

KEYWORD: Personal Conduct; Alcohol

DIGEST: Applicant consumed alcohol to excess from at least 1994 to 2002, was arrested three times for driving while intoxicated, used cocaine in 1995 and 2001, including while she possessed a security clearance, and failed to disclose most of that conduct, as required, in a security clearance application she submitted in June 2002. Applicant has failed to mitigate the security concerns that arise from her alcohol consumption and personal conduct. Clearance is denied.

CASENO: 03-02790.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-02790

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

Robert Gregory, Esquire

**SYNOPSIS**

Applicant consumed alcohol to excess from at least 1994 to 2002, was arrested three times for driving while intoxicated, used cocaine in 1995 and 2001, including while she possessed a security clearance, and failed to disclose most of that conduct, as required, in a security clearance application she submitted in June 2002. Applicant has failed to mitigate the security concerns that arise from her alcohol consumption and personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On June 29, 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 security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. Applicant submitted an answer to the SOR that was received by DOHA on August 20, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on August 1, 2005. A notice of hearing was issued on October 3, 2005, scheduling the hearing for October 28, 2005. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. Applicant testified, called one witness to testify on her behalf, and submitted eight documentary exhibits that were marked as Applicant Exhibits (AE) 1-8, and admitted into the record without objection. The transcript was received on November 16, 2005.

## **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 a 46-year-old woman who has been employed by the same defense contractor since October 1982, presently as a product technician. She was married in October 1984, and that marriage ended in divorce in January 2001. She has two daughters, ages 27 and 20. She submitted a number of letters of recommendation from friends and co-workers who indicate they believe her attributes include honesty, trustworthiness, and dependability.

Applicant admits being intoxicated when she was arrested and charged with driving under the influence of alcohol in 1991. The record does not contain any other information about this incident. She was arrested and charged again with driving under the influence of alcohol on August 8, 1993. She pled guilty to that offense on February 24, 1994, and was placed on 12 months probation and ordered to pay a fine in the amount of \$460.00, perform 72 hours of community service work, obtain an alcohol evaluation and attend a Mothers Against Drunk Driving impact panel. She failed to timely complete the terms of her sentence and a warrant was issued for her arrest. She thereafter completed the terms of her sentence and the warrant was quashed when the sentence was completed on arch 17, 1995.

Applicant was again arrested and charged with driving under the influence of alcohol on February 3, 2001. Although she admits she was operating a motor vehicle while intoxicated at the time of her arrest, the charges were dismissed because of a prior appellate court ruling dealing with the use of the breathalyzer in the jurisdiction. While the file indicates the prosecutor appealed the dismissal of Applicant's charge, there is no evidence of the result of that appeal.

Applicant was charged with assault for an offense that occurred on March 29, 2000, involving a violent altercation between her and her husband on one side, and her daughter's boyfriend and his mother on the other side. Applicant admits having consumed seven to eight beers prior to the fight. She apparently was not arrested for the offense, but instead a summons was sent to her through the mail. She retained an attorney to represent her on the charge, which was dismissed based upon the complainant's failure to appear. Applicant never personally appeared in court on this charge.

Applicant estimated that from 1994 to August 2002, on average, she consumed one to two pitchers of beer a couple of times during the week. From Friday to Saturday night she would consume about one-half case of beer. She became intoxicated almost every Friday night. Her drinking habits caused her children, other family members, and her work supervisor to be concerned she had a drinking problem.

Applicant used cocaine once or twice during the week and on every weekend for about a five-month period of time in 1995. She purchased the cocaine for each use at a cost of \$20.00. She again used cocaine two or three times in 2001. Applicant had been granted a secret security clearance in 1990, which she possessed on each occasion when she used cocaine.

Applicant's drinking and drug abuse caused her to miss work and to be suspended from her employment for three months in 1995. She was referred to an outpatient substance abuse program that she attended for three months in 1995, apparently as a precondition to her being reinstated to her job. She also attended alcoholics anonymous meetings while in the substance abuse program.

