

KEYWORD: Alcohol; Personal Conduct

DIGEST: After four alcohol-related driving offenses over a ten-year period and a 1999 diagnosis of alcohol dependence, Applicant continues to drink alcohol. He did not disclose all of his alcohol-related arrests on his security clearance application out of shame and embarrassment. He has failed to mitigate the concerns raised by his alcohol consumption and lack of candor on his security clearance application. Clearance is denied.

CASENO: 03-16783.h1

DATE: 02/28/2006

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16783

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

After four alcohol-related driving offenses over a ten-year period and a 1999 diagnosis of alcohol dependence, Applicant continues to drink alcohol. He did not disclose all of his alcohol-related arrests on his security clearance application out of shame and embarrassment. He has failed to mitigate the concerns raised by his alcohol consumption and lack of candor on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On November 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct.

In a sworn statement, dated December 17, 2004, Applicant responded to the SOR allegations and requested a hearing. In his SOR responses, Applicant denied the allegations in SOR subparagraphs 1.b, 1.g. and 1.k under Guideline G. He denied all the allegations under Guideline E, SOR subparagraphs 2.a and 2. b. The case was assigned to me on November 29, 2005. A notice of hearing was issued on January 3, 2006, scheduling the hearing for January 25, 2006. The hearing was conducted as scheduled. The government submitted seven exhibits that were marked as Government Exhibits (Gov Ex) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted three exhibits that were marked as Applicant's Exhibits (AE) A-C. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 6, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 57-year-old artillery tester for a defense contractor.⁽²⁾ He has worked for his present employer since 2002.⁽³⁾ He seeks a security clearance. He is married and has two grown children. From 1965 to 1971, he served on active duty in the United States Marine Corps. He is a Vietnam veteran. He is described by his supervisors and co-workers as conscientious, dedicated, reliable, and a hard worker.⁽⁴⁾ While working for his current employer, he has received several letters of appreciation⁽⁵⁾ and was nominated for an award in July 2005.⁽⁶⁾

Alcohol Consumption

Applicant started consuming alcohol in 1965 after he joined the military.⁽⁷⁾ He served in the military from 1965 to 1971. He drank approximately one pitcher of beer twice a month. From 1971 to 1992, his alcohol use increased to six beers two to three times per week. From 1992 to 2000, he drank alcohol on a daily basis. He drank an average of four to five beers per day. On occasion he would drink up to ten beers a day.⁽⁸⁾

On March 6, 1990, Applicant was arrested and charged with Driving While Intoxicated and Refusing a Chemical Test.⁽⁹⁾ He was given probation before judgment for one year.⁽¹⁰⁾

On March 19, 1992, Applicant was arrested and charged with Driving While Intoxicated.⁽¹¹⁾ He was found guilty and placed on one year supervised probation, 60 hours of community service and fined \$200.00.⁽¹²⁾ He was also referred by the court to alcohol counseling.⁽¹³⁾

In 1994, Applicant attended court-ordered outpatient alcohol counseling. The treatment consisted of classes about alcohol abuse and driving after drinking. Applicant attended Alcoholic's Anonymous meetings four times a week for a year.⁽¹⁴⁾ He knew he had a problem with alcohol but did not consider himself to be an alcoholic.⁽¹⁵⁾ He stopped drinking alcohol during the six-month program but starting drinking again after the six-month program ended.⁽¹⁶⁾

On September 6, 1996, Applicant was arrested and charged with Driving Under the Influence.⁽¹⁷⁾ The charge was

dismissed after the witnesses did not show up for court. [\(18\)](#)

On October 2, 1999, Applicant was arrested and charged with Driving While Intoxicated and Failure to Drive Right of Center. [\(19\)](#) He was found guilty and placed on 18 months supervised probation, fined \$400.00 and court costs. A February 10, 1999, arrest for DUI was alleged in SOR subparagraph 1.g. At the hearing, Applicant testified that he was never arrested in February 1999. He indicated the only time he was arrested for DUI in 1999 was on October 2, 1999. There being no evidence (such as arrest records) to the contrary, I find for Applicant with respect to SOR subparagraph 1.g.

