

KEYWORD: Alcohol

DIGEST: In October 1995, Applicant received a diagnosis of alcohol dependence from a counselor of a recognized treatment program. After the diagnosis and following completion of one year of aftercare and Alcoholics Anonymous (AA) meetings (where he accomplished the fifth step), Applicant terminated AA and resumed drinking in the fall of 1996. He believed he could manage his alcohol consumption. In February 2001, Applicant exercised poor judgment when he consumed alcohol before entering his place of employment at the ship facility during a period of heightened alert at the facility. Without historic evidence of extended sobriety for a significant period of time, Applicant's current sobriety and participation in AA after receiving the SOR in February 2005 does not mitigate the disqualifying information presented under the alcohol consumption guideline. Clearance is denied.

CASENO: 03-25655.h1

DATE: 12/19/2005

DATE: December 19, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25655

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

David R. Daniels, Esq.

**SYNOPSIS**

In October 1995, Applicant received a diagnosis of alcohol dependence from a counselor of a recognized treatment program. After the diagnosis and following completion of one year of aftercare and Alcoholics Anonymous (AA) meetings (where he accomplished the fifth step), Applicant terminated AA and resumed drinking in the fall of 1996. He believed he could manage his alcohol consumption. In February 2001, Applicant exercised poor judgment when he consumed alcohol before entering his place of employment at the ship facility during a period of heightened alert at the facility. Without historic evidence of extended sobriety for a significant period of time, Applicant's current sobriety and participation in AA after receiving the SOR in February 2005 does not mitigate the disqualifying information presented under the alcohol consumption guideline. Clearance is denied.

**STATEMENT OF CASE**

On January 26, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On February 8, 2005, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

On April 5, 2005, this case was assigned to me and set for hearing on May 4, 2005. The Government submitted four exhibits (GE), and Applicant submitted a binder containing four groups of exhibits (AE), that have been admitted in evidence (Tr. 14) and renumbered as follows: AE 1 is relabeled AE i., AE 2 becomes AE ii., AE 3 is changed to AE iii., AE 4 shall be reidentified as AE iv. Testimony was taken from Applicant. The transcript (Tr.) was received on May 13, 2005.

Pursuant to E3.1.17. of the Directive, subparagraph 1.e. of the SOR is amended by changing October 15, 1995 to October 18, 1995, to conform the SOR with the date of discharge appearing on the first page of GE 4.

### **FINDINGS OF FACT**

The SOR alleges alcohol consumption. Applicant admitted all factual allegations but denied he had ever had blackouts. Applicant is 47 years old and employed as a senior computer scientist for a defense contractor. He has worked for the same contractor since October 1985. Currently, he seeks a secret security clearance.

On October 23, 1978 (subparagraph 1.b.), Applicant was arrested for driving under the influence (DUI), second offense, BAC 20%. He pleaded guilty and was ordered to attend the alcohol safety action program. On July 10, 1979, this charge was amended to improper driving, and Applicant was fined. On November 14, 1978 (subparagraph 1.c.), Applicant was arrested and charged with DUI, accident, second offense, BAC 20%. This charge was also amended on July 10, 1979 to reckless driving, second offense, resulting in a fine and court costs. In each case, the original charge was reduced because Applicant successfully completed the state's safety action program. Both DUI offenses occurred while Applicant was in college.

Applicant testified he did not consume much alcohol before 1992. No additional information was provided. However, between 1992 (when he started working on ships) and 1995, in addition to drinking at special events, he discovered he was drinking more at home and on the weekends. (Tr. 54) In September 1995 (subparagraph 1.d.), Applicant and fifty of his coworkers were bused to a sports event in a nearby city. Applicant was informed that after the event, he and the other employees could spend time in a historic part of the city before the bus returned them home. When he returned to the location where the bus was supposed to depart, the bus was gone. Though Applicant claims he drank only four beers before and after the game, and became confused and lost (Tr. 25-27; 71-74), I find Applicant also consumed alcohol to excess. Applicant called his wife to come get him. She declined as she did not know the directions. A coworker picked him up and drove him back home. Applicant, his supervisor, and another coworker arranged for a replacement to cover sea trial duty the next day. Applicant was extremely upset by missing the bus and believed alcohol was part of the reason. He stated, "it seemed like things were a little out of control. I felt there might be a problem when I was missing something I needed to do for work." (GE 2)

