

KEYWORD: Alcohol

DIGEST: Applicant is 42 years old and has been gainfully employed in the shipbuilding industry most of his adult life. He was convicted of four alcohol-related driving offenses during the period from 1981 to 2003. While he participated in alcohol awareness counseling in each of the four cases, he has never completed a meaningful alcohol rehabilitation program with long-term aftercare monitoring. He continued to drink throughout the period until he quit drinking altogether in May 2005. He denies he has ever had a problem with alcohol. Applicant disclosed only one of his drunk driving offenses on the Security Clearance Application (SF 86) he submitted about four months before his last offense. Applicant failed to mitigate the security concerns regarding his alcohol consumption. Clearance is denied.

CASENO: 03-25852.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25852

**DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S BRUCE**

**APPEARANCES**

## **FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

## **FOR APPLICANT**

David P. Price, Esq.

## **SYNOPSIS**

Applicant is 42 years old and has been gainfully employed in the shipbuilding industry most of his adult life. He was convicted of four alcohol-related driving offenses during the period from 1981 to 2003. While he participated in alcohol awareness counseling in each of the four cases, he has never completed a meaningful alcohol rehabilitation program with long-term aftercare monitoring. He continued to drink throughout the period until he quit drinking altogether in ay 2005. He denies he has ever had a problem with alcohol. Applicant disclosed only one of his drunk driving offenses on the Security Clearance Application (SF 86) he submitted about four months before his last offense. Applicant failed to mitigate the security concerns regarding his alcohol consumption. Clearance is denied.

## **STATEMENT OF THE CASE**

On April 19, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline G - Alcohol Consumption. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer signed May 17, 2005, Applicant admitted the allegations of subparagraphs 1.a. through 1.f. of the SOR, and denied, in part, the allegation of subparagraph 2.g., and requested a hearing before an administrative judge.

The case was assigned to me on October 5, 2005, and I conducted the hearing on October 27, 2005. The government submitted exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified at the hearing along with one other witness, and offered exhibits (AE) A through G, also admitted without objection. DOHA received the hearing transcript (Tr.) on November 9, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 42 years old and has been married once. His marriage ended in divorce in 1992 after three years. He has no children.<sup>(1)</sup> He was raised in a traditionally stable family environment, and following high school, he chose to follow his father's career in the shipbuilding industry. He has been gainfully employed in the field since high school as a mechanic/pipe fitter/welder.<sup>(2)</sup> He successfully completed a six-month vocational welding school course in 1997.<sup>(3)</sup> He held a clearance from 1982-1996 when he worked for the same federal contractor as his father, and again in 2003, when he resumed working for the same company.<sup>(4)</sup> He has never served in the military.<sup>(5)</sup>

Applicant was laid off by the contractor in 1996 due to a significant downturn in the industry. He left his hometown area to seek work and was successful for about six years in working in various private industry jobs in a nearby state.<sup>(6)</sup> In 2003, he was rehired by the same defense contractor,<sup>(7)</sup> and in February 2004, he was promoted to a supervisory/management position at a new location in another state where he is presently located.<sup>(8)</sup> He is highly regarded by his supervisors at work and is considered reliable, trustworthy and dependable, and an outstanding employee.<sup>(9)</sup> His immediate supervisor has known Applicant and his family for about 23 years. He considers Applicant to be strongly patriotic, and not a risk to national security.<sup>(10)</sup>

Applicant admits he began drinking in about 1980 when he was about 17 years old. He continued doing so until at least late May 2005.<sup>(11)</sup> During this time he would drink intermittently to the point of intoxication, but except for being stopped for drunk driving, Applicant did not believe he had any problems with alcohol, or was ever a threat to himself or others in the community.<sup>(12)</sup> In his opinion, Applicant's consumption of alcohol has not caused him any health problems, or difficulties with his finances, employers, family, friends, or co-workers. He has never been clinically assessed or diagnosed as having abused alcohol or being alcohol dependent.<sup>(13)</sup>

Applicant admits he was convicted of Driving While Intoxicated (DWI) in 1981. He paid a fine for the offense and was directed to attend alcohol awareness counseling. He was arrested again in 1983 for another alcohol-related driving offense, but the charge was reduced to reckless driving.<sup>(14)</sup>

He does not recall the specifics of the 1983 incident or the punishment imposed,<sup>(15)</sup> however, he did not contest the information provided by the government that he was also directed to attend alcohol counseling as a result of the incident.

In 1989, Applicant was convicted of his second DWI offense. In addition to paying a fine, his driver's license was suspended and he was again directed to attend alcohol awareness classes. [\(16\)](#)

Applicant was convicted of a third alcohol-related driving offense in 1998. He paid a fine and was again directed to attend alcohol awareness counseling as a part of his sentence. His driver's license was also suspended for 30 days. [\(17\)](#)

In 2003, Applicant was convicted of his fourth, and most recent alcohol-related driving charge. He was given a six-month suspended jail sentence and placed on probation for one year. He paid a fine of about \$1000.00 and was ordered to attend further alcohol counseling and complete 100 hours of community service while on probation. His driver's license was also suspended for a year. [\(18\)](#) Applicant successfully completed his probation period and other requirements imposed in the case without incident. [\(19\)](#) An alcohol abuse evaluation of Applicant was conducted as a part of the alcohol treatment directed in the case. His prognosis for recovery was positive, but guarded, which Applicant disputes. No further information concerning the evaluation was submitted by either party.

