Applicant has not had any alcohol-related incidents either at or away from work. He drinks only in moderation, and never before driving. Applicant mitigated the security concerns arising from his history of excessive alcohol consumption. Clearance is granted.

CASENO: 03-22185.h1

DATE: 03/03/2006

DATE: March 3, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22185

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of excessive consumption of alcohol, resulting in three alcohol-related incidents between 1982 and 1994. Since then, Applicant has not had any alcohol-related incidents either at or away from work. He drinks only in moderation, and never before driving. Applicant mitigated the security concerns arising from his history of excessive alcohol consumption. Clearance is granted.

**STATEMENT OF THE CASE**

On August 12, 2000, Applicant submitted a security clearance application. 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On December 30, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on February 17, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 8, 2005. The government introduced Exhibits 1 through 7. Applicant presented Exhibits A through E and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on

December 16, 2005.

### FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.d, 1.e (in part), and 1.f of the SOR, with explanations. Applicant's Answer to SOR, dated July 7, 2005. He denied the factual allegations in ¶ 1.b and 1(e) (in part) of the SOR. (*Id.*) At the hearing, Applicant amended his response somewhat, admitting ¶ 1.b and denying ¶ 1.c of the SOR. (Tr. at 21.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in October 1962. (Ex. 1 at 1.) He began drinking alcohol at about age 16, consuming about 10 beers nightly on weekends. (Ex. 2 at 2.) After high school he attended a military academy for a short time but elected to transfer to a civilian college. (Tr. at 49.)

He continued drinking alcohol while attending college. He admitted he drank alcohol to excess at times. (Tr. at 49.)

In May 1982, when he was 19 years old, Applicant attended a party and became intoxicated. (Tr. at 53.) He left to get food and drove to a pizza restaurant, arriving about 1:00 a.m. Finding no one present, Applicant entered a back door and put cases of soft drinks and sausages into the trunk of his car. (Ex. 6 at 3.) The manager discovered Applicant, forcibly detained him, and called the local police. Applicant told the police officer he left money on the counter for the property, but made inconsistent statements about the amount; the money was not found. (*Id.* at 4-5.) The police officer noticed signs of intoxication. A breath test showed Applicant's blood-alcohol concentration was .17 %. (*Id.* at 5.) Authorities charged Applicant with Theft, Public Intoxication, and Illegal (underage) Consumption of Alcohol. (*Id.*) To dispose of the charges, Applicant attended a four to eight-week counseling course for alcohol abuse. (Ex. 2 at 2; Tr. at 55.)

Applicant was married in May 1988. (Ex. 1 at 4.) He separated from his wife in June 1993, pending divorce. (Tr. at 33-34.)

In July 1993, Applicant went out with friends, consumed about nine or ten beers, and was stopped by police while driving home. (Ex. 2 at 1; Ex. 5 at 2; Tr. at 56.) He failed the roadside sobriety test and was arrested for Driving Under the Influence of Alcohol (DUI). He arranged for an alternate disposition of the charges by attending an outpatient alcohol intervention program, which he completed. (Ex. 2 at 1; Tr. at 57.) As part of the program, Applicant attended

meetings of Alcoholics Anonymous (AA), and abstained from drinking alcohol for about one year. (Tr. at 78.)

Beginning in January 1993, Applicant worked for a consulting company providing engineering services to private industry and government agencies. (Ex. 1 at 4.) He received a Secret clearance in December 1993. (Ex.1 at 10; Tr. at 64.)

Applicant's divorce was final in the summer of 1994. (Tr. at 34.) According to Applicant, he was single, making good money, and living it up. (*Id.*) In about August 1994, Applicant was arrested and charged with DUI. (*Id.*; Tr. at 61.) Once again, he arranged to attend an outpatient alcohol intervention program. He completed the program, including attending some AA meetings, and the charges were dropped.

