

KEYWORD: Alcohol

DIGEST: Applicant was arrested for driving under the influence (DUI) three times, the last in August 2003. He voluntarily and successfully completed a four-month inpatient rehabilitation program followed by a six-month aftercare program. He attends Alcoholics Anonymous (AA) meetings regularly, has not consumed alcohol since August 2003, avoids alcohol-focused social events, and received a favorable prognosis from a credentialed medical professional. He has mitigated security concerns based on alcohol consumption. Clearance is granted.

CASENO: 03-27040.h1

DATE: 03/16/2006

DATE: March 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27040

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant was arrested for driving under the influence (DUI) three times, the last in August 2003. He voluntarily and successfully completed a four-month inpatient rehabilitation program followed by a six-month aftercare program. He attends Alcoholics Anonymous (AA) meetings regularly, has not consumed alcohol since August 2003, avoids alcohol-focused social events, and received a favorable prognosis from a credentialed medical professional. He has mitigated security concerns based on alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On February 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline G (Alcohol Consumption).

Applicant answered the SOR in writing on February 25, 2005, admitted all the allegations, and requested a hearing. The case was assigned to me on December 12, 2005, and heard on February 9, 2006. DOHA received the transcript (Tr.) on February 24, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 44-year-old electronics technician for a defense contractor. He served in the U.S. Army from 1981 to 1985, received numerous awards and commendations, and was honorably discharged.⁽¹⁾ He received an Army Commendation Medal at the end of his active service.⁽²⁾ He began working for his current employer upon his discharge from the Army. He received a security clearance in April 1993.⁽³⁾

Applicant was married in 1982, separated in 1987, and divorced in 1989. He has never remarried, and he has no children.⁽⁴⁾

In December 1987, Applicant was arrested for driving under the influence (DUI).⁽⁵⁾ He was placed on probation before judgment, and he participated in a county-sponsored alcohol treatment program from July to December 1998.⁽⁶⁾

Applicant testified he has never consumed alcohol on the job, missed work because of drinking, gone to work intoxicated, or had accidents at work because of drinking.⁽⁷⁾ Before his 1987 arrest, his drinking was confined to weekends, when he could consume about a 12-pack of beer. He continued his same level of drinking after his arrest.⁽⁸⁾

In May 1992, Applicant was arrested again for DUI. He served seven days in jail and was placed on probation for a year and a half.⁽⁹⁾ He again participated in a county-sponsored alcohol treatment program from August 1992 until February 1993. He began to drink more heavily during the six months before his 1992 arrest.⁽¹⁰⁾ He stopped drinking after the 1992 arrest because he wanted to prove to himself he was not an alcoholic, and he abstained for about five years.⁽¹¹⁾ He resumed "social" drinking in 1997, starting with a few drinks on the weekend. By July or August 2002, he was drinking heavily during the week as well as on weekends.⁽¹²⁾

Applicant was arrested for DUI a third time in August 2003. On this occasion, his blood-alcohol was .16, twice the legal limit. He was sentenced to six months in jail (suspended), fined \$150, and placed on probation for two years.⁽¹³⁾ He consulted a lawyer and asked for help with his drinking problem. After considering several facilities, he began a four-month inpatient program that required him to spend nights and weekends in the facility but allowed him to return to work during the day.⁽¹⁴⁾ The program included group and individual counseling, stress management, relapse prevention training, substance awareness groups, and random drug testing three times a week. The program strove to connect inpatients with Alcoholics Anonymous (AA) in the local community.⁽¹⁵⁾ On some Sundays, he was given a pass, but he
⁽¹⁶⁾

was required to submit to a urinalysis and a breathalyzer upon return. The program accepts only patients who have been diagnosed as drug or alcohol dependent.⁽¹⁷⁾

By the time of Applicant's court appearance, he was halfway through the inpatient treatment program. He did well in the program and received written recognition for his progress.⁽¹⁸⁾ He completed his court-ordered probation in October 2005.⁽¹⁹⁾

After completing his inpatient treatment, he voluntarily enrolled in a six-month aftercare program in January 2004 and completed it in June 2004.⁽²⁰⁾ The aftercare program provided structured one-on-one therapy with a licensed clinical social worker.

Applicant's probation required regular attendance at Alcoholics Anonymous (AA) meetings.⁽²¹⁾ He attended meetings daily from August 25, 2003 to December 12, 2003 and several times a week from December 15, 2003 to October 21, 2004.⁽²²⁾ He did not document his AA attendance after October 2004 because his probation ended at that time. He has taken a leadership role in his "home group" and volunteered to be a greeter. He travels frequently in connection with his work but he continues to attend AA meetings at least once or twice a week at his various work sites.⁽²³⁾

Applicant has an active social life, but he avoids alcohol-focused events.⁽²⁴⁾ He has accumulated a small library of books about alcoholism, some published by AA and several by other authors.⁽²⁵⁾

Applicant's supervisor has known him for about 23 years. They were coworkers until about ten years ago. As coworkers they had daily contact. In their present supervisor-employee role, they have weekly contact. After each of the three DUI incidents, Applicant notified his supervisor. After the third incident, they discussed the potential impact on his security clearance and the measures he was taking to rehabilitate himself.⁽²⁶⁾ His supervisor regards him as a very skillful, conscientious employee.⁽²⁷⁾ Applicant's performance ratings from 1995 to the present consistently reflect he exceeded the expectations set by his supervisor.⁽²⁸⁾

