

KEYWORD: Alcohol

DIGEST: Applicant's alcohol-related incidents and his drinking pattern in the period of 1979 to March 2004 constitutes excessive alcohol consumption that has not been mitigated, even though there has been no documented diagnosis of alcohol abuse. Clearance is denied.

CASENO: 03-05940.h1

DATE: 09/30/2004

DATE: September 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05940

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol-related incidents and his drinking pattern in the period of 1979 to March 2004 constitutes excessive alcohol consumption that has not been mitigated, even though there has been no documented diagnosis of alcohol abuse. Clearance is denied.

STATEMENT OF CASE

On February 25, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on March 18, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on June 7, 2004. Applicant received the FORM on June 8, 2004. His response to the FORM was received on July 1, 2004. The case was assigned to me on July 9, 2004.

FINDINGS OF FACT

The SOR alleges alcohol consumption under Guideline G. Applicant provided material admissions to all the factual allegations and requested a decision without a hearing. Applicant is 49 years old and has been employed as systems engineer by a defense contractor since 1982. He seeks a secret security clearance.

In response to subparagraph 1.a., Applicant claimed he used alcohol occasionally to a level of intoxication between 1979 (not 1970) and February 2002. In his sworn statement dated October 24, 2002, Applicant recalled at age 18 he drank one to three mixed drinks a week and became intoxicated rarely.

On November 30, 1979, Applicant was arrested for driving while under the influence of alcohol (DWI) and reckless driving. Applicant had consumed about four to five mixed drinks. Applicant was fined \$200.00 and ordered to attend DWI school. He paid the fine and successfully completed the DWI school.

On January 11, 1980, Applicant was arrested for DWI. He was found guilty of the charge and placed on one year probation, and his license was suspended for one year.

On July 9, 1994, Applicant was charged with DWI and reckless driving. Applicant had been drinking with friends at a downtown tavern and was on his way home when his friend recommended they stop for food. Because his truck was longer than the typical flatbed, one of his wheels ran over the curb at a drive-through restaurant. Applicant was arrested after flunking a field sobriety test. The charge was ultimately dismissed after the arresting officer failed to appear for court.

On February 7, 2002, Applicant was arrested for DWI and reckless driving. He was found guilty of DWI and sentenced to 90 days in jail with 85 days suspended, placed on one year probation, fined \$500.00 in costs, ordered to attend DWI driving school, complete a victims discussion course, and required to install intoxilock on his vehicle. The reckless driving charge was dismissed. Applicant had consumed one large mixed drink and was driving home. On cresting a slight hill, the car in front of him suddenly slowed down and Applicant struck the car. Although he failed the field sobriety test, his breath test registered under the legal limit of alcohol in his blood. He was still charged with DWI because the officer concluded Applicant's drinking was a cause of the accident. According to his sworn statement dated October 24, 2002 (item 5), Applicant completed all conditions of his sentence and consumed no alcohol since his arrest on February 7, 2002.

Applicant began consuming alcohol at age 15. In college, he drank one to three mixed drinks a week. In the middle of 1979, Applicant became stressed after his girlfriend announced she wanted to end the relationship. He began drinking four to six drinks on three to five nights a week. Applicant discovered alcohol had control over him after consuming one drink. This drinking pattern lasted until approximately June 1980.

Applicant married in June 1980. He still consumed alcohol but not to the extent he had before his marriage. Between 1981 to 1985, Applicant drank moderately with a few occasions of drinking to an intoxicating level. Applicant abstained

from drinking between late 1985 and 1991 when his drinking resumed but at a reduced level of approximately one night a week.

Applicant noted his drinking never caused him financial problems. He had never passed out, experienced the shakes, or drank the morning after to recover from drinking the night before. He learned in 1999 he had a medical condition and recognized the damage alcohol can do to the liver of a person with this condition. Applicant explained when his court obligations were completed, his plan in the future would be to (1) consume no alcohol while driving a vehicle, (2) consume no alcohol after work, (3) control his drinking to an occasional glass of wine, (4) keep himself occupied so drinking would not be practical, and (5) consider total abstinence.

