

KEYWORD: Alcohol

DIGEST: Applicant had three alcohol-related driving incidents in the late 1980s and early 1990s. He had another alcohol-related driving incident in 2003. Applicant twice attended and completed alcohol abuse driving programs. After receiving notice of security concerns, Applicant voluntarily attended and completed an alcohol abuse program, but Applicant still consumes alcohol a few times a week. Applicant has not mitigated security concerns about alcohol consumption. Clearance is denied.

CASENO: 03-18218.h1

DATE: 07/28/2005

DATE: July 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18218

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Michael F. Fasanaro, Jr., Esq.

SYNOPSIS

Applicant had three alcohol-related driving incidents in the late 1980s and early 1990s. He had another alcohol-related driving incident in 2003. Applicant twice attended and completed alcohol abuse driving programs. After receiving notice of security concerns, Applicant voluntarily attended and completed an alcohol abuse program, but Applicant still consumes alcohol a few times a week. Applicant has not mitigated security concerns about alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On June 4, 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 June 7, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption) of the Directive.

Applicant answered the SOR in writing on June 21, 2004, admitting all of the allegations under Guideline G, with small amendments as to the date of an offense and time for suspension of his driver's license. He requested a hearing before an administrative judge and the request was received by DOHA on June 25, 2004. Department Counsel was prepared to proceed with the case on January 10, 2005, and the case was assigned to me on January 11, 2005. A notice of hearing was issued on May 13, 2005, and the hearing convened on June 20, 2005. Three government exhibits, five Applicant exhibits, the testimony of one Applicant witness, and the testimony of the Applicant were received during the hearing. DOHA received the transcript on July 14, 2005.

FINDINGS OF FACT

Applicant is a 37-year-old high school graduate employed as a security systems installer for a defense contractor. He is married with one child. His family lives in State A and he works in neighboring State B. He and his family alternate week-end visits to each other. He received his security clearance while working for another defense contractor. [\(1\)](#)

Applicant admitted to drinking alcohol from 1985 to July 2003 sometimes to excess and to the point of intoxication. [\(2\)](#) Applicant admitted, and a witness testified, Applicant drank some alcohol at a company related picnic in July 2004 but was not intoxicated. [\(3\)](#)

Applicant was charged with and convicted in 1989 in State A of driving while impaired and having a concealed weapon. He was not married at the time. Applicant was sentenced to a suspended jail term, placed on probation, was fined \$150.00, his driver's license was revoked for six months, and he was ordered to attend a substance abuse and driving education program. He successfully completed the program and probation. [\(4\)](#)

In 1991, Applicant was charged with and pled guilty to driving while impaired in State A. He was sentenced to a suspended jail term, was fined \$555.00, placed on supervised probation for one year, to attend substance abuse treatment, and his driver's license was suspended for four years. He received counseling weekly at a licensed psychiatric facility from November 1991 to February 1992 to fulfill his sentence to attend substance abuse treatment. He successfully completed his probation. [\(5\)](#)

In 1994, Applicant was arrested in State A for failure to stop after an accident causing property damage. He admitted to drinking beer before the incident, but stated he was not impaired. The charges were dismissed after the property damage was repaired by Applicant. [\(6\)](#)

In 2003, Applicant was charged with and was convicted of driving under the influence in State B. He received a suspended jail sentence, was fined \$350.00, his driver's license was restricted for one year, placed on probation for two years, and ordered to complete an alcohol awareness program. Applicant completed the ten week alcohol awareness program and paid all fines, and completed his probation. [\(7\)](#)

In October 2004, after receipt of the SOR, Applicant again sought counseling from a substance abuse counselor who had treated him previously. He completed another program with the counselor, and the counselor closed his case for successfully completing the program. The counselor determined Applicant's prognosis for avoiding future substance abuse problems was fair to good. [\(8\)](#)

Applicant still drinks alcohol but has moderated his drinking. He has three or four beers a week and an occasional glass of wine with his wife. He has not had an alcohol-related incident since July 2003. He does not now attend any alcohol programs and is not enrolled in Alcoholics Anonymous. [\(9\)](#)

Applicant has a good work record and is highly regarded by his supervisors. They are aware of his alcohol problems. The supervisors feel Applicant has overcome his problems. [\(10\)](#) One supervisor, while commenting favorably on Applicant's job performance and noting his experience with alcohol abuse issues because of his own family background, believes Applicant has recovered and his progress is admirable. [\(11\)](#)

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." [\(12\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(13\)](#)

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. [\(14\)](#) 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.⁽¹⁵⁾

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.⁽¹⁶⁾ 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.⁽¹⁷⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁹⁾ "[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."⁽²⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²¹⁾

Based upon a 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: Excess alcohol consumption is a security concern because it 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 would mitigate security concerns, pertaining to the adjudicative guideline 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 three driving while intoxicated convictions, a traffic accident after consuming alcohol, his admission to drinking sometimes to excess from 1985 to 2003 supports application of Alcohol Consumption Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence. . .*).

I have also considered Alcohol Consumption Mitigating Conditions E2.A7.1.3.1 (*the alcohol related incidents do not indicate a pattern*); 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*). Applicant had three alcohol-related driving incidents from 1989 to 1994 then none for nine years until 2003. While there is a long time between incidents, the incidents do indicate a pattern of drinking and driving. While the first series of incidents was over 11 years ago, there are indications the alcohol-related problems still exist. He had an alcohol related driving incidents only two years ago, and he was drinking alcohol only one year ago. He admitted he still drinks alcohol, even though he indicates he has moderated his intake. He drinks a few beers a week and has wine with meals. There is no positive change in his behavior supportive of sobriety. While he went to alcohol abuse counseling within the last year, the counselor did not provide an overwhelmingly positive indicator of sobriety. He stated Applicant's chances of not having alcohol-related incidents in the future are only fair to good. This is not a solid indicator supportive of sobriety. Applicant has failed to show he has changed his drinking behavior sufficiently to mitigate the security concerns about his alcohol consumption.

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.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against 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. 32-33; 37.
2. Applicants answer to the SOR, dated Jun. 21, 2004.
3. Tr. 27-28; 56.
4. Government exhibit 1 (Applicant's statement, dated Jun. 25, 1992) at 2-3.
5. *Id.* at 4.
6. Tr. 43-44; Government Exhibit 2 (Applicant's statement, dated Aug. 14, 1996).
7. Tr. 44-48; Government exhibit 3 (Applicant's statement, dated Jul. 23, 2003).
8. Tr. 50-51; Applicant's exhibit D (Counselor's letter, dated, Oct. 8, 2004).
9. Tr. 49-54.
10. Tr. 21-31; Applicant exhibit A (Performance Appraisal, dated May 25, 2005; Applicant exhibit B (Supervisor's letter, dated Jun. 17, 2005); Applicant exhibit E (Supervisor's letter with performance evaluation, dated Dec. 21, 2002).

11. Applicant exhibit C (Supervisor's letter, dated Jun. 15, 2005).
12. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. Directive ¶ E2.2.1.
14. *Id.*
15. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
16. *See* Exec. Or. 10865 § 7.
17. Directive ¶ E3.1.14.
18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
20. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
21. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.