Applicant supervises six to eight technicians. He is regarded as a strong supervisor who is considerate of his subordinates and conscientious about the details of a job.⁽²⁹⁾ He has received numerous commendations and letters of appreciation for his performance of duty, including several received after his last DUI incident.⁽³⁰⁾

In response to inquiries from the local motor vehicle administration concerning Applicant's medical fitness to operate a motor vehicle, his supervisor responded on two occasions, in November 2003 and April 2004, that he "is a very valuable and trusted employee who is very dedicated to his job."⁽³¹⁾ As a result of Applicant's rehabilitative measures and the evaluations of his supervisor, he did not lose his driver's license. Instead, he received a license with an "alcohol restriction," prohibiting him from driving or attempting to drive a vehicle after consuming any amount of alcohol.⁽³²⁾

Applicant has three brothers. He is especially close to a brother who is one year older than he is. They were close while growing up, had less contact while the brother was in the Navy, and resumed their close relationship after the brother retired from the Navy. Both Applicant and his brother are unmarried, and they socialize frequently, about once a week.⁽³³⁾ His brother testified Applicant recognized his serious drinking problem for the first time after his arrest in August 2003.⁽³⁴⁾ He has seen no signs of alcohol consumption by Applicant since the August 2003 arrest.⁽³⁵⁾

A psychiatrist with special qualifications in addiction medicine interviewed Applicant, his supervisor, his brother, and the director of the inpatient alcohol abuse treatment program, and he evaluated the evidence relevant to Applicant's alcohol problems. He concluded Applicant is alcohol

dependent, but in full sustained remission.⁽³⁶⁾ He gave Applicant an excellent prognosis for continued sobriety.⁽³⁷⁾

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and 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.

In evaluating an applicant's conduct, 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 or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case

No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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. Directive ¶ E2.A7.1.1. A disqualifying condition (DC 1) may arise from alcohol-related incidents away from work, such as driving under the influence. Directive ¶ E2.A7.1.2.1. Applicant's DUI record establishes DC 1.

DC 5 applies when there is "[h]abitual or binge consumption of alcohol to the point of impaired judgment." Directive ¶ E2.A7.1.2.5. Applicant admitted habitual drinking, including weekend and weekday binges, to the point of impaired judgment. His impaired judgment was demonstrated when he drove with a blood-alcohol level at twice the legal limit in August 2003. I conclude DC 5 is established.

DC 6 applies when the evidence shows "[c]onsumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program." Directive ¶ E2.A7.1.2.6. Applicant's third DUI arrest was after he twice completed a county-sponsored alcohol treatment program. However, there is no evidence of a diagnosis of alcoholism by a credential medical professional during either of the two county-sponsored programs. Thus, I conclude DC 6 is not established.

Three mitigating conditions (MC) are relevant. MC 2 applies where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." Directive ¶ E2.A7.1.3.2. Applicant's problems with alcohol ended in August 2003. He has not consumed alcohol since then. I conclude MC 2 is established.

MC 3 applies where there have been "[p]ositive changes in behavior supportive of sobriety." Directive ¶ E2.A7.1.3.3. Applicant has not only stopped consuming alcohol, he has been very active in AA, established a practice of avoiding alcohol-focused social events, and surrounded himself with a support network that includes AA and his brother. I conclude MC 3 is established.

MC 4 applies when, following a diagnosis of alcohol dependence, "the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. . . ." Directive ¶ E2.A7.1.3.4. Although there is no evidence of an express diagnosis of alcohol dependence made during Applicant's inpatient treatment program or outpatient aftercare program, it was a condition for admission to those programs, and Applicant apparently met that requirement. At the hearing, a psychiatrist with special expertise in addiction medicine testified Applicant was alcohol dependent but in full sustained remission. Applicant successfully completed both inpatient treatment and outpatient aftercare, participates in AA, has abstained from alcohol for

more than two years, and has received a favorable prognosis from a highly qualified, credentialed medical professional. I conclude MC 4 is established.

Applicant's epiphany was his arrest for DUI in August 2003. Since then, he has successfully completed extensive rehabilitation, changed his lifestyle, surrounded himself with a support system, and abstained from alcohol consumption. At the hearing, he appeared honest, open, self-aware, and very sincere. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude he has mitigated the security concern based on alcohol consumption.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Applicant's Exhibit (AX) E-H.
2. AX G; Tr. 146.
3. Government Exhibit (GX) 2 at 1-4, 8; AX A at 1.
4. GX 2 at 3; AX A at 1.
5. The SOR alleged this arrest was on December 6, 1987. Without objection from Applicant, I granted Department Counsel's motion to amend the SOR to allege the arrest was on December 26, 1987, instead of December 6, 1987 (Tr. 15).
6. GX 2 at 7.
7. Tr. 155.
8. Tr. 156.
9. *Id.*
10. Tr. 160.
11. Tr. 164.
12. Tr. 166.
13. GX 8.
14. Tr. 169-71.

15. Tr. 69-71.
16. Tr. 172.
17. AX P at 1, 3.
18. AX B.
19. Tr. 174.
20. GX 9.
21. AX C.
22. AX M.
23. Tr. 180-82.
24. Tr. 186-87, 201-02.
25. Tr. 190-95; AX D.
26. Tr. 106-08.
27. Tr. 86-91.
28. AX I.
29. Tr. 109.
30. AX J.
31. AX L at 21, 22.
32. *Id.* at 23; AX N..
33. Tr. 119-24.
34. Tr. 132.
35. Tr. 135-36.
36. Tr. 38-49.
37. Tr. 50.