

KEYWORD: Alcohol

DIGEST: Applicant, a 34-year-old customer engineer, had three Driving Under the Influence and Driving While Intoxicated charges between 1990 and 2000. These charges have been mitigated by the passage of time and a positive change in lifestyle, which support sobriety. Clearance is granted.

CASENO 03-17493.h1

DATE: 09/20/2005

DATE: September 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17493

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 34-year-old customer engineer, had three Driving Under the Influence and Driving While Intoxicated charges between 1990 and 2000. These charges have been mitigated by the passage of time and a positive change in lifestyle, which support sobriety. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 4, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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. Specifically, the SOR set forth security concerns arising under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 24, 2004, Applicant submitted a notarized response to the allegations and requested waiver under Guideline J. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM), and provided Applicant with a complete copy on August 10, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted an additional response and evidence on August 23, 2005. This case was assigned to me on September 6, 2005.

## **RULINGS ON PROCEDURE**

In its brief, Department Counsel has advised that the government will not pursue the SOR allegation under Guideline J. As a result of the recent amendment to 10 U.S.C. § 986, this Disqualifying Condition will apply when an Applicant has been incarcerated for at least a year. Applicant served ten days in jail for his third Driving While Intoxicated Offense (DWI), a felony under the applicable state law. The allegation of a security concern under Guideline J is therefore found in favor of Applicant.

## **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.a through 1.d of the SOR with explanation.<sup>(1)</sup> Those admissions are incorporated herein as findings of fact.<sup>(2)</sup> After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 34-year-old customer engineer for a defense contractor. Applicant has worked for this contractor or its predecessor for nine years. Applicant completed a security clearance application (SF 86) in April 1996 and a supplemental statement in June 2003.<sup>(3)</sup>

In November 1990, the police arrested and charged Applicant with Driving Under the Influence (DUI) and criminal mischief.<sup>(4)</sup> The court found him guilty on the DUI charge, sentenced him to 90 days in jail (suspended), placed him on probation for two years, fined him, and ordered him to participate in an alcohol education program.<sup>(5)</sup> The court dismissed the criminal mischief charge.<sup>(6)</sup>

In October 1995, the police arrested and charged Applicant with Driving While Intoxicated (DWI), his second offense.<sup>(7)</sup> He plead guilty to the charge.<sup>(8)</sup> The court sentenced him to thirty days in jail, allowing him to work under a work release program, fined him, assessed him court costs, and suspended his license for one year.<sup>(9)</sup>

In 1995, Applicant drank primarily on the weekends, usually 12 12-ounce beers.<sup>(10)</sup> He drank minimally during the week.<sup>(11)</sup> From 1998 until July 1999, his alcohol progressively increased.<sup>(12)</sup> He began drinking 6 12-ounce beers a day and significantly more on the weekends.<sup>(13)</sup> Although he does state why, in July 1999, Applicant stopped drinking "for the wrong reasons".<sup>(14)</sup> In November 1999, he resumed drinking, increasing his daily intake of beer to 18 cans a day and 24 cans a day on the weekends.<sup>(15)</sup>

On March 18, 2000, the police arrested and charged Applicant with a third DWI offense, a felony under state law.<sup>(16)</sup> On July 24, 2001, he plead guilty to the charge.<sup>(17)</sup> The court sentenced him to ten years in jail (suspended), placed him on four years of probation, ordered 200 hours of community service, suspended his license for one year, directed participation in a substance abuse program, and fined him.<sup>(18)</sup> Applicant finished the community service requirements, paid his fines, attended substance abuse counseling and completed his probationary period as required.<sup>(19)</sup> He self-reported this incident to his employer.<sup>(20)</sup>

Immediately after his third arrest and on his own initiative, Applicant sought counseling for his alcohol problem through a private alcohol counseling service and Alcoholics Anonymous (AA).<sup>(21)</sup> He participated in counseling for six to eight months and in AA for six months.<sup>(22)</sup> As a result of counseling, he acknowledged that he is an alcoholic.<sup>(23)</sup> He has abstained from alcohol use since March 17, 2000.<sup>(24)</sup> He has continued to remain sober and his quality of life has improved.<sup>(25)</sup>

Applicant returned to the counseling service in June 2004 for a complete evaluation of his alcohol addiction.<sup>(26)</sup> Based on the Addiction Severity Index and SASSI-3 (Substance Abuse Subtle Screening Inventory), the counseling service diagnosed him as alcohol dependent and noted that he had been in remission for four years.<sup>(27)</sup> The report noted his previous successful completion of two extensive treatment programs for alcohol dependency, which included individual and group therapy.<sup>(28)</sup> He actively participated in therapy, learning new skills, concepts and attitudes for addressing life problems.<sup>(29)</sup> He accepted full responsibility for the consequences of his alcohol use and addressed his alcohol problem.<sup>(30)</sup> He demonstrated an understanding of how to identify problems which could lead to alcohol use and the steps necessary to maintain sobriety.<sup>(31)</sup> His risk for future problems resulting from drinking were deemed significantly lower.<sup>(32)</sup>

