

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant has abused alcohol for nearly 30 years. He has been convicted of driving under the influence three times since 1997, and lost a security clearance in 2002 because of his alcohol-related conduct. He continues to drink despite being diagnosed as an alcohol abuser and being told to abstain from drinking. He has failed to provide any information to mitigate the resulting security concerns about his alcohol consumption and related criminal conduct. Clearance is denied.

CASENO: 02-33786.h1

DATE: 08/31/2004

DATE: August 31, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33786

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has abused alcohol for nearly 30 years. He has been convicted of driving under the influence three times since 1997, and lost a security clearance in 2002 because of his alcohol-related conduct. He continues to drink despite being diagnosed as an alcohol abuser and being told to abstain from drinking. He has failed to provide any information to mitigate the resulting security concerns about his alcohol consumption and related criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On March 12, 2004, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his criminal and personal conduct, and about his alcohol consumption. The SOR informed him DOHA adjudicators could not make the preliminary affirmative finding, based on available information, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On March 31, 2004, Applicant responded to the SOR (Answer), admitted all of the allegations therein, [\(2\)](#) and requested a determination without a hearing. On June 17, 2004, DOHA Department Counsel submitted a file of relevant materials (FORM) with ten exhibits (Items 1 - 10) attached in support of the government's preliminary decision. Applicant received a copy of the FORM on June 25, 2004, and was allowed 30 days to respond. However, he did not timely submit any further information and the case was assigned to me on August 13, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 46-year-old principal engineer who requires a security clearance in connection with his employment with a defense contractor. He divorced his wife of four years in 1994,⁽³⁾ and has been treated for depression in connection with his divorce.⁽⁴⁾ He previously held a Q-clearance through his employment as a technical staff member at a government-owned/contractor-operated (GOCO) facility supporting Department of Energy work. That access was suspended in February 2002 after Applicant was arrested a second time for due to adverse alcohol-related behavior. (SOR 1.h) Applicant went to work for his current employer in March 2002 after it was suggested by his GOCO employer that he would have difficulty getting his Q-clearance back.⁽⁵⁾

Applicant began drinking while still in high school. From 1974 through 1976, he drank infrequently and moderately. While in college, beginning around 1978, Applicant would drink as many as eight beers twice monthly. In 1984, he went to work for the aforementioned GOCO. From 1985 through November 1997, Applicant would go out with co-workers on Friday nights and have four or five beers each time. He estimates he would have as many as 10 beers four times a year, but did not think he was intoxicated even though he was hung over the next day.⁽⁶⁾

On November 23, 1997, Appellant and a co-worker went to dinner, then to a casino and a pool hall after work. Applicant eventually drank between 11 and 13 beers before trying to drive home. When he was pulled over, a breathalyser showed his blood alcohol content (BAC) to be .20%. Applicant was charged with aggravated driving under the influence (DUI) and spent the night in jail. He eventually pled guilty to a lesser charge of simple DUI, received a 5-day suspended jail sentence, and was ordered to attend an alcohol education program for first offenders. (SOR 1.b)

In early 1998, while his November 1997 DUI arrest was being processed through the judicial system, Applicant sought counseling from his company's employee assistance program (EAP) on the recommendation of his security manager who thought it might help his legal and his security clearance situations.⁽⁷⁾ EAP counseling continued until his departure from the company in early 2002. Initially, the counseling addressed Applicant's drinking but also focused on the recent breakup of his marriage and his treatment for depression. No diagnosis relative to alcohol use was provided until December 2000, when Applicant was referred to an outside alcohol treatment facility. He was diagnosed by a licensed drug and alcohol abuse counselor as an alcohol abuser and it was recommended he abstain from further alcohol use. As long as he abstained, his prognosis was good. A psychiatrist who evaluated Applicant in April 2001 also diagnosed Applicant as an alcohol abuser. (SOR 1.c) On August 23, 2001 Applicant signed a Recovery Agreement with EAP wherein he promised to abstain from alcohol, to submit to random urinalysis, to consult with an EAP-assigned counselor at least monthly, and to attend Alcoholics Anonymous meetings.⁽⁸⁾

Applicant stopped drinking from about January 1998 through August 1998. He resumed drinking around August 1998, and, until October 2000, he would consume a six-pack of beer twice monthly. Despite this level of consumption, he insists he was not drunk after the November 1997 arrest until his second arrest for DUI on October 6, 2000. Applicant had gone out to celebrate his recent work promotion. Applicant drank more than 10 beers and was found to have a .11% BAC. Applicant eventually pled guilty to DUI, attended an alcohol safety class for two months, and was placed on unsupervised probation. [\(9\)](#) (SOR 1.d)

