

DATE: September 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-07305

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Farhyn E. Hoffman, Esquire, Department Counsel

Francisco J. Mendez, Jr, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol abuse--punctuated by alcohol-related arrests in August 2000, February 2003, and July 2003--was not mitigated because Applicant demonstrated little insight into his alcohol abuse and continued to drink to the point of intoxication. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 22 November 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption. [\(U\)](#) Applicant answered the SOR on 20 December 2005, and requested a hearing. DOHA assigned the case to me 20 June 2006 and I convened a hearing 9 August 2006. DOHA received the transcript 18 August 2006.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of SOR except for subparagraph 1.a., which he denied because he did not drink to the point of intoxication through the entire period. Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 25-year-old site manager for a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant has a history of alcohol abuse from at least August 2000 to July 2006, punctuated by three alcohol-related arrests. Applicant began drinking in high school, when he was 17-18 years old. He obtained a fake identification card, which he used to buy alcohol for himself and his friends. He got drunk on occasion. He estimates he bought alcohol with the fake identification card 30-40 times during the year or so that he had it.

In August 2000, Applicant was arrested for underage possession of alcohol and possession of fraudulent identification

when he used his fake identification card to buy two cases of beer for himself and his friends. Among other consequences for these offenses, he was required to complete an alcohol safety action program (ASAP), which he did. His fake identification card was confiscated, and he did not try to get a new one, but he continued to drink, even after he entered college. His college was something of a party school and he regularly participated.

Between August 2000 and February 2003, Applicant estimates he drove while intoxicated (over the legal limit in his state) about 20 times. In February 2003, he was arrested for hit-and-run when he left the scene of an accident in which he fish-tailed into a parked car on a snowy road. ⁽²⁾ The pertinent part of his sentence was one-year probation.

Between February 2003 and April 2004, Applicant confined his drinking to Friday and Saturday nights, and estimates he was intoxicated an average of once each weekend. In July 2003, he was arrested for public intoxication when he left a bar after drinking 15-16 beers, and decided to walk home rather than drive his car. Although he acknowledges being drunk, he feels a bit put upon because he had had the good sense to not drive his car home. However, he was not always so sensible. In summer 2004 and summer 2005, he drove while intoxicated coming home from two concerts (Tr. 52-54). He testified that he last drank to the point of intoxication ⁽³⁾ 3-4 weeks before the hearing, when he attended a friend's party and stayed overnight. He last consumed alcohol the Saturday before the hearing, six beers sitting around a campfire on a camping trip.

Applicant acknowledged that his alcohol consumption has impaired his judgment, but has not undertaken any counseling other than that required by his sentences. He does not think he needs counseling. He claims that now that he has entered the working world, he does not have time for the drinking habits of his college days. His supervisor of two years considers him an extremely trustworthy employee, who disclosed his adverse alcohol (and drug) history to him during his hiring interview. He has had some social contact with Applicant and does not remember him ever drinking, and certainly not drunk.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽⁴⁾

CONCLUSIONS

The government established a case for disqualification under Guideline conditions 1 and 5, ⁽⁵⁾ and Applicant failed to mitigate the security concerns. He has a long history of drinking to excess, with adverse consequences, three arrests between August 2000 and July 2003. While he has moderated his conduct such that he has had no alcohol-related arrests since July 2003, this has been due more to happy circumstance than a commitment to sobriety. He continues to drink to

the point of intoxication, including on rare occasions, driving while intoxicated. His misconduct demonstrates a pattern of alcohol abuse which is recent. The steps he has taken to curtail his drinking have been supportive of avoiding alcohol-related incidents, but not of sobriety. More troubling is the fact that Applicant appears to have no insight into the potential problems raised by his continued excessive consumption of alcohol. The record evidence establishes his alcohol abuse and he had the burden of establishing extenuation, mitigation, or rehabilitation--a burden he did not meet. I cannot conclude that he is unlikely to return to abusive levels of drinking or experience more alcohol-related incidents. Accordingly, I resolve Guideline G against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant has told several inconsistent versions of this accident, which cast doubt on his credibility. In his February 2005 sworn statement (G.E. 2), he states that he had 8-10 drinks in a bar over a 3-4 hour period, fish-tailed into the car on his way home and went to sleep, before being awakened by police and questioned around 2 a.m. In his December 2005 answer to the SOR, he does not mention drinking before the accident, but describes throwing darts and drinking beer with his friends when he got home. At hearing, he suggests he was drunk at the time of the accident (Tr. 33), then recants it (Tr. 40). He claims he drank before the accident, but not much, then drank a lot after he got home. When pressed (Tr 42), claims he drank four, maybe six to eight beers before leaving the bar.
3. Defined by him as over the legal driving limit, reached by consuming ten beers over a four hour period.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. 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 abuse; E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;