

KEYWORD: Alcohol

DIGEST: Applicant, a 30-year-old electrical technician, committed an operating under the influence of liquor (OUIL) offense in 1998. While he has consumed alcohol to intoxication on eight occasions since the OUIL, most recently on December 31, 2003, he does not operate a motor vehicle after he has consumed more than three beers over a four or five-hour period. Nothing in the record indicates a diagnosis of alcohol abuse or alcohol dependence, and the drunk driving offense was an isolated incident not indicative of a pattern. Applicant has demonstrated he can drink responsibly. Clearance is granted.

CASENO: 03-01367.h1

DATE: 10/04/2004

DATE: October 4, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01367

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Andrew A. Thomas, Esq.

SYNOPSIS

Applicant, a 30-year-old electrical technician, committed an operating under the influence of liquor (OUIL) offense in 1998. While he has consumed alcohol to intoxication on eight occasions since the OUIL, most recently on December 31, 2003, he does not operate a motor vehicle after he has consumed more than three beers over a four or five-hour period. Nothing in the record indicates a diagnosis of alcohol abuse or alcohol dependence, and the drunk driving offense was an isolated incident not indicative of a pattern. Applicant has demonstrated he can drink responsibly. Clearance is granted.

STATEMENT OF CASE

On October 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Alcohol Consumption (Guideline G).

On October 29, 2003, Applicant, acting *pro se*, responded to the SOR and requested a hearing before a DOHA Administrative Judge. On January 6, 2004, counsel for Applicant entered his appearance. The case was assigned to me on February 19, 2004, and pursuant to notice of March 22, 2004, a hearing was scheduled for April 15, 2004. With the agreement of the parties, an amended notice was subsequently issued rescheduling the hearing for April 14, 2004.

At the hearing, three Government and 11 Applicant exhibits were admitted. Testimony was taken from Applicant and from a National Guard member who had served with Applicant for nine years, including during peacekeeping operations OCONUS from May to December 1997. A transcript of the hearing was received on April 26, 2004.

FINDINGS OF FACT

The SOR alleges Alcohol Consumption concerns because of an April 1998 drunk driving offense and continued consumption of alcohol, at times to intoxication, to at least July 2003. Applicant admits the factual allegations, but submits in mitigation that the episodes of intoxication have been infrequent and he no longer drinks and drives. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 30-year-old electrical technician employed by a defense contractor since December 1999. As a senior radar operator in the service of the National Guard from April 1992 to April 2000, Applicant held a Secret security clearance without adverse incident. He seeks to retain his Secret clearance for his present duties with the defense contractor.

In April 1992, a couple of months before he graduated from high school, Applicant enlisted in the National Guard. On completion of basic training, he attended college full-time in 1993 and 1994 while continuing in the Guard as a senior radar operator.

From August 1995 to December 1999, he was employed as an electrical technician for a local company that designs power plants. He was away from his job from mid-May 1997 through December 1997 while deployed OCONUS with his Guard unit for peacekeeping operations, for seven months of that time in a hostile environment. During the deployment Applicant took quick action as the senior radar operator (E-5) to disseminate information that led to the discovery of hundreds of tons of potentially explosive materials at an adjacent weapons storage site. For his outstanding leadership and hard work, Applicant was awarded a formal commendation by the Guard. In April 2000 he was honorably discharged from his military service.

Applicant has displayed similar dedication to his work with his present employer. As of his performance evaluation for 2001, he was considered a tremendous asset because of his versatility, technical expertise and knowledge of the product, and good communication skills. The program manager has been impressed by Applicant's ability to adjust to increasing levels of work. During a two-week long temporary duty assignment OCONUS in 2003, Applicant proved so instrumental in the expeditious upgrade and repair of equipment that he received a letter of appreciation from a Government agency for his "unparalleled" knowledge sharing, customer commitment, and dedication.

