

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant has mitigated security concerns about his alcohol-related arrests and treatment as he provided evidence that he has reformed his conduct. He has totally abstained from drinking since 2002 and has changed his lifestyle. He both successfully completed his alcohol treatment in January 2004 and his probation. He performs well on the job without any evidence of an alcohol problem. He established he had no intent to falsify his 2000 security application. Applicant's alcohol consumption and personal conduct are no longer security concerns. Clearance is granted.

CASENO: 03-24979.h1

DATE: 11/23/2005

DATE: November 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24979

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has mitigated security concerns about his alcohol-related arrests and treatment as he provided evidence that he has reformed his conduct. He has totally abstained from drinking since 2002 and has changed his lifestyle. He both successfully completed his alcohol treatment in January 2004 and his probation. He performs well on the job without any evidence of an alcohol problem. He established he had no intent to falsify his 2000 security application. Applicant's alcohol consumption and personal conduct are no longer security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 10, 2005. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleged specific concerns over alcohol consumption (Guideline G) in paragraph 1 and personal conduct (Guideline E) in paragraph 2. Applicant responded to these SOR allegations in an undated, notarized Answer where he admitted all of the allegations and requested a hearing.

Department Counsel on April 7, 2005, indicated the case was ready to proceed. The matter was assigned to me on April 21, 2005. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on July 18, 2005, set the matter for July 26, 2005, at a location near where Applicant works and lives.

At the hearing the Government offered six exhibits which were admitted into evidence without objection. (Exhibits 1-6; TR 10-15) Applicant was represented by his wife. He and his wife both testified and offered three exhibits which were admitted into evidence without objection. (Exhibits A-C) (TR 24-28) Applicant was allowed two weeks after the hearing until August 9, 2005, to submit additional evidence. (TR 61-62, 81-83) The Government had until August 22, 2005, to submit comments. (TR 82) On July 29, 2005, Applicant submitted Exhibit D. On August 23, 2005, Government's counsel indicated he had no objection to the documents, so Exhibit D was admitted into evidence; and the record closed. The transcript (TR) was received on August 5, 2005.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 43 years old, worked for a defense contractor (Employer #1) in State #1 from March 1996 to present. While he had a period where he was laid off, he has worked for the company for a total of 20 years. He initially completed a Security Clearance Application (SF 86) in September 2001 and completed another SF 86 in September 2004. He is seeking a Secret clearance. (Exhibits 1, 2; TR 34; Exhibit A) He was granted an interim clearance in September 2001, but his interim security clearance was withdrawn in March 2005 after the SOR was issued. He is now in a position where he does not need a security clearance. (Exhibit D; TR 35-36; 65)

Applicant was first married in 1983 and divorced in 1989. His second marriage was in 1995, and he was divorced in 1998. He married his current wife in November 2003. (Exhibits 1, 2; TR 17-18)

### **Alcohol**

Applicant admitted that from 1979 to 2002 he consumed alcohol at times to excess and to the point of intoxication; he was treated for alcohol detoxification twice prior to January 1994. He was arrested in 1993 in State #1 and charged with Driving under the Influence of Alcohol, Blood Alcohol Content was .21. He was found guilty and placed on probation; he was fined, his driver's license was suspended; and he was ordered to attend an alcohol education course. Applicant received outpatient treatment [\(2\)](#) from January 1994 to September 1994 for a condition diagnosed as Alcohol Dependence. His prognosis was guarded. (Answer; Exhibits 3, 5, 6; TR 39-40; 59)

Applicant was arrested in August 19, 2001 in State #2 and charged with Domestic Battery after he had been drinking alcohol; he pleaded guilty to a reduced charge of Battery and was sentenced to pay a fine of \$25 plus costs. He was arrested again on August 30, 2001 in State #1 and charged with Driving under the Influence of Alcohol; he had

consumed beer prior to the arrest and was driving to the hospital to get treatment for an earache. He refused to take a chemical test. He was found guilty and sentenced to six months jail, suspended, 18 months Drinking Driver Monitor Program probation, and his driver's licenses was suspended. He was ordered to pay a \$500 fine plus costs and ordered to complete an alcohol education program. However, they did not have room in the program for him until 2003. He received outpatient treatment<sup>(3)</sup> beginning July 2003 for 26 weeks for Alcohol Dependence, Severe. He went to one Alcoholics Anonymous (AA) meeting and felt no need to drink after that. The program emphasized the importance of not drinking. (Answer; Exhibits 3, 5, 6; TR 19-20; 40-45; 53-56; 58-59; 67-68) He successfully completed both the alcohol treatment program in January 2004 and probation in May 2004. (Exhibit D; TR 59-63)

Applicant no longer drinks and last consumed alcohol in 2002; he stopped drinking even before he went into the treatment program because he had experienced too many problems in his life from alcohol. (Exhibit 3; TR 33; 64) His wife confirmed his abstinence from alcohol and testified that he is very dedicated to his job. She stated he passed all of the sobriety tests while he was in treatment in 2003. His wife confirmed that they have no alcohol in their home. She is confident that he will not drink again. (TR 17-18; 21-22; 28-29)