In August 2000, Applicant applied for renewal of his security clearance. (Ex. 1 at 1.) He reported his two arrests for DUI and his alcohol-related counseling programs. (*Id.* at 9.) DOHA requested a current evaluation of Applicant for any problems with alcohol. Applicant selected a licensed clinical social worker to perform the assessment. (Ex. 3 at 2.)

In June 2004, the social worker submitted his evaluation. According to the social worker, Applicant scored extremely high on a standardized alcoholism screening test, and the Substance Abuse Subtle Screening Inventory indicated a "high probability of having a substance dependence disorder." (Ex. 4 at 1.) The report stated Applicant "presents with an alcohol dependence history with a more recent history of limited controlled drinking. It is this therapist's belief that [Applicant] is at high risk for a progression in his consumption without further treatment." (Ex. 4 at 2.)

According to Applicant, he declined to enroll in the recommended counseling sessions because they were essentially the same as those he previously completed after his two DUI arrests. (Tr. at 23.) Applicant also disagreed with the results of the evaluation. (Tr. at 20.) He asserts the social worker stated that "everyone needs counseling and especially, everyone needs group counseling," or words to that effect. (Tr. at 20.) Applicant felt the social worker was attempting to coerce him into coming to him for treatment. (Tr. at 23.) He also attacked his judgment because his rehabilitation center is located near a bar offering adult entertainment. (Tr. at 25; Ex. A.)

Applicant obtained a second assessment in November 2005. (Tr. at 27.) The second evaluation reported significantly lower scores on the standardized tests. (Ex. B at 1.) The evaluator noted Applicant had taken the tests before, and may have learned how to answer them to achieve a lower score. (*Id.*) The evaluator stated,

While [Applicant] does not present as having an alcohol problem, he may be relying too heavily on will power to prevent a relapse in the future. He demonstrated little insight into why he was drinking to excess, and seems to have no

support system to draw upon if he does experience a desire to use beyond appropriate boundaries.

(Ex. B at 2.) Recognizing Applicant has not had an alcohol-related incident in ten years, the evaluator concluded he is not a high risk for relapse at the present time. (*Id.*; Tr. at 31.)

Applicant consulted his personal physician, who opined he saw no outward signs of alcohol dependence in his patient. (Ex. C.) Applicant also submitted laboratory results of a blood test for liver function, maintaining the normal results were inconsistent with alcohol abuse. (Tr. at 37.) Finally, Applicant's partner provided a statement that Applicant has always limited his alcohol intake and acted responsibly. (Ex. D.)

He asserts he has "basically abstained" from alcohol in 2005. (Tr. at 27.) He states he had a drink at a New Year's celebration and a beer after playing golf with his father in the summer. (Tr. at 28.) However, in his Answer to the SOR, dated February 17, 2005, Applicant wrote that he drinks alcohol in moderation, and "I enjoy a glass of wine with my wife at dinner on average of once a week, and usually at home." When confronted with his statement, Applicant indicated he didn't "consciously" abstain during that period, but did not have any alcohol to drink. (Tr. at 83.)

## 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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988)). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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.

(Directive, ¶ E2.A7.1.1.) Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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. (*Id.*)

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. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 2002).) "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.)

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 a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

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

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "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." The evidence reveals one incident of excessive, underage drinking in 1982 and two instances-in July 1993 and August 1994-where Applicant committed an alcohol-related driving offense

away from work. I conclude the evidence raises this potentially disqualifying condition.

Under the Directive, ¶ E2.A7.1.2.3, "[d]iagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence" may be disqualifying. Applicant was required to attend alcohol counseling programs after his underage drinking and DUI offenses, but the available evidence does not indicate a qualified individual ever diagnosed him as an alcohol abuser or alcohol dependent.

Paragraph E2.A7.1.2.4 of the Directive provides it may be disqualifying where there is "[e]valuation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." The first evaluation (Ex. 4) was conducted by a licensed clinical social worker who worked for an Outpatient, Alcohol and Drug Treatment Program. The second evaluation (Ex. B) was also performed by a licensed clinical social worker. Although this evaluator specialized in treatment of sex offenders, the available evidence indicates he presently provides a broad range of clinical services, including psychosocial evaluations for adults.