A social drinker of beer only, Applicant allowed alcohol to negatively impact his judgment on an occasion in April 1998. En route home with friends after he had consumed five or six beers at a party, Applicant was stopped by the police for weaving. He failed field sobriety tests and was arrested for OUIL, operating as to endanger, and failure to stay within marked lanes. Applicant pleaded guilty to OUIL and his case was continued without a finding to October 1999 with conditions of probation, payment of fees, 45-day loss of license, and completion of an alcohol education program. The operating as to endanger charge was dismissed and the failure to stay within marked lanes charge was filed. Applicant fulfilled the terms of his sentence and the OUIL charge was subsequently dismissed. In the alcohol program that he attended once a week for sixteen weeks, Applicant was educated about the effects of alcohol, including the relation of alcohol consumed to blood alcohol content, and how to drink responsibly. He was also required to attend two Alcoholics Anonymous meetings where he learned alcohol could have a very negative impact on a person's life.

On seven or eight occasions (two weddings, July 4th cookouts, and New Years Eve celebrations) since his April 1998 OUIL, Applicant became intoxicated after consuming four or five beers. Applicant did not operate a motor vehicle after drinking on any of those occasions. He has not been intoxicated since December 31, 2003.

Applicant has been candid with the Government about his OUIL, disclosing it on his security clearance application executed in July 2002 in conjunction with a periodic reinvestigation of his Secret clearance. Applicant realizes he made a "huge mistake" by driving drunk in April 1998. While he intends to continue to consume alcohol in the future, he is committed to drinking responsibly. To that end, he no longer associates with those friends with whom he went out drinking in April 1998. He does not keep beer in his home, buying it only when friends come over. Applicant has never been diagnosed as having an alcohol problem.

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 personal 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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

GUIDELINE G

Alcohol Consumption

The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

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 (E2.A7.1.2.1.)

Conditions that could mitigate security concerns include:

The alcohol related incidents do not indicate a pattern (E2.A7.1.3.1.)

The problem occurred a number of years ago and there is no indication of a recent problem (E2.A7.1.3.2.)

Positive changes in behavior supportive of sobriety (E2.A7.1.3.3.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guideline G:

A security concern is raised by Applicant's OUIL offense in April 1998, and by his admissions that he has consumed alcohol to intoxication, including on seven or eight occasions since that incident. Although there is no evidence Applicant has ever allowed alcohol to negatively influence his work or Guard performance or attendance, those to whom classified information is entrusted must be relied on to safeguard this material both during business and non-business hours. The ingestion of alcohol to intoxication is incompatible with this duty due to the obvious potential for intentional or inadvertent disclosure when one is under the influence. Disqualifying condition (DC) E2.A7.1.2.1. (alcohol-related incident away from work) must be considered. On the other hand, nothing in the record indicates that Applicant has ever been diagnosed as an alcoholic, alcohol abuser, or as alcohol dependent by any credentialed medical professional or licensed clinical social worker within the meaning of DCs E2.A7.1.2.3. or E2.A7.1.2.4. of Guideline G. Applicant's primary physician indicates Applicant is in good health and has not been treated for a substance abuse problem. Since nothing in the Directive or Executive Order 10865 prohibits drinking per se, the fact that Applicant continues to consume alcohol is not in and of itself security disqualifying. The salient issue is whether Applicant is at risk of future excessive alcohol consumption that could impair his ability to safeguard classified information.

A single alcohol-related incident that occurred in April 1998, six years ago, is not sufficient to indicate a pattern (*see* mitigating condition E2.A7.1.3.1.). oreover, with the insight gained from having attended a court-ordered alcohol

education classes in 1998, Applicant has made a significant alteration in his outlook and behavior supportive of sobriety (see MC E2.A7.1.3.3), taking care not to drive if he drinks more than two or three beers in a four or five-hour period. With respect to the seven or eight instances where he has consumed alcohol to intoxication since his OUIL, the occasions were celebratory in nature such as the two weddings and New Year's eves where overindulgence may be expected among those who otherwise drink responsibly. Applicant has demonstrated that he can control his drinking, and that he recognizes and appreciates the risk of abusive drinking, both personally and from a security standpoint. His drunk driving is unrepresentative of his current situation and not likely to be repeated. Subparagraphs 1.a., 1.b., and 1.c. are resolved in his favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the 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.

Elizabeth M. Matchinski

Administrative Judge

1.