Applicant testified persuasively that his life had changed 100 percent as he has a better outlook on life. (TR 32) His wife is supportive of him. (TR 56-57) Since he was worked at his current company, he has never gone to work under the influence of alcohol or been reprimanded for poor performance. (TR 66) Applicant has a current drivers license in State #1. (Exhibit D)

### **Personal Conduct**

Applicant admitted that he did not reveal his 1993 arrest for DUI in response to Question 24 on alcohol/drug offenses in his June 27, 2000, SF 86. (Answer; Exhibits 1, 2; TR 47-48) However, he has difficulty reading and did not have any intent to falsify. He was diagnosed with learning disabilities when he was in high school but was able to graduate. (TR 23, 27-28; 36-39; 48-50; 57-58; Exhibit C) When he was interviewed in June 2002, he was only asked about his financial issues. (Exhibit 4; TR 52-53)

### **References**

The Facility Security Manager stated that Applicant has been employed for twenty years and has been a good employee and of good character. He recommends him for access to classified information as he is of good integrity. (Exhibit A)

The president of the union who has known Applicant for six years assessed him as a stellar operator; he was able to do

jobs with little training. (Exhibit B)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **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.**

### **Guideline E - Personal Conduct**

**A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.**

An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (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 applicant'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 of recurrence.<sup>(4)</sup>

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Alcohol Consumption**

The Government established security concerns over Applicant's alcohol-related arrest in 1993 and two more arrests in 2001. Applicant's conduct falls within E2.A7.1.1.2.1: Alcohol-related incidents away from work. . . . During his subsequent court-ordered treatment Applicant was diagnosed with alcohol dependence, and arguably falls within E2.A7.1.1.2.4. <sup>(5)</sup> even though no evidence was provided on the educational credentials of the individuals who assessed Applicant in either of his treatment programs. As he returned to alcohol abuse after his initial treatment in 1994, Applicant also falls within E2.A7.1.1.2.6.: Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

However, Applicant mitigated these security concerns as Applicant provided evidence to demonstrate that he falls within several mitigating conditions: <sup>(6)</sup> The first arrest in 1993 occurred over ten years ago; the more recent arrests in 2001 were serious, but he has had no subsequent arrests in over four years. While his two arrests in 2001 are troublesome, they seemed to be linked to his involvement with a person that he no longer sees and no longer indicate a pattern under C 1. His having had no subsequent arrest brings him within 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). Applicant's arrests and periods of heavy drinking stopped in 2002 even before he started his second treatment. He has addressed these alcohol concerns by abstaining from drinking and changing his life-style. Now he is older, more mature, and has been in a stable marriage since 2003 with a woman who also abstains from alcohol and supports him in his sobriety. He is gainfully employed and highly regarded at his company for his stellar performance. While attendance at AA combined with abstinence would provide a stronger case, he provided evidence that he sustained his abstinence from alcohol for a period of three years. Thus, there is no indication of a recurring problem with alcohol. Indeed, the clinical director, while she did not provide a prognosis, did state he successfully completed treatment with the outpatient addiction services in January 2004. He also completed his probation in 2004 which required him to seek treatment. The only reason for the delay in treatment was a delay in the program having availability to include him.

Significantly, he had an excellent record of performance on the job for over 20 years where he has worked for Employer #1 where he held a security clearance. To his credit Applicant was viewed very favorably by his union president who has known him for six years and by the security manager who has known him for 20 years. Viewing him as a whole person, he demonstrated that he has changed his lifestyle to eliminate all use of alcohol. Applicant successfully completed his outpatient treatment in 2003-04. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. though 1.g.. under SOR Paragraph 1.

### **Personal Conduct**

While the government raised concerns under Guideline E<sup>(7)</sup> over Applicant's failure to answer to Question 24 on the 2000 security clearance application concerning any alcohol offences, Applicant admitted his omission, but established that he did not do so deliberately, with an intent to deceive. I conclude he had no intent to deceive; further, he established his reading difficulties to establish extenuating evidence under Personal Conduct. In addition, I carefully considered all of the circumstances in light of the "whole person" concept. Consequently, these personal conduct concerns were not established. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 1.a.: 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 the Applicant. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Several pages of Exhibit 5 are illegible, but Department Counsel stated that it was the best copy available. The discharge summary offers no information on the educational background of the person who did the assessment of Applicant.
3. Except for Applicant's admissions in his Answer, no evidence was provided on this 2003-04 treatment program nor on the educational background of the person who did the assessment of Applicant. The individual who confirmed that Applicant completed the 2003 outpatient addiction program successfully and was discharged in January 2004 was a CAC-AD, clinical supervisor. She provided no prognosis in her July 2004 letter to Applicant. (Exhibit D)
4. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
5. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.
6. **E2.A7.1.1.3. Conditions that could mitigate security concerns include:** 1. The alcohol related incidents do not indicate a pattern; 2. The problem occurred a number of years ago and there is no indication of a recent problem; 3. Positive changes in behavior supportive of sobriety; 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements,

participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

7. A deliberate omissions would raise Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness . . .*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's state of mind at the time the statement was made.