

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant's five alcohol-related incidents between April 1990 and June 2002 and his continued drinking to the point of impairment demonstrates alcohol abuse. Falsifying his July 2002 clearance application demonstrates his willingness to conceal the truth if it conflicts with his personal interests. Smith Amendment (10 U.S.C. § 986) also requires denial of clearance. Clearance denied.

CASENO: 03-04179.h1

DATE: 07/20/2004

DATE: July 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04179

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's five alcohol-related incidents between April 1990 and June 2002 and his continued drinking to the point of impairment demonstrates alcohol abuse. Falsifying his July 2002 clearance application demonstrates his willingness to conceal the truth if it conflicts with his personal interests. Smith Amendment (10 U.S.C. § 986) also requires denial of clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 8 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption and personal conduct. ⁽¹⁾ Applicant answered the SOR on 13 April 2004 and requested a decision without hearing. He did not respond to the Government's File of Relevant Material (FORM), issued 26 May 2004. The record closed 10 July 2004, the day the response was due. The case was assigned to me 19 July 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 53-year-old shipyard electrician since 1971--seeks access to classified information. He has not previously

held a clearance.

Applicant has a history of alcohol abuse punctuated by five alcohol-related incidents. He continues to consume alcohol to the point of impairment.

Applicant describes himself as a "light social user" of alcohol, consuming 12 beers per week plus two cognacs and ginger ale over the last 18 years.⁽²⁾ He becomes "buzzed" six to eight times per year, but does not consider that to be intoxicated. He asserts that he has never had a problem controlling his consumption and could stop immediately if necessary.

The record, however, presents contrary evidence. In June 2002, Applicant was charged with DWI and speeding when he was stopped for doing 54 miles per hour in a 35 MPH zone.⁽³⁾ He failed a field sobriety test, blew .09/.08 on two breath tests, and was convicted contrary to his pleas. However, the DWI charge was dismissed when he appealed his conviction to superior court.

In September 1992, Applicant was charged with DWI and open container violation.⁽⁴⁾ He was convicted of the open container violation, but the DWI was nolle prossed because his B.A.C. was .03 at the time of his arrest. In October 1990, Applicant was charged with DWI and driving with licence restricted.⁽⁵⁾ Although he was convicted of the licence offense, and sentenced to 18 months in jail (suspended), the DWI was nolle prossed because his B.A.C. was .03 at the time of his arrest.

In April 1990, he was charged with DWI after consuming seven beers over a 3½-hour period.⁵ He was stopped when he failed to signal a turn, blew a .10 B.A.C., and was subsequently convicted of DWI contrary to his pleas. Two weeks before this arrest, he was arrested for transporting alcohol, a charge that was later dismissed.⁵

In November 1983, Applicant was charged with carrying a concealed weapon and abetting an intoxicated driver.⁽⁶⁾ He was convicted of the firearms offense, but the abetting charge was dismissed.⁽⁷⁾

In July 2002, Applicant disclosed his November 1983 weapons charge, his September 1992 DWI arrest, and his June 2002 DWI arrest. However, he omitted his two April 1990 alcohol-related arrests and his October 1990 DWI arrest.⁽⁸⁾ Applicant denied falsifying his clearance application, claiming he thought he was only required to go back seven years. However, this assertion is undermined by his reporting one DWI arrest that was over ten years old at the time of his clearance application. In addition, the April 1990 DWI is the one arrest on which he had a B.A.C. above the legal limit, and is the one arrest in which the DWI offense was not either nolle prossed or dismissed.

POLICIES

The Directive, Enclosure 2 sets forth adjudicative guidelines 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 fairly raised by the facts and circumstances presented. Each adjudicative 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, I conclude the relevant, applicable, adjudicative guidelines are Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct). In addition, Applicant's case falls within the provisions of the "Smith Amendment,"⁽⁹⁾ because he was sentenced to more than a year in jail for his October 1990 offense.

BURDENS

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

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 those who must protect national interests as their 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.⁽¹⁰⁾

CONCLUSIONS

The Government has established its case under Guideline G. Applicant's five alcohol-related arrests between April 1990 and June 2002, [\(11\)](#)

his weekly consumption of 14 drinks and his six-to-eight times per year consumption of "buzz"-producing amounts of alcohol, [\(12\)](#)

and some basic denial about the effects alcohol consumption has had on his life, establish a history of alcohol abuse that shifts the burden of persuasion to Applicant to demonstrate that he does not have a problem with alcohol. His evidence falls short of that burden. Consequently, I conclude Guideline G against Applicant.

In addition, Applicant's 18-month jail sentence for the October 1990 offense precludes granting his clearance under 10 U.S.C. § 986. However, the October 1990 offense was part of Applicant's alcohol abuse that has not otherwise been mitigated. Because I deny Applicant's clearance due to his alcohol abuse and false clearance application, I do not do so solely because of the requirements of 10 U.S.C. § 986. Accordingly, I make no statement under O.I. 64.

The Government has established its case under Guideline E. Applicant certainly knew he had more than the two alcohol-related arrest he reported on his clearance application. [\(13\)](#)

His willingness to withhold that information from the Government suggests he may be willing to put his personal interests ahead of those of the Government. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: For the Applicant

Subparagraph g: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. Age 35 to the present. From age 30 to 35, he drank ten beers weekly. From age 20 to 30, he drank 6 beers a week.
3. Applicant disclosed this arrest on his July 2002 clearance application as "pending charges" (question 26).
4. Although Applicant defends his omission of other alcohol arrests because he thought he only had to go back seven years, he disclosed this arrest on his July 2002 clearance application as an "alcohol-related arrest" (question 24).
5. An arrest he did not disclose on his clearance application.
6. An offense he reported on his clearance application as a "firearms offense" (question 22).
7. Although Applicant admitted this charge, there is no evidence that Applicant himself had been drinking or was intoxicated at the time of this arrest.
8. All of which he was required to report regardless of the ultimate disposition of the alcohol-related charge.
9. The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 amended Title 10 U.S. Code by adding § 986 which precludes the initial grant or renewal of security clearances under four specific circumstances. On 7 June 2001, the Deputy Secretary of Defense issued implementing regulations under DoD 5200.2-R; the Director,

DOHA issued Operating Instruction 64 (O.I. 64) on 10 July 2001.

10. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

11. 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.

12. E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

13. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;