Applicant submitted two letters of recommendation from his supervisor, dated June 20, 2004 and August 22, 2005.<sup>(33)</sup> Both letters praised his work performance and the lifestyle changes he had made in the last five years.<sup>(34)</sup> His supervisor also stated that at business functions and social events where alcohol is served, he had observed Applicant requesting nonalcoholic beverages such as water, tea or cola to drink.<sup>(35)</sup> He also submitted a letter, dated August 20, 2005, from his current girlfriend, who stated that since September 2004, she had not known or observed him to drink alcohol on the many occasions they are together.<sup>(36)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. 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 in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, 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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. 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.<sup>(37)</sup> The government has the burden of proving controverted facts.<sup>(38)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(39)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(40)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(41)</sup>

No one has a right to a security clearance<sup>(42)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(43)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(44)</sup> Section 7 of Executive Order 10865 specifically provides 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(45)</sup> 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 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.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline G. Based on all the evidence, Alcohol Consumption Disqualifying Conditions 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 E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*) apply in this case. In a period of ten years, the police arrested and charged Applicant with three DUI/DWIs. During this same time period, his drinking increased from periodic weekend binges to excessive drinking on a regular basis, causing impaired judgment, court convictions for DWI and jail time.

I have considered all the Alcohol Consumption Mitigating Conditions and concluded that E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), and E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*) apply in this case. Applicant consumed his last alcoholic drink more than five years ago. At that time, he recognized he had a problem with alcohol. He immediately enrolled in a treatment and counseling program which provided both individual and group therapy, and began attending AA meetings. He successfully completed the treatment programs, and embraced the skills, attitudes and philosophies learned. He admitted that he is an alcoholic. He changed his attitude about alcohol, and thus, his lifestyle. He developed a strong support group within his family and friends, and a plan to identify and manage potential problems which could lead to his resumption of drinking. Because of these changes, he has remained sober since March 17, 2000. His relationships with family and friends are greatly improved, and he describes that last three years of his life as the best. His supervisor praised his work performance and supported his declaration that he no longer drinks. Likewise, his girlfriend confirmed that when they are together, which is frequently, he does not drink. Applicant is rehabilitated and a recurrence of his conduct is not likely.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our

national interests. I am persuaded by the totality of the evidence in this case, that Applicant has shown a significant change in his behavior following his active participation in alcohol counseling. He stopped drinking. Through his active participation in the alcohol counseling program, he recognized that he had an alcohol problem, and assumed responsibility for his conduct and alcohol use, which allowed him to create a new lifestyle away from alcohol. I conclude that Applicant has successfully mitigated and overcome the government's case under Guideline G.

Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to 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 (Alcohol Consumption): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Item 3 (Applicant's Response to SOR, dated June 24, 2004) at 1.
2. In his response to the allegation in subparagraph 2.a. of the SOR, Applicant requested waiver under 10 U.S.C. § 986. *Id.* Since the government has decided not to proceed with its case under this allegation and the allegation has been found in his favor, his request for waiver is moot.
3. Item 4 (Security Clearance Application, dated April 24, 1996); Item 5 (Statement of Applicant, signed on June 10, 2003).
4. Item 3, *supra* note 1, at 1; Item 4, *supra* note 3, at 7.
5. Item 3, *supra* note 1.
6. *Id.*
7. *Id.*; Item 4, *supra* note 3, at 7.
8. Item 3, *supra* note 1, at 1.
9. *Id.*; Item 4, *supra* note 3, at 7.
10. Item 5, *supra* note 3, at 3.
11. *Id.*



12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*; Item 6.
17. Item 5, *supra* note 3, at 2.
18. *Id.*
19. Item 3, *supra* note 1, attachments at 6-11; Court order discharging Applicant from community service dated August 5, 2005 and attached to response to FORM at 3.
20. Item 8 (Report of Adverse Information on Employee, dated October 17, 2002).
21. Item 5, *supra* note 3, at 3-4.
22. *Id.* at 4.
23. *Id.*
24. *Id.* at 4-5.
25. *Id.*
26. Item 3, *supra* note 1, Attachment (letter from counseling service, dated June 17, 2004) at p.4-5; The administrator director of the counseling service wrote this report. She holds a Masters of Arts degree and is a Licensed Professional Counselor.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 5.
31. *Id.*
32. *Id.*
33. *Id.* at 12, Attachment to FORM response at 4.
34. *Id.*
35. *Id.*
36. *Id.* at 3.
37. ISCR Case No. 96-0277 (July 11, 1997) at 2.
38. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

39. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
40. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
41. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
42. *Egan*, 484 U.S. at 531.
43. *Id.*
44. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
45. Executive Order No. 10865 § 7.