

KEYWORD: Alcohol

DIGEST: Applicant was an alcohol abuser whose alcohol consumption increased substantially during the period October 1997 until October 1998, when he became heavily intoxicated on a twice weekly basis. His alcohol abuse never resulted in an accident or arrest. A technician, with unspecified qualifications, advised Applicant that his alcohol assessment indicated he was "probably an alcoholic" because he "fit the profile of an alcoholic." Since being assessed, Applicant has dramatically altered his attitude, done extensive reading on alcoholism, abstained for one year, resumed but reduced his consumption of alcohol, and been sober for over three years. Clearance is granted.

CASENO: 03-14225.h1

DATE: 03/14/2005

DATE: March 14, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14225

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was an alcohol abuser whose alcohol consumption increased substantially during the period October 1997 until October 1998, when he became heavily intoxicated on a twice weekly basis. His alcohol abuse never resulted in an accident or arrest. A technician, with unspecified qualifications, advised Applicant that his alcohol assessment indicated he was "probably an alcoholic" because he "fit the profile of an alcoholic." Since being assessed, Applicant has dramatically altered his attitude, done extensive reading on alcoholism, abstained for one year, resumed but reduced his consumption of alcohol, and been sober for over three years. Clearance is granted.

**STATEMENT OF THE CASE**

On June 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated June 29, 2004, with 33 attachments, Applicant responded to the allegations in the SOR, and requested a hearing. The case was assigned to me on October 15, 2004. A notice of hearing was issued that same date, and the hearing was held on November 18, 2004. During the hearing, two Government exhibits, three Applicant exhibits, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on December 1, 2004.

## RULINGS ON PROCEDURE

At the commencement of the hearing, Department Counsel moved to amend the SOR by withdrawing the allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. and 2.b.). The declared basis for the motion was that one allegation (subparagraph 2.a.) was erroneous on its face and there was no admissible evidence to support the remaining allegation (subparagraph 2.b.).<sup>(1)</sup> There being no objection by Applicant, I granted the motion.<sup>(2)</sup>

## FINDINGS OF FACT

Applicant has admitted three of the six factual allegations pertaining to alcohol under Guideline G (subparagraphs 1.b. through 1.d.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor seeking to retain a security clearance previously granted to him in March 1991.<sup>(3)</sup>

Applicant was an alcohol abuser. He began consuming alcohol when he was 18-years old in about 1985,<sup>(4)</sup> but that early alcohol consumption was undistinguished as to quantity and frequency. Commencing in June 1994, and continuing until October 1998, he consumed alcohol (either hard liquor, beer, or a combination of the two)<sup>(5)</sup> on an almost daily basis.<sup>(6)</sup> He generally consumed "a couple beers three or four times a week."<sup>(7)</sup> The quantity and frequency of Applicant's alcohol consumption increased during the period October 1997 until October 1998, when he would become "heavily intoxicated"<sup>(8)</sup> on "at least a twice weekly basis."<sup>(9)</sup> Applicant concedes he was an alcoholic during that one year period,<sup>(10)</sup> during which he also "blatantly disregarded the alcohol driving laws"<sup>(11)</sup> and drove his automobile while alcohol-impaired approximately two times per week.<sup>(12)</sup> Despite his driving habits, Applicant was never arrested for any alcohol-related offense.<sup>(13)</sup> During the same period, he was absent from work approximately twice a month, due in part to his drinking and staying out too late the night before.<sup>(14)</sup>

In October 1998, Applicant was directed by his supervisor to undergo an alcohol assessment at the local military

<sup>(15)</sup>

<sup>(16)</sup>

wellness center. The entire assessment took about one hour, and consisted of his answering questions similar to those in the Michigan Alcoholism Screening Test (MAST).<sup>(17)</sup> The test was assessed by someone, otherwise unidentified, and Applicant subsequently returned for a second interview during which he was given the results by a technician.<sup>(18)</sup> Applicant was advised by the technician that the results of the test indicated he was "probably an alcoholic"<sup>(19)</sup> because he "fit the profile of an alcoholic."<sup>(20)</sup> It was recommended that he attend Alcoholics Anonymous (AA) after attending the wellness center's alcohol program.<sup>(21)</sup>

The results of the assessment surprised Applicant and he decided to address the situation. He did extensive reading on alcoholism<sup>(22)</sup> and attended two AA meetings with his alcoholic-sister.<sup>(23)</sup> Based on what he had learned, he concluded the technician's assessment was "based on probability,"<sup>(24)</sup> and that he did not have a physical or psychological dependency for alcohol.<sup>(25)</sup> Instead, Applicant attributed his alcohol problem to "some bad choices with whom and how to spend [his] time after work,"<sup>(26)</sup> as well as to the pressures and stresses of his job and problems with his girlfriend.<sup>(27)</sup> He subsequently quit his job, in large measure because he had an unsuccessful probationary period that would have precluded his rehiring if he had to be fired,<sup>(28)</sup> secured another job, and abstained for approximately 12 months.<sup>(29)</sup>