Then, Applicant decided to discuss the situation with a counselor. (Tr. 28) Though Applicant does not believe his increased drinking at home factored into his decision to seek counseling (Tr. 58, 74, 75), he realized his drinking at home was negatively affecting his family life because he had been hesitant to take the family out for fear of driving after he had been drinking. (Tr. 56)

Applicant participated in outpatient treatment (subparagraph 1.e.) from September 21, 1995 to October 18, 1995. Applicant successfully completed outpatient treatment that was from 8 A.M. to 4 P.M., everyday for 28 days. At the outset of outpatient treatment, Applicant was administered an intake assessment to ascertain the extent of his problem with alcohol. The symptoms segment of the survey shows that the blackouts (GE 3) module was checked even though Applicant denies ever blacking out. (Tr. 76)

Then, Applicant entered aftercare (subparagraph 1.f.) that included 12 months of group therapy meetings once a week, and AA. Applicant signed a continuing care contract on his entry into the aftercare program (GE 4), agreeing to pursue recovery goals for at least a year. He successfully completed the year-long aftercare component and reached the fifth step of AA before he stopped participating in AA in the fall of 1996. Applicant indicated in his sworn statement (GE 3) that there were years he did not drink alcohol following his treatment in 1995/1996. Yet, his testimony is ambiguous on whether he actually remained abstinent for a year or any significant period of time. (Tr. 30) He resumed drinking in the fall of 1996 because he thought he could manage his alcohol consumption. (Tr. 87-88; GE 2) Although he did not tell his counselors (Tr. 90) or his sponsor he was going to discontinue AA, he announced his decision to his wife who was supportive. (Tr. 90)

From the fall of the 1996 to February 2005, Applicant characterized himself as a moderate drinker, drinking just on special occasions and no longer consuming at home. (Tr. 92-93) Applicant and his wife divorced in May 1999. (Tr. 90) Applicant had consumed about three beers at a restaurant on February 14, 2001 (subparagraph 1.g.) when he was unexpectedly called to conduct a test on a ship at the facility.<sup>(1)</sup> He arranged for a team to meet him on a ship at the facility. He boarded the ship and proceeded directly to the test area. On his way, he claims he passed by a secured area that was supposed to be padlocked when unattended. He informed the security officer of the day that a security violation was occurring. Other security officers then confronted Applicant and told him he would have to take a breathalyzer test because a security officer smelled alcohol on his breath. He declined to take the test and his security badge was removed and he was escorted off the facility. (Tr. 42) His badge was returned nine days later and he was reprimanded for exercising poor judgment along with a briefing on the "zero-tolerance alcohol policy" at the facility that Applicant claimed he knew nothing about. (Tr. 36, 43)

In his answer, Applicant stated his intention to stop drinking at parades and after-work activities, but he did not state an intention to stop drinking alcohol. Even though he testified he stopped drinking on February 7, 2005, because he was worried about his career (Tr. 94), his answer to the SOR furnishes a different position.<sup>(2)</sup> In his answer and at the hearing, he indicated he began AA on February 7, 2005, and had attended 88 AA meetings by the date of the hearing. (Tr. 98) Applicant testified he reached the fifth step of AA. He still participates in two or three charity groups and various motorcycle associations. Through his affiliation with AA, Applicant began visiting prisoner facilities four weeks before the hearing to discuss the canons of AA with the prisoners. (Tr. 104)

On April 19, 2005, a psychiatric consultant hired by Applicant evaluated him and arrived at a diagnosis of alcohol abuse in remission, based on a clinical interview and the results of a personality assessment recognized by the psychiatric community. According to the psychiatric consultant, Applicant's decision to stop drinking in February 2005, together with his participation in AA was enough for the consultant to render a good prognosis conditioned on Applicant staying

abstinent and continuing with AA.

Applicant's fellow-employee since 1983, and supervisor since 1990, stated by affidavit that about one-fourth of the people on the bus (subparagraph 1.d.), could not locate the bus after the event in September 1995. The supervisor considers Applicant a loyal and reliable employee who has received several awards for ensuring the readiness of ships entering fleet duty.

His coworker has known Applicant for 20 years and has worked with him since December 2000. The coworker was present during the ship inspection incident in February 2001 but did not smell alcohol on Applicant's breath. The four remaining coworkers, who have known Applicant for up to 13 years, have found him to be conscientious and analytical about his work performance as well as security.