Department counsel argues that the report from the first evaluation (Ex. 4) reflects a diagnosis of alcohol dependence. Specifically, she cites the test results showing a "high probability of having a substance dependence disorder" and the comment that Applicant "presents with an alcohol dependence history." However, the test results standing alone do not require a particular diagnosis. I also note the evaluator's litany of symptoms did not establish the diagnostic criteria required for a finding of dependence. In the absence of clear language, I am reluctant to infer that the comments were meant as a specific diagnosis of a condition existing over ten years earlier. Based upon the available evidence, I am not persuaded Exhibit 4 raises this potentially disqualifying condition. As noted above, the evaluation admitted as Exhibit D did not indicate Applicant had a current alcohol problem. Even though the available evidence does not raise this specific disqualifying condition, the information in the reports must be considered as part of the overall evaluation of Applicant's suitability for a security clearance.

Paragraph E2.A7.1.2.5 of the Directive provides that "[h]abitual or binge consumption of alcohol to the point of impaired judgment" may be disqualifying. The Directive does not define the terms "binge" or "habitual" in reference to alcohol consumption. The *Diagnostic and Statistical Manual of Mental Disorders, Third Edition* (DSM III), published in 1980, before the promulgation of guidelines using these terms, defined "binges" as "remaining intoxicated throughout the day for at least two days." (DSM III at 169.) By contrast, in February 2004, the National Institute of Alcohol Abuse and Alcoholism (NIAAA) approved the following definition:

A "binge" is a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 gram percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in 2 hours.

Obviously these definitions are markedly different. I find the definition from the DSM III is a better indication of the

meaning intended by the drafters of the guidelines.

Applicant admitted consuming large quantities of alcohol-as much as ten beers nightly-on weekends while in college. However, this occurred over 20 years before the initiation of this action. The evidence also indicates he consumed excessive amounts of alcohol on the two instances resulting in DUI offenses, however the evidence is not sufficient that these instances were habitual or constituted a binge. I conclude the evidence does not raise this potentially disqualifying condition, but Applicant's history of alcohol consumption is a factor to be considered as part of the "whole person" analysis.

Finally, the Directive, ¶ E2.A7.1.2.6, states that it may be disqualifying where there is evidence of "[c]onsumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program." As discussed above, I do not find that Applicant was diagnosed as alcohol dependent; therefore, this potentially disqualifying condition is not raised. However, the fact that Applicant resumed drinking to excess after his alcohol-related incidents and repeated counseling will be considered as part of the "whole person" concept discussed below.

The security concerns arising from excessive alcohol consumption can be mitigated. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." Contrary to Applicant's assertions, his two DUIs demonstrate a pattern of excessive drinking, drinking under circumstances that create personal risk, and consuming alcohol to excess after receiving counseling for a similar problem. I conclude this potentially mitigating condition does not apply.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." Applicant's alcohol-related incidents occurred many years ago. He has had no re-occurrences in over ten years. The psychological evaluations reflect that he had a problem with alcohol in the past, but they do not persuade me that such a problem exists today. I conclude this potentially mitigating condition does not apply in this case.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following his last alcohol-related incident, Applicant gained increased awareness of the dangers of drinking and driving. He sharply curtailed his alcohol consumption. He now drinks alcohol only in moderation and does not drink before driving. I find this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating factors in light of the "whole person" concept. Applicant is a mature individual who has worked as a defense contractor for many years. He consumed alcohol excessively, resulting in three alcohol-related incidents between 1982 and 1994. He showed little amenability to rehabilitative efforts-indeed, he had his second DUI very soon after ending his abstinence following his first DUI. The recent evaluations reflect



character traits which no doubt led to the excessive use of alcohol in the past. However, since 1995, he has been able to control his drinking. I conclude Applicant has mitigated the security concerns arising from his history of excessive alcohol consumption.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

### **DECISION**

In light of all of 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.

Michael J. Breslin  
Administrative Judge