On October 11, 1999, Applicant voluntarily checked himself in to inpatient alcohol treatment at a Veteran's Administration (VA) hospital. [\(20\)](#) He received a diagnosis of alcohol dependence from his treating psychiatrists. [\(21\)](#) His admission notes indicate that his level of alcohol use prior to admission was a half pint of vodka everyday and about six to eight beers per day during the week and double that amount on the weekends. [\(22\)](#) On October 28, 1996, he was discharged from inpatient treatment.

From November 1999 to July 2002, he attended outpatient treatment. [\(23\)](#) He also attended AA meetings for approximately six months to a year. He considered himself to be an alcoholic at the time he attended this treatment. [\(24\)](#) For approximately one year, he stopped drinking alcohol. He started drinking alcohol again in late spring/early summer 2000. [\(25\)](#) From August 2000 to April 2003, he would drink beer only on the weekends when he was socializing with friends. He estimates this occurs two or three times per month and he drinks four to five beers per occasion. Since August 2000, he has been intoxicated twice, drinking 12 beers each time. [\(26\)](#)

On April 4, 2003, Applicant was sent home from work because he smelled of alcohol and his supervisors thought he was incapable of performing his job in a safe and efficient manner. [\(27\)](#) He received a verbal warning that should a similar incident occur in the future more severe disciplinary action will be taken. [\(28\)](#) He was advised of the employee assistance program but declined use of their services. [\(29\)](#)

In a signed, sworn statement provided to the Defense Security Service on April 25, 2003, Applicant denied drinking 12 to 18 beers and a half pint of vodka on a daily basis. He claimed he had not used vodka for over 30 years. [\(30\)](#) At the hearing, he admitted to minimizing the amount of alcohol he used in his signed, sworn, statement, because he was ashamed and was afraid his drinking history could prevent him from getting a security clearance. [\(31\)](#)

At present, Applicant considers himself to be a recovering alcoholic. [\(32\)](#) His current level of alcohol use is two beers a day during the week and an average of four cans of beer on the weekends. [\(33\)](#) The last time he drank to intoxication was in December 2005. [\(34\)](#) He testified that he does not drink as much as he used to since he is aware of the work-related consequences and has gotten more involved in hobbies. [\(35\)](#)

Personal Conduct

Applicant completed a security clearance application on February 1, 2002.⁽³⁶⁾ In response to question 24 related to his alcohol arrests/convictions, he listed a September 1996 arrest for Driving Under the Influence. He did not list his March 1990 and March 1992 DUI arrests. Although he did not list his 1999 DUI arrest in response to question 24, he did list it in response to question 26.⁽³⁷⁾ He first denied deliberately omitting his 1990 and 1992 DUI arrests. He claimed he had trouble remembering all of his arrests. At the hearing, Applicant admitted that he did not list all four DUI arrests because he was afraid he would not get a clearance and he was ashamed of himself.⁽³⁸⁾

In his April 6, 2003, signed, sworn statement provided to the Defense Security Service, Applicant failed to disclose that he was arrested in March 1992.⁽³⁹⁾ Applicant claims that this omission was an oversight on his part. He also had the dates confused and initially thought the arrest occurred in 1997 rather than 1992.⁽⁴⁰⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴¹⁾ The government has the burden of proving controverted facts.⁽⁴²⁾ The burden of proof is something less than a preponderance of evidence.⁽⁴³⁾ 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.⁽⁴⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁴⁵⁾

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁽⁴⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴⁷⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽⁴⁸⁾ 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.

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

Guideline G - Alcohol Consumption: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increase the risk of unauthorized disclosure of classified information due to carelessness.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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 guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines G, Alcohol Consumption and Guideline E, Personal Conduct.

Guideline G - Alcohol Consumption

The Government's evidence establishes potentially disqualifying conditions under Guideline G, Alcohol Consumption.

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*) applies because Applicant has had four DUI arrests from 1990 to 1999.

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*) applies with respect to the April 2003 incident where Applicant was sent home from work when his supervisor concluded he was either too intoxicated or impaired to be able to perform his job safely.

