

KEYWORD: Alcohol

DIGEST: Applicant is a technician for a defense contractor. He was convicted of driving while intoxicated in 1983 and 1993. He was convicted of domestic assault after consuming alcohol in 1996. He admits to continuing to drink alcohol to excess and intoxication at least twice monthly. Applicant has not mitigated security concerns for alcohol consumption. Clearance is denied.

CASENO: 03-18534.h1

DATE: 12/27/2005

DATE: December 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18534

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a technician for a defense contractor. He was convicted of driving while intoxicated in 1983 and 1993. He was convicted of domestic assault after consuming alcohol in 1996. He admits to continuing to drink alcohol to excess and intoxication at least twice monthly. Applicant has not mitigated security concerns for alcohol consumption. Clearance is denied.

**STATEMENT OF THE CASE**

On June 27, 2005, the Defense Office of Hearing 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 July 5, 2005. The SOR alleges security concerns under Guideline G (Alcohol Consumption) of the Directive.

Applicant answered the SOR in writing on July 25, 2005. He admitted the allegations under Guideline G. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on August 31, 2005. Applicant received a complete file of relevant material (FORM) on September 27, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided additional information on October 11, 2005, and Department Counsel had no objection to consideration of the additional information. The case was assigned to me on November 28, 2005.

### **FINDINGS OF FACT**

Applicant is 42 years old and employed as a technician by a defense contractor for over seven years. He is married with no children.<sup>(1)</sup> Applicant admitted to two offenses for driving while intoxicated, a conviction for domestic violence involving consumption of alcohol, and drinking to the point of intoxication twice per month.<sup>(2)</sup>

While serving on active duty in the Air Force, Applicant received non-judicial punishment on March 22, 1983 for driving while intoxicated. He was reduced in grade, which was suspended for six months, fined \$150.00, and ordered to perform extra duty.<sup>(3)</sup> Applicant was charged with and convicted of driving while intoxicated on November 16, 1993. He was sentenced to serve one day in jail.<sup>(4)</sup> Applicant objects to using these offenses since they happened over 10 and 20 years ago.<sup>(5)</sup>

Applicant was charged with and convicted of domestic violence on January 10, 1996, and fined \$300.00 and court costs. The conviction was set aside after he served his sentence.<sup>(6)</sup> Applicant admitted the offense happened after he consumed alcohol,<sup>(7)</sup> but noted that he was not intoxicated.<sup>(8)</sup>

Applicant admits to the consumption of alcohol to the point of intoxication twice monthly. Applicant questions the definition of "to the point of intoxication." He states:

"My understanding by Law/DPS Sheriff's Department is that .05 is legally intoxicated. This is what I used as a base (being honest) for my understanding of admitting to drinking to the point of intoxication twice a month. I was under the understanding that if I had more than 3 or 4 cocktails/beverages in an evening that this was considered intoxication. I rarely have any alcohol during the week days due to responsibilities at work. On weekends, on occasion of 'BBQ's and Friends' the consumption of beverages could increase (per weekend)." [\(9\)](#)

Applicant's supervisor submitted a letter of recommendation. The supervisor noted Applicant has waited for over five years for the adjudication of his security clearance. He has know Applicant for a number of years and considers him a good man and a loyal American. [\(10\)](#)

## 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.<sup>(15)</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.

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 guideline most pertinent to the evaluation of the facts in this case:

Guideline G - Alcohol Consumption: A security concerns exists 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.

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 two driving while intoxicated arrests and convictions, his conviction for domestic violence after consuming alcohol, and his admitted present use of alcohol to the point of intoxication twice a month 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.A7.1.2.5 (*Habitual*

*or binge consumption of alcohol to the point of impaired judgment*). The three criminal offenses are alcohol related-incidents away from work. His present twice monthly drinking to the point of intoxication is habitual or binge drinking. Binge drinking is a pattern of drinking alcohol that brings the blood alcohol concentration (BAC) to .08 or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours. (21) Applicant admits to twice monthly drinking alcohol to the point of intoxication and having at least three or four drinks in an evening when he becomes intoxicated. His admitted twice monthly intoxication, even though he may minimize the amount of alcohol consumed, establishes the binge drinking. Since his consumption of alcohol is consistent and frequent it is also considered habitual. Applicant has not presented any information that his consumption of alcohol does not lead to impaired judgment.

I have 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's alcohol-related arrests indicate a pattern since alcohol was involved in each of them. Even though the incidents were 22, 12, and 9 years ago, Applicant's admission of continued drinking to the point of intoxication twice monthly indicates there is a recent problem. His continued drinking to intoxication is not behavior that supports a finding of sobriety. I conclude Applicant has not presented sufficient information to meet his burden to mitigate the security concerns for alcohol consumption.

I carefully considered all of the circumstances in light of the "whole person" concept. I considered Applicant's supervisor's statement concerning Applicant's work performance and his evaluation of Applicant' character. 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

**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. Government Exhibit 4 (Security Clearance Application, dated Feb. 22, 2001).
2. Government Exhibit 3 (Answer to Statement of Reasons, dated Jul. 25, 2005).
3. Government Exhibit 8 (Non-Judicial Punishment, dated Mar. 17, 1983).
4. Government Exhibit 6 (Court Documents, dated Nov. 16, 1993).
5. Applicant's answer to FORM, dated Oct. 11, 2005.
6. Government Exhibit 7 (Court Documents, dated Jan. 16, 1996).
7. Government Exhibit 3 (Answer to SOR, dated Jul. 25, 2005).
8. Applicant's answer to FORM, dated Oct. 11, 2005.
9. *Id.*
10. Supervisor's letter dated Nov. 10, 2005 (attached to Applicant's Answer to FORM).
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.

21. *See*, National Institute of Alcohol Abuse and Alcoholism National Advisory Council approval dated Feb. 5, 2004.