Applicant participated in alcohol awareness classes as a result of each of his arrests. He maintains no one ever suggested he attend Alcoholics Anonymous meetings over the 22-year period the events occurred. [\(20\)](#) As of September 2004, he did not feel he needed to reduce his drinking level, and maintained no one ever suggested he do so or totally abstain from drinking alcohol altogether. [\(21\)](#) Interestingly, despite having endured five alcohol-related driving arrests and four convictions, he never served jail time for any of the cases. [\(22\)](#)

Applicant signed his Security Clearance Application on January 2, 2003. In response to Question 24 concerning charges or convictions for any alcohol or drug related offenses, Applicant only listed his 1998 conviction, his most recent offense at the time. Applicant gave his first statement to a DSS investigator on October 15, 2003. He discussed the 1989 and 2003 incidents when confronted with the information, but still did not disclose the initial 1981 conviction. After the interview, Applicant did not authorize release of any of his personal records concerning alcohol abuse or related matters. [\(23\)](#) He met with a second DSS investigator on September 20, 2004. The 1981 case was still not disclosed or discussed in the statement issued pursuant to the meeting. [\(24\)](#)

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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 or recurrence.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. <sup>(25)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. <sup>(26)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. <sup>(27)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence. <sup>(28)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. <sup>(29)</sup>

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

**Guideline G - Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of an unauthorized disclosure of classified information due to carelessness.**

### CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline G - Alcohol Consumption.

Considering all the evidence, Alcohol Consumption Disqualifying Conditions (AC DC) 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*) applies in this case.

Applicant admits conduct that constitutes alcohol-related incidents away from work. He has consumed alcohol all of his adult life, at times to the point of intoxication. He was arrested five times over a 22 year period for alcohol-related driving charges, and was convicted in four of the cases, the most recent one occurring in 2003. The fifth case in 1989 was resolved by a reckless driving conviction. Applicant attended alcohol awareness and counseling classes as a result of all five cases. Nonetheless, he has not recognized his drinking problem, except in the context of having been stopped for the traffic offenses. He has continually denied having any substance abuse issues with his use of alcohol, and he made no effort through the entire time to curtail his drinking habits, until being primarily motivated to do so by his pending security clearance application. Applicant's behavior regarding his use of alcohol has been unpredictable at best, and he has never completed any meaningful alcohol rehabilitation program. He continued to drink and drive repetitively after previous DWI convictions, displaying increasing questionable judgment by essentially ignoring mandates from the court and continuing to drink and drive. Applicant's conduct constitutes a disregard and lack of respect for the serious concerns related to drunk driving, exemplifying his bad judgment and the considerable extent of his alcohol dependency.

I considered all the Alcohol Consumption Mitigating Conditions (AC MC) with respect to Guideline G, and conclude that none apply. Applicant's drunk driving conduct has persisted over many years, and it has only been since May 2005 that he appears to have made positive changes in his lifestyle necessary to sustain his sobriety. Assessing the actual motivation for his current sobriety, however, is difficult, and his long range prognosis is uncertain. He has never

completed a comprehensive alcohol rehabilitation program. While his self confidence to continue being sober is commendable, he has always completely denied he has any substantive substance abuse problem with alcohol, except in the context of regretting he has been caught driving drunk too many times. His drunk driving history is dynamic. He has failed to take full advantage of the professional intervention that has been made available to him, and he has failed to exhibit any appreciable understanding of the effects of alcohol. Given his history, it is inconceivable no professional alcohol abuse counselor ever encouraged or recommended he curtail his drinking or attend Alcoholics Anonymous meetings. Applicant's significant involvement with alcohol raises concerns regarding his willingness and ability to restrain from excessive use of alcohol in the future, and to protect classified information.

I further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines established for issuance of a clearance, and he has failed to mitigate the security concerns regarding his alcohol consumption. Accordingly, Guideline G is decided against Applicant.

### **FORMAL FINDINGS**

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

#### **Paragraph 1. Alcohol Consumption (Guideline G) AGAINST THE APPLICANT**

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. 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. Clearance is denied.

David S. Bruce

Administrative Judge

1. GE 1 (Security Clearance Application dated January 2, 2003), at 1-3.
2. Tr. at 60-64.
3. GE 1, *supra* note 1, at 2.
4. *Id.* at 7. See also Tr. at 90.
5. *Id.* at 4.
6. Tr. at 66-68.
7. *Id.* at 72.
8. *Id.* at 35.
9. AE F and G (Employee Performance Appraisals from September 22, 2003 to March 1, 2005). See also AE A-E (Personal reference statements).
10. AE D, *supra* note 1.



11. Tr. 78.
12. GE 3 (Applicant's sworn statement dated September 20, 2004), at 3. See also Tr. at 94.
13. *Id.*
14. Tr. at 70.
15. GE 2 (Applicant's sworn statement dated October 15, 2003), at 3.
16. *Id.* at 1-2.
17. *Id.* at 2.
18. *Id.* at 2-3.
19. Tr. at 100.
20. *Id.* at 85.
21. GE 3, *supra* note 12, at 3.
22. Tr. at 99-100.
23. *Id.* at 93-94.
24. GE 3, *supra* note 12.
25. Directive, Enclosure 2, Para. E2.2.2.
26. Executive Order 10865 § 7.
27. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
28. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
29. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.