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*) applies. Applicant was diagnosed as alcohol dependent by a credentialed medical professional during his inpatient alcohol treatment at the VA hospital. There are several entries in his treatment records where it is clear that he was examined by staff psychiatrists as well as the alcohol counselors. I find there is sufficient evidence to conclude the staff psychiatrists made the diagnosis.

AC DC E2.A7.1.2.5: (*Habitual or binge consumption of alcohol to the point of impaired judgment*) applies. Applicant's consumption of alcohol since 1990 resulted in four DUI arrests and one incident where he showed up for work in an impaired condition. His habitual consumption of alcohol has resulted in at least five occasions where he showed impaired judgment. On four occasions he drove while intoxicated and on one occasion he showed up for his work in an impaired condition and was sent home.

AC DC E2.A7.1.2.6: (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*) applies. Applicant attended alcohol treatment in 1999 he received a diagnosis of alcohol dependence by the staff psychiatrist. He remained sober for about six to eight months but resumed drinking alcohol in Spring/Summer 2000. He initially indicated he drank only on the weekends two to three times a month when he socialized with friends. At the hearing, he indicated that he drinks alcohol on a daily basis, two to three beers during the work week and double that on the weekends. He occasionally drinks to intoxication. Since resuming drinking alcohol in 2000, his frequency of alcohol use has increased from twice a month to daily use. This remains a concern as well as the fact that Applicant has minimized his alcohol use in the past.

I find none of the mitigating conditions apply to Applicant's case. Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1: (*The alcohol-related incidents do not indicate a pattern*) does not apply. He has over a ten-year history of alcohol-related arrests. He appears to attempt to reduce the level of his alcohol use after each incident but slowly increases the level of his alcohol use over time.

AC MC E2.A7.1.3.2: (*The problem occurred a number of years and there is no indication of a recent problem*) does not apply. Applicant's most recent alcohol-related incident occurred in 2003 when he showed up for work in an impaired condition. It may have occurred a number of years ago but one should also consider Applicant's reaction to this incident overall. This incident occurred after the Applicant had underwent treatment and was diagnosed as alcohol dependent. It occurred after he submitted his application for a security clearance. He should have been aware with four DUIs that his alcohol use would come under scrutiny in his background investigation. He was informed of the opportunity to use the services of the Employee Assistance Program. He declined assistance. At hearing, Applicant stated he considers himself a recovering alcoholic. Yet, he still drinks on daily basis and on occasion drinks to the point of intoxication. Applicant has not met his burden to apply this mitigating condition.

AC MC E2.A7.1.3.3: (*Positive changes in behavior supportive of sobriety*) does not apply since Applicant drinks alcohol on a daily basis. Cutting down alcohol consumption is not indicative of positive changes in behavior supportive of sobriety. He no longer attends AA meetings or similar support groups.

Finally, AC MC 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 received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) does not apply. Although Applicant successfully completed alcohol treatment, his current alcohol use negates any attempt at applying this mitigating condition since he was diagnosed as alcohol dependent.

Given his past history of alcohol abuse, I cannot conclude Appellant's claims that he has reduced the amount he drinks sufficient enough to mitigate the security concern. Although Applicant appears to be highly thought of by his co-workers, a concern remains because he still drinks alcohol on a daily basis despite his past problems with alcohol. His minimization of the extent of his alcohol use in the past only heightens the security concern. Accordingly, Guideline G is concluded against Applicant.

Guideline E - Personal Conduct

The government established a prima facie case with respect to the allegation in SOR subparagraph 2.a but did not establish a prima facie case with respect to SOR subparagraph 2.b.

The allegation in SOR subparagraph 2.b states Applicant deliberately provided false information to a Special Agent of the Defense Security Service when he provided an April 16, 2003, signed, sworn statement indicating three of his four DUI arrests but deliberately failed to list the DUI arrest alleged in SOR subparagraph 1.d. Applicant maintains that he has difficulty recalling all of his DUI arrests and he essentially overlooked this arrest. I find his explanation credible.

