

KEYWORD: Alcohol

DIGEST: Applicant has been convicted twice for driving under the influence of alcohol (DUI), the last offense occurring on June 13, 2003. He continued to consume alcohol after he was convicted of the last DUI, and last reports being intoxicated in April 2005. Applicant has failed to mitigate the security concerns that arise from his alcohol consumption. Clearance is denied.

CASENO: 04-00316.h1

DATE: 12/16/2005

DATE: December 16, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00316

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been convicted twice for driving under the influence of alcohol (DUI), the last offense occurring on June 13, 2003. He continued to consume alcohol after he was convicted of the last DUI, and last reports being intoxicated in April 2005. Applicant has failed to mitigate the security concerns that arise from his alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On May 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G, concerning alcohol consumption. Applicant submitted an answer to the SOR that was received by DOHA on June 25, 2004, requested a decision without a hearing, and admitted all SOR allegations. Applicant sent a letter, dated December 27, 2004, addressed to Department Counsel and requested a hearing. (Appellate Exhibit I)

The case was assigned to me on July 5, 2005. A notice of hearing was issued on September 14, 2005, scheduling the hearing for October 18, 2005. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. Applicant testified, and submitted four documents that were marked as Applicant's Exhibits (AE) 1-4, and admitted into the record without objection. The transcript was received on October 28, 2005.

FINDINGS OF FACT

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

Applicant is 53 years old, and has been employed by a government contractor since October 2001. He was hired as a property control clerk, but has served as his employer's facility security officer for approximately the last three years. Applicant was married in June 1971, and divorced in May 1985. He has two daughters, ages 33 and 30, and one stepdaughter, age 33, from that marriage. He remarried in May 1986, and is currently separated from this wife.

Applicant graduated from high school in 1970, and enlisted in the U.S. Marine Corps in January 1971. He served on active duty, with the exception of two brief periods when he was released from active duty, until his retirement in June 2001. He served as a rifleman during the first three years of his enlistment, and as a personnel administrative chief for the last 22 years of his career. Applicant was a master gunnery sergeant (paygrade E-9) when he retired. His awards and decorations include the meritorious service medal, good conduct medal (11 awards), Navy and Marine Corps Achievement Medal (2 awards), and five certificates of commendation or letters of appreciation. He possessed a top-secret security clearance during most of his military career, and no action was ever taken to revoke or downgrade that clearance based on expressed security concerns.

Applicant was charged with driving under the influence of alcohol (DUI) in March 1991. He testified this arrest occurred in the middle of the day after he was stopped for speeding while on his way to pick his mother up at a bus station. He claims to have only had a few beers before being stopped. Although the record does not disclose the disposition of the charge, Applicant was required to pay a fine and complete a safe-driving school.

On June 13, 2003, Applicant was charged with Extreme DUI, DUI, and Having a Blood Alcohol Concentration (BAC) of 0.08 or Higher after he was involved in an automobile accident that occurred at approximately 5:00 P.M. He claims he drank about three beers at lunch, having stopped while on his way to pick up his wife at an airport. He was administered two breath tests, and registered a 0.194 and 0.186 BAC. On October 20, 2003, Applicant pled guilty to the DUI charge and the remaining charges were dismissed. He was sentenced to one year probation, and ordered to obtain a substance abuse screening, pay a fine in the amount of \$450.00, and serve 24 hours in jail.

On November 13, 2003, Applicant attempted to surrender himself at a detention center to commence serving the 24-hour jail sentence that was imposed. He was refused admittance to the center after registering a 0.072 and a 0.070 BAC on breath tests that were administered. He completed the jail sentence at a different facility on December 5, 2003.

Applicant testified he began drinking alcohol when he was about 18 or 19 years old and used to drink "an awful lot." (Tr. p. 36) He estimated he was consuming a couple of beers daily until April 24, 2005, which was the last time he became intoxicated, and he then decided to quit drinking alcohol and smoking cigarettes at the same time. He testified his father was an alcoholic, and he considers himself to be addicted to alcohol. He also testified he attends Alcoholic Anonymous (AA) meetings three to four times a month and was working on the 12th step. However, he was unable to respond to questions put to him by Department Counsel that would be expected to be common knowledge by someone working the 12th step of the AA program, such as "What is the 12th step?" (Tr. p. 38)

Applicant was diagnosed as "Alcohol Abuse . . . but leans toward Alcohol Dependence" on October 24, 2003. (GE 4) The diagnosis was made by a psychology technician on a Marine Corps base. He completed a two-day outpatient course on November 21, 2003, and was encouraged to attend two AA meetings per week for 90 days, and to abstain from alcohol. He testified he attended the AA meetings as recommended.

A state driver risk inventory was completed on Applicant on October 28, 2003. (GE 5) According to that inventory, which appears to be the computer generated scoring of a multi-question written test, Applicant did not meet the criteria of dependency or abuse. However, the report went on to note that "Problematic risk of alcohol is present. Although not meeting the DSM-IV criteria for dependence or abuse, this client demonstrates a substance abuse risk." The report also suggested that Applicant be interviewed, and counseling and AA considered as possible recommendations.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant has twice been charged with alcohol-related driving offenses, the last arrest occurring in June 2003. Following his 2003 DUI conviction, he was refused admittance to a detention center to serve a court ordered sentence because he had alcohol in his system. An alcohol assessment administered in October 2003 diagnosed him as alcohol abusive, while another indicated that a problematic alcohol risk existed. Both assessments suggested Applicant would benefit from counseling and attendance at AA meetings. He completed a two-day counseling program and attended some AA meetings in 2003 and possibly thereafter, but continued to consume alcohol until at least April 24, 2005. Disqualifying Condition (DC) 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.*

Applicant's two alcohol-related arrests were separated by more than 12 years. The only other alcohol-related incident of record was his attempt to surrender himself to serve a jail sentence with alcohol in his system. Accordingly, he is entitled to some consideration under Mitigating Condition (MC) 1: *the alcohol related incidents do not indicate a pattern.* However, Applicant's arrests appear to be symptomatic of a much larger alcohol problem. He continued to drink alcohol after the 2003 arrest and jail incident, and after receiving the diagnoses, and after attending the substance abuse program and at least some AA meetings. Although he claims to have quit drinking in April 2005, to be attending AA meetings several times a month, and to be working on the AA 12th step, his failure to know what the 12th step consists of and other information about AA strongly indicates he is not being truthful. Further, Applicant considers himself to be addicted to alcohol but has done little to deal with the problem, and only recently claims to have abstained from alcohol consumption.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, including Applicant's long and distinguished service as a Marine while holding a security clearance, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline G is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: 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 is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

9. *Egan*, 484 U.S. at 528, 531.

10. *Id* at 531.

11. *Egan*, Executive Order 10865, and the Directive.