

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant drank alcohol to excess from 1981 to 2001. He was convicted of driving while intoxicated in 1994 and sentenced. He was convicted of having an open container of alcohol in 1998 and sentenced. He was convicted of driving while intoxicated in 2000 and sentenced. He completed four alcohol treatment programs and his prognosis for sobriety is poor. Applicant did not include all his alcohol-related convictions and treatments on his security clearance application. However, Applicant has difficulty reading and comprehending. Applicant has not mitigated security concerns for alcohol consumption, but has mitigated security concerns for personal conduct. Clearance is denied.

CASENO: 03-15787.h1

DATE: 08/05/2005

DATE: August 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15787

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant drank alcohol to excess from 1981 to 2001. He was convicted of driving while intoxicated in 1994 and sentenced. He was convicted of having an open container of alcohol in 1998 and sentenced. He was convicted of driving while intoxicated in 2000 and sentenced. He completed four alcohol treatment programs and his prognosis for sobriety is poor. Applicant did not include all his alcohol-related convictions and treatments on his security clearance application. However, Applicant has difficulty reading and comprehending. Applicant has not mitigated security concerns for alcohol consumption, but has mitigated security concerns for personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On September 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on September 15, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 15, 2004. He admitted nine and denied one of the allegations under Guideline G, and denied the allegations under Guideline E. He requested a hearing before an administrative judge and the request was received by DOHA on September 22, 2004. Department Counsel was prepared to proceed with the case on May 6, 2005, and the case was assigned to me on May 12, 2005. A notice of hearing was issued on May 25, 2005, and the hearing convened on June 22, 2005. Five government exhibits and the testimony of the Applicant were received during the hearing. DOHA received the transcript on July 5, 2005.

## FINDINGS OF FACT

Applicant is a 39-year-old mechanical technician performing preventive and corrective maintenance for a defense contractor for six years. He served 11 years on active military duty, but was unable to pass the written tests to make his rate and involuntarily left active duty with an honorable discharge. He served two years with the merchant marine before working for the defense contractor. He has been married for almost 20 years. He separated from his wife for a period but they are now together. <sup>(1)</sup>

Applicant, as he admitted, drank alcohol to excess to the point of intoxication at times from 1981 to 2001. <sup>(2)</sup> Applicant received inpatient treatment at a military service alcohol rehabilitation center in 1990 and was diagnosed as alcohol dependent. <sup>(3)</sup>

In 1994, Applicant was arrested for driving while intoxicated, and sentenced to a suspended jail term, was fined \$296.00, his driver's license was suspended, and he was ordered to attend an alcohol safety program. Applicant again attended a military service alcohol in-patient treatment program, was evaluated as alcohol dependent, and his prognosis on discharge was poor. <sup>(4)</sup> In 1998, Applicant was arrested for not complying with his sentence by not attending the alcohol safety action program. Applicant actually did participate in a program, but it was not the State program but a military service program. <sup>(5)</sup>

In 1998, Applicant was charged with and found guilty of having an open container of alcohol and fined \$75.00. <sup>(6)</sup> In 2000, Applicant was charged with and convicted of driving while intoxicated, and sentenced to a jail term of 30 days, was fined \$300.00, and his driver's license was suspended. <sup>(7)</sup> He was evaluated at and completed an alcohol safety program. As a result of the alcohol safety program, he was referred to another alcohol treatment program which he successfully completed in 2000. <sup>(8)</sup>

Applicant submitted a security clearance application in 2001. Applicant listed only the 1994 driving while intoxicated conviction when answering question 24 asking if he had been charged with or convicted of any offense related to alcohol or drugs. On the same security clearance application, Applicant responded "NO" to question 30 asking if in the last seven years the use of alcoholic beverages resulted in any alcohol-related treatment or counseling. In 2001, Applicant had two other alcohol-related convictions in 1998 and 2000, and had received alcohol-related treatment and counseling three times in the seven years before he submitted the application. Applicant did not type the answers on the form but provided them to a clerk for his employer. Applicant is a high school graduate, but he had trouble reading, and was pushed along in his education. He had trouble reading and understanding the questions on the security clearance application form. <sup>(9)</sup>