The record evidence shows that Applicant was confused over the actual dates of other DUI arrests he listed as well. For instance, he initially thought his October 1999 arrest occurred in March 1999. In addition, he provided another signed, sworn statement on April 25, 2003, explaining the omitted DUI arrest. I find the government did not establish a prima facie case with respect to SOR subparagraph 2.b.

SOR subparagraph 2.a alleges Applicant deliberately omitted alcohol-related arrests on his security clearance application. Applicant admitted that he deliberately did not list his 1990 and 1992 arrests for DUI on his security clearance application because he was ashamed and he was concerned he would not get a security clearance. I find he deliberately falsified his security clearance application by failing to list the arrests listed in SOR subparagraphs 1.c and 1.d. The allegation indicated Applicant failed to list the arrests listed in subparagraphs 1.b, 1.c, 1.d and 1.h. At the hearing, it was discovered that SOR subparagraphs 1.b and 1.c are the same incident. Applicant listed the arrest alleged in SOR subparagraph 1.h in response to another question on the security clearance application. I conclude Applicant deliberately falsified his security clearance application by omitting the arrests alleged in subparagraphs 1.c and 1.d.

Personal Conduct Disqualifying Condition 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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant deliberately did not list his two earlier DUI arrests which are alleged in SOR subparagraphs 1.c and 1.d on his security clearance application, partly out of shame and partly out of concern that he would not get a security clearance.

I find none of the Personal Conduct Mitigating Conditions apply to Applicant's case. Applicants are required to be truthful with the Government at all times. A lack of candor raises questions as to whether the person is trustworthy enough to protect classified information. Deliberate falsification can be mitigated if as alleged under PC MC E2.A5.1.3.3: (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). In this case, Applicant has failed to meet his burden that he made a prompt, good-faith effort to correct his falsification. It appears the Defense Security Service Special Agent confronted him with the facts about his other alcohol arrests during his interviews. Accordingly Guideline E, is concluded against Applicant.

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: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h Against Applicant

Subparagraph 1.i Against Applicant

Subparagraph 1.j Against Applicant

Subparagraph 1.k Against Applicant

Subparagraph 1.l Against Applicant

Subparagraph 1.m Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a

security clearance for Applicant. Clearance is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Tr. at 22.
3. Tr. at 67.
4. AE B.
5. AE C.
6. AE A.
7. Gov Ex 2, p.2.
8. *Id.*
9. Gov Ex 2; Tr. at 23-27. (SOR subparagraphs 1.b and 1.c are the same offense. Applicant was confused about the date of the arrest and originally thought it occurred in 1985).
10. Gov Ex 2, p.1.
11. Tr. at 27-28; Gov Ex 3, p.1; Gov Ex 4.
12. Gov Ex 3, p.1.
13. Tr. at 28.
14. Tr. at 29.
15. Tr. at 30.
16. Tr. at 61.
17. Tr. at 30; Gov Ex 2, p. 2.
18. Gov Ex 2, p.2.
19. Tr. at 32-35; Gov Ex 2, p. 2.
20. Tr. at 35-37; Gov Ex 6; Gov Ex 2, p.2.
21. Gov Ex 6, pgs. 17, 19, 20, 23.
22. Gov Ex 6, p.2.

23. Tr. at 37.
24. Tr. at 38.
25. Tr. at 62.
26. Gov Ex 2, p. 3.
27. Tr. at 38-41; Gov Ex 5; Gov Ex 2, p.3.
28. Gov Ex 5.
29. Tr. at 63-64.
30. Gov Ex 3 p.2.
31. Tr. at 55.
32. Tr. at 64.
33. Tr. at 57.
34. Tr. at 60.
35. Tr. at 58-59.
36. Gov Ex 1.
37. (Applicant was initially confused over the date of his DUI. I find credible his statement that the March 1999 DUI arrest actually occurred in October 1999.)
38. Tr. at 56.
39. Gov Ex 2 and Gov Ex 3.
40. Gov Ex 4.
41. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
42. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
43. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
44. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
45. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
46. *Id.*
47. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
48. Executive Order 10865 § 7.