

KEYWORD: Alcohol

DIGEST: Applicant held a security clearance for over 27 years as an Air Force officer. During that time, he had several off-duty alcohol-related incidents. He was diagnosed as alcohol dependent and received both in-patient and out-patient treatment for the condition, before and after his retirement. Nevertheless, he went on a three-day drinking bender in February 2004. Clearance is denied.

CASENO: 03-01240.h1

DATE: 09/02/2004

DATE: September 2, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01240

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Constantine Bardis, Esq.

SYNOPSIS

Applicant held a security clearance for over 27 years as an Air Force officer. During that time, he had several off-duty alcohol-related incidents. He was diagnosed as alcohol dependent and received both in-patient and out-patient treatment for the condition, before and after his retirement. Nevertheless, he went on a three-day drinking bender in February 2004. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 15 December 2003, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 26 January 2004 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge, but was reassigned to me on 2 June 2004. On 7 July 2004, 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 21 July 2004.

RULINGS ON PROCEDURE

On 1 July 2004, Applicant's attorney entered his appearance and requested the case be "adjourned" for one month so he "could better prepare." Under the procedural guidance, once a hearing date is established, the administrative judge may grant a continuance "only for good cause." DoD Directive 5220.6 ¶ E3.1.8. On 14 January 2004, Applicant acknowledged receipt of the SOR and a letter notifying him of his right to representation. On 26 April 2004, Department Counsel provided Applicant discovery and advised him that, if he wanted legal representation, he should retain an attorney "promptly." He cautioned Applicant that, if he wanted legal representation, he needed to act "now" because, once the hearing was scheduled, he could not guarantee the judge would continue the hearing to meet an attorney's schedule. Applicant and Department Counsel subsequently agreed to a hearing date of 7 July. The notice of hearing was issued on 18 June 2004. By letter dated 2 July 2004, I denied the request because Applicant's attorney had not shown "good cause." At the hearing, on 7 July 2004, Applicant's attorney expressed confidence in his ability to represent Applicant despite the short time to prepare. Tr. 8.

FINDINGS OF FACT

Applicant is a 54-year-old program senior manager for a defense contractor. He served in the U.S. Air Force from 1973 until 1 January 2001, retiring as a colonel (O-6). He held a security clearance throughout his military career and had access to sensitive compartmented information.

Applicant has a history of consuming alcohol to the point of intoxication and, on occasion, to the point of blacking out. In August 1975, Applicant was arrested on a military installation for driving while intoxicated (DWI). He was punished for the offense under Article 15, UCMJ (10 U.S.C. § 815). He forfeited a portion of his pay and was ordered to attend alcohol counseling. Tr. 43.

In 1979, Applicant was arrested by the state highway patrol for driving under the influence of alcohol (DUI). He successfully completed an alcohol awareness program in July 1980 and the charge was subsequently dismissed. Answer. After this incident, Applicant stopped drinking for a while. But soon thereafter, he was drinking heavily. Tr. 45-46.

In July 1990, Applicant was arrested for DWI, speeding, and failure to stay in the traffic lane. He had been drinking, but refused to take a breath test. The charges were dismissed in February 1991 without prejudice. Answer. Tr. 47.

In July 1996, Applicant's wife filed a temporary restraining order against him as a result of an argument. After drinking almost a full bottle of vodka, Applicant started to yell and scream at his wife and son. When his wife tried to telephone for help, he ripped the phone off the wall. Applicant was ordered out of the house and to have no contact with his children. The order was eventually dismissed. Answer.

In October 1996, Applicant was arrested for DUI, driving with excessive alcohol in his blood, and speeding. He pled guilty to speeding. He was sentenced to 60 hours of community service and ordered to pay a fine and complete level II alcohol counseling. Answer. The court deferred resolution of the DUI offense for 24 months. Ex. 4 at 3. It was eventually dismissed.

On 12 October 2000, Applicant was driving home when he felt stressed. He stopped at the side of the road, got a bottle of vodka from the trunk of his car, and drank "a lot of it." Ex. 2 at 4. He fell asleep. A police officer stopped, woke

Applicant up, and cited him for DUI. Applicant pled guilty to driving with impaired ability (DWAI) and was ordered to complete level 2 alcohol education and have 86 hours of therapy at a state certified agency and 18 days of in-patient treatment. Ex. 4 at 8. Applicant was admitted to a military hospital for alcohol detoxification from 16-22 October 2002. He participated in an in-patient alcohol treatment program in a local hospital. He was diagnosed as alcohol dependent and his doctor prescribed Antabuse. Ex. A at 9.

In February 2004, Applicant felt stressed, so he took three days off work and consumed a considerable amount of alcohol. After three days, he realized he needed help and checked himself into a clinic. Tr.55.

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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant has a history of consuming alcohol to the point of intoxication (¶ 1.a); was arrested and charged with DWI or DUI in 1975 (¶ 1.b), 1979 (¶ 1.c), 1990 (¶ 1.d) 1996 (¶ 1.f), and 2000 (¶ 1.g); a temporary restraining order was filed against him for an alcohol-related incident in 1996 (¶ 1.e); entered an alcohol detoxification program in October 2000 (¶ 1.h); and was diagnosed and treated for alcohol dependence at a hospital in October 2000 (¶ 1.i) and a clinic from December 2000 until June 2001(¶ 1.j). 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 established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant is a habitual and binge consumer of alcohol to the point of intoxication. DC E2.A7.1.2.5. He has been involved in alcohol-related incidents away from work--his DWIs and DUIs and the incident resulting in the issuance of the restraining order. DC E2.A7.1.2.1. He was diagnosed by a credentialed medical professional as being alcohol dependent (DC E2.A7.1.2.3), but continues to consume alcohol after completing several alcohol education or rehabilitation programs (E2.A7.1.2.6).

None of the mitigating conditions listed under the guideline apply. Although Applicant is fully aware of his problem and has attended several educational and rehabilitation programs, he does not have his problem under control. It has only been six months since his last major alcohol-related incident--a three-day bender in February 2004. Under the circumstances, the finding is against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

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).