

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant consumed alcohol to excess and the point of intoxication from 1982 until June 2003. Applicant admits driving while drunk on numerous occasions and was arrested and convicted for DUI four times. He realizes once he starts to drink he cannot stop. He has been abstinent since June 2003. Applicant mitigated the security concerns raised by his alcohol consumption and criminal conduct. Clearance is granted.

CASENO: 03-22912.h1

DATE: 06/02/2005

DATE: June 2, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22912

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant consumed alcohol to excess and the point of intoxication from 1982 until June 2003. Applicant admits driving while drunk on numerous occasions and was arrested and convicted for DUI four times. He realizes once he starts to drink he cannot stop. He has been abstinent since June 2003. Applicant mitigated the security concerns raised by his alcohol consumption and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 27 July 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 9 August 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 February 2005. On 29 March 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 8 April 2005.

FINDINGS OF FACT

Applicant is a 40-year-old principal engineer for a defense contractor. He is highly rated for his innovative engineering solutions and his strong work ethic.

Applicant began drinking shortly before he entered college. He drank to the point of intoxication at times from 1982 to June 2003. In college he drank to the point of intoxication on many occasions. After he graduated, his alcohol abuse was

limited to weekends and vacations.

In March 1987, Applicant was arrested for driving under the influence of alcohol (DUI) in State 1. He was administered a breath test that showed his blood-alcohol content to be 0.14%. He was convicted, placed on probation, and ordered to attend an alcohol education program. Upon completion of phase 1 of the program, the program coordinators recommended to Applicant's probation officer that he be continued into phase 2 of the program, but he was not. Applicant's driver's license was suspended.

In April 1995, Applicant was arrested for DUI in State 2. He pled nolo contendere and was convicted. He was fined, had his license suspended for 45 days, and was ordered to attend a driver-alcohol education program. Applicant completed the 24 hours of alcohol abuse classes.

In April 1996, Applicant was arrested for DUI in State 1. He refused to take the breath test. His license was suspended and he was required to attend eight four-hour alcohol abuse classes and two Alcoholic Anonymous (AA) meetings. Shortly after this DUI, Applicant went to an alcohol abuse program hoping it would help mitigate this DUI with his employer. He did not like attending AA meetings that were a required part of this program, so he stopped going. He did attend the court-ordered alcohol abuse program.

In June 2001, after police observed him driving erratically, Applicant was arrested for DUI in State 3. When he exited his vehicle, he was staggering. His breath-test results were .193% and .176%. Applicant pled guilty and was sentenced to attend 16 hours of alcohol education classes and 20 hours of alcohol counseling from August to October 2001. He abstained for 11 months after his arrest, but then resumed consuming alcoholic beverages. Tr. 16.

Applicant has driven drunk on other occasions and was pulled over by police officers, but was not arrested. Tr. 15. He claims he was a weekend binge drinker. He came to realize the serious implications of continuing to drink after his interview with a Defense Security Service agent in June 2003 and has not consumed any alcoholic beverages since. Tr. 9-10, 15. He promises to enter in-patient rehabilitation if he ever has another drink. Tr. 18. One of Applicant's close friends testified that he had observed a marked difference in Applicant. He has not seen Applicant use alcohol in over two years. Applicant noted that his family and friends are supportive of his decision to stop drinking.

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 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from 1982 until at least June 2003 (¶ 1.a), was convicted in August 2001 of a DUI that occurred in June 2001 (¶ 1.b), was convicted of operating a motor vehicle under the influence of alcohol in May 1996 (¶ 1.c), was convicted in 1995 of DUI, and was convicted of DUI in 1987 (¶ 1.e). Applicant admitted each of the allegations. Answer. 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.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline G. Applicant had alcohol-related incidents away from work -his four arrests for driving under the influence of alcohol. DC E2.A7.1.2.1. He admits he was a binge drinker and consumed alcohol to the point of impaired judgment on numerous occasions. DC E2.A7.1.2.5. Although Applicant believes he may have been diagnosed as an alcohol abuser, there is no evidence of record that he has been. Nevertheless, Applicant recognizes he is an alcohol abuser and that he cannot control his consumption if he takes that first drink. His relapse in 2002, after being abstinent for eleven months, demonstrated to Applicant that he cannot be a social drinker and must abstain from all alcohol consumption to remain sober. He has been abstinent for approximately two years and understands that another alcohol-related incident will lead to the loss of his security clearance and possibly his employment. His abstinence demonstrates Applicant has made positive changes in his behavior supportive of sobriety. MC E2.A7.1.3.3. After considering all of

the circumstances, including his determination not to consume any alcohol in the future and the support of his family and friends, I find for Applicant on ¶ 1.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant's alcohol related convictions, as noted in ¶¶ 1.b-1.e, raised criminal conduct security concerns under Guideline J. ¶ 2.a. Applicant admits the allegation. Answer. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of potentially disqualifying conditions under Guideline J. Applicant admits the serious nature of his multiple DUI offenses. DC E2.A10.1.2.2. But the criminal behavior was not recent-the last offense occurred almost four years ago. MC E2.A10.1.3.1. And there is clear evidence of successful rehabilitation. MC E2.A10.1.3.6. Applicant has turned his life around and sworn off alcohol for good. He has eliminated the major cause of his past criminal conduct by no longer consuming alcoholic beverages. After considering all of the circumstances of this case, I find for Applicant on ¶ 2.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).