Applicant admitted he last drank alcohol in March 2001. He had a wake up call after completing treatment and knew he was losing friends, and alcohol was not his friend. He last attended an Alcoholic Anonymous meeting in November 2004 after attending six meetings during three separate months of that year. His wife is his main support for maintaining sobriety. [\(10\)](#)

## **POLICIES**

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." [\(11\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(12\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(13\)](#) An administrative judge should consider: (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 applicant'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 of recurrence. [\(14\)](#)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. [\(15\)](#) 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(16)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(17)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(18)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>(19)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(20)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline G - Alcohol Consumption:** There 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.

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline G. Applicant's two driving while intoxicated arrests and convictions, his conviction for having alcohol in an open container, his admitted use of alcohol to excess on various occasions over 20 years, and his four referrals and attendance at alcohol treatment programs supports application of

Alcohol Consumption Disqualifying Conditions E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence . . .*), and 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 did complete a military service alcohol abuse program rather than a state program so Applicant was wrongly convicted under SOR allegation 1.e., and I find for Applicant on this allegation.

I have considered Alcohol Consumption Mitigating Conditions E2.A7.1.3.1 (*the alcohol-related incidents do not indict a pattern*); E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*); and E2.A7.1.3.4 (*following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and has received a favorable prognosis by a credential medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*). Applicant was a heavy drinker for over 20 years. His alcohol-related arrests, and treatment and counseling for alcohol related incidents shows a pattern of alcohol use and abuse. Applicant's last alcohol abuse incident was in 2000, and there is no indication of a recent problem. However, Applicant has not established that there are positive changes in his behavior supportive of sobriety. While there are indications he successful completed alcohol treatment programs, there are no on-going indications Applicant has behavioral changes supportive of sobriety. In 2004, he only sparingly attended Alcoholic Anonymous meetings, and attended the last meeting in November 2004. He does not frequently attend meetings of organizations to help with his sobriety, and he has not presented a favorable prognosis of his alcohol-related condition from an alcohol treatment professional. His only sobriety support is his wife. This is a positive support but she is not a professional. Applicant has not established solid evidence supportive of sobriety to mitigate the security concerns.

The government has not established its case under Guideline E. The gravamen of the Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness. . .*) is has Applicant provided false information with an intent to deceive. Applicant did not provide the correct answers to questions 24 and 30 on his security clearance application. Applicant has difficulty reading and comprehending what he reads, even though he completed high school. He was unable to advance on active military duty because he could not read well enough to pass the written test for advancement. Since Applicant lacks reading skills, he could not understand the questions on the security clearance application. He did provide information on one arrest but did not understand the requirement to provide information on all of his arrests and convictions. I find Applicant's testimony concerning his reading skills and comprehension, and his reasons for answering questions on the security clearance application to be credible. I conclude Applicant did not deliberately omit, conceal, or falsify material and relevant facts on the application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not 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 AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

**DECISION**

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Tr. 16-19; Tr. 27-28; Government Exhibit 1 (Security clearance application, dated Mar. 1, 2001).
2. Tr. 28-29; Government Exhibit 2 (Applicant's statement, dated May 28, 2003) at 3.
3. Tr. 29; Government Exhibit 5 (Treatment summary, dated Sep. 7, 1990).
4. Tr. 30; Government Exhibit 3 (Release from Treatment, dated Aug. 16, 1994); Government Exhibit 4 (Aftercare treatment plan, dated Aug. 11, 1994).
5. Tr. 32.
6. Tr. 30-31.
7. Tr. 32-33.
8. Tr. 33.
9. Tr. 22-24; Tr. 27-28; Tr. 40-41; Government Exhibit 1 (Security clearance application, dated Mar. 1, 2001).
10. Tr. 35-40.
11. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
12. Directive ¶ E2.2.1.
13. *Id.*
14. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
15. *See* Exec. Or. 10865 § 7.
16. Directive ¶ E3.1.14.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
19. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).
20. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.