Applicant eventually resumed his alcohol consumption, but at a much more moderate quantity and frequency. His normal pattern over the past five years<sup>(30)</sup> has been two or three 12-ounce beers once a week.<sup>(31)</sup> The last time he was intoxicated occurred over three years ago.<sup>(32)</sup> As he gets older, Applicant has been losing his desire to drink beer.<sup>(33)</sup> His future intentions are to continue his natural progress and keep doing what he has been doing.<sup>(34)</sup>

Applicant previously served on active duty with the U.S. Air Force from October 1989 until June 1994. From June 1994 until he resigned and was honorably discharged, effective January 5, 1999, he was with the Air National Guard. He was honorably discharged from the U.S. Air Force Reserve, effective December 2003. He has been employed by the same government contractor since October 1999, and is currently serving as a satellite communications technician.<sup>(35)</sup> His direct supervisors, former supervisor, and a former colleague, all speak of Applicant in glowing terms and give him their highest recommendations.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Alcohol Consumption - Guideline G: 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, as well as those which could mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard<sup>(36)</sup> or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded those standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of

persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline G. Commencing in June 1994, and continuing until October 1998, Applicant exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by abusing alcohol. The quantity and frequency of his alcohol consumption increased substantially during the period October 1997 until October 1998, when he would become heavily intoxicated on a twice weekly basis. Fortunately, none of his periods of intoxication or incidents in which he operated a motor vehicle while impaired ever resulted in an accident or arrest. His alcohol consumption did, however, cause some work-absentee problems. These incidents and the conduct which contributed to the incidents fall within Alcohol Consumption Disqualifying Condition (AC DC) 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*) and AC DC E2.A7.1.2.5. (*habitual or binge consumption of alcohol to the point of impaired judgment*). However, because there is limited evidence that alcohol had any impact on his job performance and activities other than some absences associated with alcohol, there does not appear to be sufficient justification to apply AC DC E2.A7.1.2.2. (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*).

In October 1998, Applicant's supervisor advised him to undergo an alcohol assessment. He did so. A technician advised Applicant that the results of a test he had taken indicated he was "probably an alcoholic" because he "fit the profile of an alcoholic." The record is silent as to the professional qualifications of the individual or technician who administered the alcohol assessment or evaluation. Furthermore, in the absence of appropriate documentation from the wellness center, it is unclear if the assessment constituted a diagnosis by a credentialed medical professional or an evaluation by a staff member of a recognized alcohol treatment program. Accordingly, I find no application of AC DC E2.A7.1.2.3. (*diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*) or AC DC E2.A7.1.2.4. (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*).

Applicant's actions since the alcohol assessment, including his limited participation in AA meetings, extensive reading on alcoholism, abstinence for one year, reduced consumption of alcohol, and continuing sobriety for over three years, reveal an individual who has dramatically altered his attitude, relationship with alcohol, and his lifestyle. That changed behavior clearly falls within Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*) and AC MC E2.A7.1.3.2. (*the problem occurred a number of years ago and there is no indication of a recent problem*).

Under the evidence presented, I am confident that Applicant's alcohol abuse of the past will not recur. There is convincing evidence of current sobriety. He has taken efforts to rehabilitate himself, and it appears he has, in fact, been successful. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to the issue of alcohol consumption. Accordingly, allegations 1.a. through 1.f. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Paragraph 2., Guideline E: WITHDRAWN/FOR THE APPLICANT

Subparagraph 2.a.: Withdrawn/For the Applicant

Subparagraph 2.b.: Withdrawn/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. Clearance is granted.

Robert Robinson Gales  
Chief Administrative Judge



1. Tr., at 11.
2. Tr., at 12.
3. Government Exhibit 1 (Security Clearance Application (SF 86), dated August 7, 2001), at 7.
4. Tr., at 18, 28.
5. Government Exhibit 2 (Statement, dated May 13, 2003), at 2.
6. *Id.*
7. Response to SOR, dated June 29, 2004, at 2.
8. Government Exhibit 2, *supra* note 5, at 2.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. Response to SOR, *supra* note 7, at 2.
15. Government Exhibit 2, *supra* note 5, at 3.
16. Tr., at 29.
17. Tr., at 29.
18. Tr., at 31-32.
19. Tr., at 32.
20. Government Exhibit 2, *supra* note 5, at 3.
21. Tr., at 32.
22. Response to SOR, *supra* note 7, at 3.
23. Tr., at 26.
24. Response to SOR, *supra* note 7, at 3.
25. *Id.*
26. *Id.*
27. Tr., at 33.
28. Response to SOR, *supra* note 7, at 2-3.
29. *Id.*, at 3; Tr., at 35.

30. Tr., at 27.

31. Tr., at 26.

32. Tr., at 27.

33. Tr., at 35.

34. Tr., at 35.

35. Government Exhibit 1, *supra* note 1, at 1.

36. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)