Applicant provided a statement on December 11, 2002, in which she claimed to have not consumed alcohol since August 2002. (GE 2) She testified the last time she consumed alcohol was about a month before the hearing when she drank about five or six beers at home. (Tr. p. 73)

Applicant signed and swore to the accuracy of the contents of a security clearance application (SF 86) on June 6, 2002. In the SF 86, she failed to disclose, as required, her use of cocaine in 1995 and 2001, her use of cocaine while possessing a security clearance, her 1991 and 1993 driving under the influence arrests, and her 2000 assault arrest. On January 14, 2004, Applicant signed and swore to the accuracy of the answers she provided to interrogatories propounded to her by DOHA. Included in her answers was an assertion that she last used cocaine in 1995.

Applicant asserted in a statement she provided to a special agent from the Defense Security Service (GE 2) that her failure to disclose the 1993 driving under the influence charge was due to her belief that she only had to disclose arrests that had occurred in the preceding seven years, and she did not disclose the assault charge because she never had contact with the police and the charge was dismissed. She admitted in the statement she did not disclose her use of cocaine because she was afraid she would lose her job.

Applicant testified she failed to disclose her use of cocaine in the SF 86 because she was confused, and/or didn't remember, and/or was under pressure, and/or was afraid she would lose her job. (Tr. pp.56-59) She testified she did not disclose the assault charge because she didn't know she had been arrested, and/or charged, and/or because it was dismissed. (Tr. pp. 61-62) She testified she didn't list her 2001 use of cocaine in response to the interrogatories because she probably didn't think about it and/or she misunderstood the question. (Tr. pp. 65-66)

### **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, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are 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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> 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.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant failed to disclose her use of cocaine in 1995 and 2001, her use of cocaine while possessing a security clearance, her arrests for driving while intoxicated in 1991 and 1993, and her being charged with assault in 2000 in the SF 86 she submitted in June 2002. She also provided false information about when she last used cocaine in the answers she provided to the interrogatories propounded to her by DOHA in January 2004.

I have considered Applicant's appearance and demeanor while testifying, the manner in which she answered the questions posed to her by Department Counsel, and the substance of her testimony. I found her to be evasive, contradictory, and totally unbelievable. Applicant deliberately provided false information in the SF 86, and in her answers to the interrogatories propounded to her.

*DC 2: The deliberate omission, concealment, or falsification of relevant and material fact*

*from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities applies in this case. I have considered all the Mitigating Conditions under Guideline E and none apply. Guideline E is decided against Applicant.*

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 was charged with driving while intoxicated in 1991, 1993, and 2001. Although she was only convicted of the 1993 charge, she admitted having operated a motor vehicle while intoxicated on each occasion. She consumed alcohol to excess from at least 1994 to August 2002, becoming intoxicated on a regular basis. She was suspended from work in 1995 because of her drinking and drug use, and was only reinstated after completion of an outpatient substance abuse program in 1995. Despite attending that program, she continued to drink to excess until at least 2002, and abused cocaine again in 2001. Although she claimed in December 2002 to have quit consuming alcohol as of August 2002, she admitted at the hearing to having drunk five to six beers at home on a single day about a month before the hearing.

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*; DC 2: *Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*; [\(12\)](#) and DC 5: *Habitual or binge consumption of alcohol to the point of impaired judgment* apply in this case. I have considered all the Mitigating Conditions under Guideline G and none apply. Guideline G is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, 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 failed to overcome the case against her and satisfy her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline E: Against Applicant

Subparagraphs a-e: Against Applicant

SOR ¶ 2-Guideline G: Against Applicant

Subparagraphs a-e: Against 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 Applicant. Clearance is denied.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Although there is no evidence that Applicant was ever intoxicated at work or consumed alcohol at work, I find the intent of this disqualifying condition to be broad enough to include her conduct which prohibited her attendance at work due to her alcohol consumption.