Applicant received recognition for conducting successful, simulated tests in October 1994. In May 1995, Applicant received a letter of appreciation for his work on a project. In June 2002, Applicant was officially appreciated for conducting outstanding training exercises on certain weapons systems. He also was recognized in December 2004 for his contributions to the commissioning of a ship.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Alcohol Consumption (Guideline G)**

Excessive alcohol consumption can lead to poor judgment and increase the risk of unauthorized disclosure of classified information.

### **CONCLUSIONS**

Excessive alcohol consumption (AC) can lead to questionable judgment and failure to control impulses while increasing the risk of security violations due to carelessness. The Government has established a case of excessive alcohol consumption under Guideline G. Applicant admitted occasionally drinking to excess from 1978 to at least 2003. Applicant's first two alcohol-related incidents in 1978 fall within AC disqualifying condition (DC) E2.A7.1.2.1. (*alcohol-related incidents away from work, such as driving while under the influence of alcohol*). Even though the two alcohol-related incidents occurred when Applicant was in college, they remain relevant in the overall picture of Applicant's alcohol problem over the years. The fact that he sought treatment in September 1995 constitutes good judgment. Applicant's diagnosis of alcohol dependence in October 1995 by a certified counselor of a recognized treatment program activates AC DC E2.A7.1.2.4. (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), and clearly indicates Applicant was in need of treatment. Applicant's resumption of alcohol use in the fall of 1996 following diagnosis of alcohol dependence and treatment, raises additional security concerns about his alcohol use simply because he made promises to maintain sobriety, then changed his mind thinking he could manage the problem on his own. Though Applicant's resumption of alcohol in the fall of 1996 after his diagnosis alcohol dependence in October 1995 turns the examination to 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*), this DC is not applicable as the diagnosis was rendered by a counselor and not a credentialed medical professional.

I have weighed the circumstances of this case against the mitigating conditions (MC) of the alcohol consumption guideline and conclude that AC MC E2.A7.1.3.2. (*the problem occurred a number of years ago and there is no indication of a recent problem*) does not apply as there is insufficient evidence Applicant has ever engaged in any significant period of abstinence. Rather, Applicant has continued to consume alcohol since the fall of 1996. Given the fact Applicant had worked at the ship facility since 1992, he should have known about the "no alcohol policy" in effect

in February 2001, especially because of the heightened security alert on the facility at the time.

AC MC E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*) applies when the evidence shows the applicant has made systemic changes in his lifestyle to demonstrate he is seriously committed to leading a life of long-term sobriety. Though Applicant has mentioned his involvement with charitable organizations and his discussions of AA principles with prisoners, there is little or no evidence of an external support network, e.g., friends or family, that facilitates Applicant's present sobriety efforts.

AC MC E.2.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 AA or 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 here for two reasons. First, there is no credible evidence Applicant has abstained from alcohol use for 12 months at any time. Second, the consultation and prognosis by Applicant's psychiatric consultant lacks foundation as it comes after less than three months of purported abstinence. Moreover, Applicant's resumption of AA and cessation of drinking in February 2005, as well as his consultation with the consultant in April 2005, must be viewed as action principally motivated by his receipt of the SOR rather than a sincere desire to reach long-term sobriety.

In reaching my adverse decision under the AC guideline, I have also reviewed the circumstances of this case under the whole person concept. The review has also included careful examination of Applicant's topnotch job performance, as well as the awards and certificates. But, given the absence of constructive behavioral changes contributing to sobriety and the lack of a significant record of abstinence, Applicant has failed to demonstrate his alcohol problems will not recur in the future.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Alcohol Consumption, Guideline G): AGAINST THE APPLICANT.

Subparagraph a. Against the Applicant.

Subparagraph b. Against the Applicant.

Subparagraph c. Against the Applicant.

Subparagraph d. Against the Applicant.

Subparagraph e. Against the Applicant.

Subparagraph f. Against the Applicant.

Subparagraph g. Against the Applicant.

Subparagraph h. Against the 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.

Paul J. Mason

Administrative Judge

1. The facility was on a heightened alert during the period as this ship had been intentionally damaged a year earlier by terrorists.
2. In his answer to the SOR, dated February 11, 2005, Applicant unequivocally stated, "I am not consuming alcohol to excess and have basically been drinking on social occasions, as do many folks." (answer to SOR, p. 4)