

KEYWORD: Alcohol

DIGEST: Applicant drove a vehicle while under the influence of alcohol in November 2001, and committed an alcohol-related domestic violence offense in December 1998. He has mitigated the security concerns that arise from his alcohol consumption. Clearance is granted.

CASENO: 03-24043.h1

DATE: 04/20/2006

DATE: April 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24043

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Patrick Faucheux, Esq.

SYNOPSIS

Applicant drove a vehicle while under the influence of alcohol in November 2001, and committed an alcohol-related domestic violence offense in December 1998. He has mitigated the security concerns that arise from his alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On December 20, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G (alcohol consumption). Applicant submitted an answer to the SOR that was received by DOHA on February 17, 2005, admitted all SOR allegations, and requested a hearing.

The case was assigned to another administrative judge on September 28, 2005, who scheduled a hearing to be conducted on December 21, 2005. That judge granted a request for a continuance on the day of the scheduled hearing due to Applicant's attorney being ill. The case was then reassigned to me on January 23, 2006, due to regional rotations. I caused a notice of hearing to be issued on February 16, 2006, rescheduling the hearing for March 6, 2006. The hearing was conducted as rescheduled. The government submitted eleven documents that were marked as Government Exhibits (GE) 1-11, and admitted into the record without objection. Applicant testified, called one witness to testify on his behalf, and submitted nineteen documents that were marked as Applicant's Exhibits (AE) 1-19, and admitted into the record without objection. The transcript was received on March 15, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 43 years old, and has been employed by a government contractor since 1987, presently as a non destructive inspection technician in which capacity he supervises nine other technicians. The many letters of recommendation, performance reviews, and certificates he submitted attest to his reputation as an outstanding employee and technician. His professional competence, trustworthiness and dependability were evidenced by his selection to be a member of a team dispatched to the People's Republic of China in June 2001 to recover an American warplane that had been forced to land in that country by the Chinese.

Applicant graduated from high school in 1980 and thereafter served on active duty in the United States Air Force from August 1981 until he was honorably discharged in January 1987. He has held a security clearance for about the past 24 years and no complaints have ever been made alleging he mishandled or otherwise risked the compromise of classified information.

Applicant was married in March 1988 and divorced in August 1997. He has two daughters, ages 14 and 12, who live in a foreign country with their mother. Applicant has lived with a woman (his fiancée) in a spouse-like relationship since September 1997, although they separated for about nine months in 2001.

Applicant was charged with battery and improper exhibition of a weapon in December 1998 as a result of a domestic violence incident with his fiancée. Their accounts of the incident are basically similar. Both had been consuming alcohol before they began to argue. She was in the kitchen of their residence and had a knife in her hand. He grabbed her wrists, pushed her into the pantry area of the kitchen, took the knife from her, and threatened to kill her. Her young daughter called the police and he was arrested. Applicant entered a plea of nolo contendere to both charges and was placed on probation for 12 months, and, as conditions thereof, he was ordered to perform 75 hours community service, pay fines and court costs totaling \$535.00, and complete a domestic violence course. Applicant successfully completed all probation conditions.

Applicant was charged with driving under the influence of alcohol (DUI) in November 2001. He estimated he had consumed between ten and twelve beers while watching football at a friend's house, and five to six more at a bar he stopped at while on his way home from the friend's house. He was stopped for speeding, failed all field sobriety tests, and registered 0.21 BAC and 0.23 BAC on breathalyzer tests. He pled guilty to the DUI and was placed on six months probation, and, as conditions thereof, ordered to pay fines and court costs totaling \$650.00, perform 50 hours community service, complete an alcohol awareness program, and obtain an evaluation and complete any recommended treatment. He successfully completed all probation conditions.

As ordered in connection with the DUI conviction, Applicant entered into a substance abuse program on March 14, 2002, and was discharged therefrom on June 6, 2002. His discharge summary noted that he had participated in individual and group therapy and attended open AA meetings. His overall treatment evaluations were above-average progress on all goals, and he completed all assignments as assigned by his primary counselor. His prognosis at discharge was "Excellent," and his discharge diagnosis was: 305.00 Alcohol Abuse, WOPD. (2)

Applicant's fiancée's testimony indicated the domestic violence incident was related to the many stresses that existed at that time in their relationship, including her financial condition and job hunting, and Applicant's assuming a role in raising her daughter and otherwise helping around the house. She also testified he benefitted from the anger management class and is now better able to control his anger. Further, she testified he has not been intoxicated at any time since the DUI arrest, and she described his drinking habits as those of a social drinker. Applicant's testimony about his current drinking habits is also consistent with one who would be considered a social drinker.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol

to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant committed a domestic violence offense in 1998, after he and his fiancée had consumed alcohol. He committed a DUI in 2001, after consuming a large quantity of beer at a friend's house while watching football and thereafter in a bar. Disqualifying Condition (DC) 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* applies.

Applicant received a diagnosis of "305.00 alcohol abuse" from a licensed mental health counselor when he was discharged from a court-ordered alcohol treatment program on June 6, 2002. The only basis for the diagnosis contained in the report (GE 11) is the 2001 DUI. The diagnosis is not in accord with the diagnostic criteria contained in the DSM-IV-TR.⁽¹³⁾

I have considered the potential application of DC 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* to the facts herein. The diagnosis that was made in this case is not only inconsistent with the DSM-IV-TR based upon the information contained in GE 11, it is inconsistent with the known history of Applicant's alcohol consumption. As such, I find this disqualifying condition does not apply.

Applicant's two alcohol-related offenses were totally dissimilar and occurred three years apart. He completed a domestic violence/anger management program following the 1998 offense, and, according to his fiancée's testimony benefitted greatly from it. He completed an alcohol abuse program in June 2002, received a prognosis of "Excellent" upon discharge, and has had no alcohol related offenses since that time. Further his testimony, the testimony of his fiancée, and the letters of recommendation and other information available about his work performance strongly indicate there is no continuing alcohol problem. Mitigating Conditions (MC) 1: *the alcohol related incidents do not indicate a pattern*; MC 2: *The problem occurred a number of years ago and there is no indication of a recent problem*; and MC 3: *Positive changes in behavior supportive of sobriety* apply.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, including Applicant's long and distinguished employment history while holding a security clearance, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline G is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: For Applicant

Subparagraphs a-e: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. WOPD: Without Physiological Dependence: no evidence of tolerance or withdrawal. . . , *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, (DSM-IV-TR) Criteria for Substance Abuse.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. DSM-IV-TR does not contain any separate diagnostic criteria for a diagnosis of Alcohol Abuse under 305.00, but instead references the text and criteria for Substance Abuse. The text for Substance Abuse begins as follows:

The **essential feature** (emphasis added) of Substance Abuse is a maladaptive pattern of substance use manifested by **recurrent** (emphasis added) and significant adverse consequences related to the repeated use of substances. In order for an Abuse criterion to be met, the substance-related problem **must have occurred repeatedly during the same 12-month period or been persistent** (emphasis added).

The diagnostic criteria for Substance Abuse are:

A. A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:

- (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)
- (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)
- (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)
- (4) continued substance use despite having persistent or recurring social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights)

B. The symptoms have never met the criteria for Substance Dependence for this class of substance.