Between October 2000 and November 2001, Applicant's drinking moderated but did not cease. He would drink one or two beers each weekend and insists the only time he had more than two beers at once was on November 6, 2001, when he and his girlfriend went out for a birthday celebration. That evening, he was arrested for driving while intoxicated (DWI) and other moving violations after he went the wrong way down a one-way street and accidentally ran a police car off the road. He failed field sobriety test but insists he was disadvantaged by a bad leg he had broken years earlier. He was found guilty based on his refusal to submit to breath or blood tests, given a one-year suspended imposition of sentence, ordered to perform community service, and assessed fines and costs. (SOR 1.g)

Applicant's three arrests for DUI / DWI each occurred in separate states. He was afforded first offender status in each state, but the record clearly shows his offenses to be violations of each state's criminal code. [\(10\)](#) (SOR 2.a)

POLICIES

The Directive sets forth adjudicative guidelines [\(11\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline G (alcohol consumption) and Guideline J (criminal conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion on the issue of whether, despite the government's information, it is clearly consistent with the national interest to grant or continue Applicant's access.⁽¹³⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽¹⁴⁾

CONCLUSIONS

Excessive alcohol consumption is a security concern (Guideline G) because it 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.⁽¹⁵⁾ The government has established a *prima facie* case for disqualification under this guideline. Applicant has abused alcohol several times since 1974. His drink of choice appears to be beer and he has consumed more than 10 beers several times. (SOR 1.a) His alcohol-related behavior has resulted in three DUI/DWI convictions (SOR 1.b, 1.d, 1.g) and a diagnosis of alcohol abuse by a licensed clinician, who also recommended Applicant abstain from further use of alcohol as of December 2000. Four months later, a psychiatrist concurred in this diagnosis. (1.c, 1.e, 1.f) Applicant's alcohol abuse has also cost him a security clearance for work with another federal agency. (1.h) On these facts, Guideline G disqualifying condition (DC) 1,⁽¹⁶⁾ DC 3,⁽¹⁷⁾ DC 4,⁽¹⁸⁾ and DC 5⁽¹⁹⁾ apply.

Balanced against the disqualifying information, Applicant has provided nothing to support any of the Guideline G mitigating conditions. To the contrary, he violated his August 2001 Recovery Agreement, was arrested shortly three months later for DWI, and still drinks in spite of a clinical recommendation he stop using alcohol. (SOR 1.i) Absent substantial information to suggest he is making changes in his approach to alcohol sufficient to overcome concerns resulting from 30 years of alcohol abuse and alcohol-related adverse conduct, I find against Applicant as to the allegations contained in SOR paragraph 1.

Criminal conduct is a security concern (Guideline J) because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. A person who is willing to disregard laws intended to protect

society may also disregard rules and procedures intended to protect classified information. The government has established a *prima facie* case for disqualification under this guideline. Applicant's arrests for DUI / DWI are criminal offenses in each of the states where they occurred. (SOR 2.a) The factor leading to those arrests, namely Applicant's abuse of alcohol, is still present, and commonsense suggests he will continue to drink and drive in the future. These facts support application of Guideline J DC 1 [\(20\)](#) and DC 2. [\(21\)](#)

In weighing availability of the listed Guideline J mitigating conditions, only MC 1 [\(22\)](#) might apply. Applicant's last arrest was three years ago. However, absent substantial information showing Applicant's alcohol abuse is no longer a concern, and in view of the fact that all three arrests occurred within a four-year period, I conclude his criminal conduct is recent. As for the other mitigating conditions, there is absolutely no basis for application. The conduct was not isolated, he was not acquitted of any of the charges, and, in light of his continued use of alcohol, there is no evidence of rehabilitation. I find against the Applicant as to the allegations in SOR paragraph 2.

These foregoing raises significant doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude the record evidence weighs in favor of the government's decision to deny Applicant access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are entered as follows:

Paragraph 1, Alcohol Consumption (Guideline G): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Paragraph 2, Criminal Conduct (Guideline J): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. As to the allegation in SOR 1.a, Applicant replied "I deny the August date." However, he provided no explanation for this response and has not denied the substance of the allegation; therefore, I have taken his response to be an admission to the gravamen of the allegation; that is, that he has consumed alcohol, at times to excess, for most of the past 30 years.
3. FORM, Item 4.
4. FORM, Items 9 and 10.
5. FORM, Item 5.
6. Id.
7. FORM, Items 5 and 7.
8. FORM, Items 9 and 10.
9. FORM, Items 5 and 8.
10. FORM, Items 6, 7, and 8.

11. Directive, Enclosure 2.
12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. *See Egan*, 484 U.S. at 528, 531.
14. *See Egan*; Directive E2.2.2.
15. Directive, E2.A7.1.1.
16. Directive, 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;
17. Directive, E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
18. Directive, E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
19. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
20. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
21. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
22. Directive, E2.A10.1.3.1. The criminal behavior was not recent;