On June 11, 2002, Applicant was determined to have an alcohol problem but the axis diagnosis was deferred. On October 24, 2002, Applicant stated he may resume alcohol use when his probation ended. A finding for Applicant under subparagraph 1.f. is declared for two reasons: (1) his completion of treatment represents good judgment exhibited by Applicant; and, (2) there is no evidence Applicant received any diagnosis during treatment. The records indicate only "an alcohol problem."

When Applicant was discharged from counseling in October 2004 relating to the February 2002 DWI, the alcohol counselor opined a favorable prognosis because Applicant was motivated to stay sober.

In his answer to the SOR dated March 2004, Applicant noted he resumed drinking wine occasionally at dinner and never to the point of intoxication. In his response to the FORM dated July 1, 2004, Applicant disclosed he had stopped drinking alcohol and would continue abstinence as long as he held a security clearance.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts

and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Alcohol Consideration

Disqualifying Conditions (DC):

1. Alcohol-related incidents away from work;
5. Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions (MC):

1. The alcohol-related incidents do not indicate a pattern;
2. The problem occurred a number of years ago and there is no indication of a recent problem;
3. Positive changes in behavior supportive of sobriety.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or

absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under alcohol consumption (Guideline G) that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

CONCLUSIONS

Excessive alcohol consumption raises security concerns because it leads to questionable judgment, failure to control impulses, and increases the risks of violating security regulations. Alcohol-related driving offenses and/or the frequency of one's drinking habits may demonstrate a level of abuse or dependence that is disqualifying under Guideline G. Between 1979 and February 2002, Applicant has committed four alcohol-related driving offenses after consuming varying amounts of alcohol. (DC 1) In three of the four offenses, Applicant was found guilty of DWI. Though the DWI charge was dismissed in 1994 because the arresting officer did not appear, Applicant registered over the legal limit of alcohol in his blood and failed the field sobriety test. In October 2002, Applicant stated he may resume his alcohol use when his probation period expired.

MC 5 refers to habitual or binge drinking the results in impairment of judgment. Applicant's drinking pattern between 1979 and March 2004 indicates habitual consumption of alcohol to the point of periodic impaired judgment. Between the middle of 1979 and the middle of 1980, Applicant realized he had no control over his alcohol consumption after consuming the first drink. In addition, four very serious alcohol offenses in 24 years represent incidents of poor judgment. Finally, continuing to consume alcohol after discovering he had a very serious medical condition in 1999

shows a certain lack of control over alcohol consumption.

All mitigating conditions have potential relevance to the case. However, MC 1 does not apply to these circumstances as Applicant's DWI offenses represents a pattern of criminal conduct that must be mitigated with substantial, corroborated evidence from independent sources. MC 2 also must be removed from consideration as the last alcohol-related incident was less than three years ago.

MC 3 recognizes positive changes in behavior supportive of sobriety. Even though he recognizes outside activities are helpful in facilitating a lifestyle conducive to sobriety, Applicant has presented no supportive evidence to back up the sobriety he claims. Applicant has provided no evidence to indicate he has a network of resources that will facilitate his sobriety. MC 4 is not applicable as there was no diagnosis from a credentialed medical professional. Considering (1) the pattern of Applicant's alcohol-related conduct, (2) the recency of his alcohol consumption, and (3) the absence of evidence describing a changed lifestyle supporting sobriety, Applicant's unsubstantiated, four month period of abstinence is insufficient to meet his ultimate burden of persuasion under the alcohol consumption guideline. In reaching my decision the guideline, I have evaluated these circumstances under the general factors of the whole person concept.

FORMAL FINDINGS

Paragraph 1 (alcohol consumption, Guideline G): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

