

KEYWORD: Alcohol

DIGEST: Applicant, a 41-year-old web designer, had three alcohol related offenses between 1995 and 2001. Applicant continued his same drinking patterns after his first two arrests. He continued to drink after his third arrest, but less often and in lower quantities. Applicant recently stopped drinking. Applicant has not mitigated the security concerns arising under Guideline G. Clearance is denied.

CASENO: 04-00710.h1

DATE: 08/22/2005

DATE: August 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00710

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Julie Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 41-year-old web designer, had three alcohol related offenses between 1995 and 2001. Applicant continued his same drinking patterns after his first two arrests. He continued to drink after his third arrest, but less often and in lower quantities. Applicant recently stopped drinking. Applicant has not mitigated the security concerns arising under Guideline G. Clearance is denied.

STATEMENT OF THE CASE

On February 24, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 5, 2005, Applicant submitted a notarized response to the allegations and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional evidence. This case was assigned to me on July 18, 2005.

FINDINGS OF FACT

Applicant admitted most of the allegations pertaining to alcohol under Guidance G (subparagraphs 1.a through 1.f of the SOR).⁽¹⁾ Those admissions are incorporated here as findings of fact. He denied the remaining allegation. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is 41 years old, and has worked as a web designer for a defense contractor since February 2003. He is married and has four children.

As a teenager, Applicant began drinking to be more outgoing and to fit in.⁽²⁾ He drank to excess, and continued to do so into his early twenties, often becoming intoxicated.⁽³⁾ He then stopped drinking for several years.⁽⁴⁾ In 1994, at age 30, he resumed drinking as a way to make friends in a new place and to fit into a new work environment.⁽⁵⁾ On at least a weekly basis in 1994 and 1995, he drank at bars with friends and at parties.⁽⁶⁾ He drank to the point of feeling good and to intoxication, but he never passed out.⁽⁷⁾

Applicant has three alcohol related arrests subsequent to drinking with friends.⁽⁸⁾ In April 1995, he and his wife attended a gala party at a local bar.⁽⁹⁾ They arrived by boat because Applicant had been told that automobile drivers were routinely stopped upon leaving the gala.⁽¹⁰⁾ He drank three or four mai tais while at the gala.⁽¹¹⁾ Upon his departure by boat, he was stopped by police, arrested for drinking while operating a boat (BWI), and taken to jail.⁽¹²⁾ His breathalyzer results showed a blood alcohol level of .16.⁽¹³⁾ He pled guilty and was placed on probation for one year, fined, and ordered to complete an alcohol treatment program.⁽¹⁴⁾

Six months later, in October 1995, he attended a party at a friend's house and drank ten beers.⁽¹⁵⁾ On his drive home, the police arrested him for drunk driving and jailed him for one night.⁽¹⁶⁾ His breathalyzer results revealed a blood alcohol level of .14.⁽¹⁷⁾ He pled guilty to driving while intoxicated (DWI).⁽¹⁸⁾ The court fined him, and sentenced him to one year of supervised probation and enrollment in an alcohol treatment program.⁽¹⁹⁾ In November 1995, he began an alcohol treatment program which he completed six months later.⁽²⁰⁾ He also sought medical treatment for a possible drinking problem.

From 1995 through 2003, Applicant regularly met with a psychologist for counseling to manage his drinking. He also sought treatment with a psychiatrist who diagnosed him with attention deficit disorder (ADD) in 1999 and prescribed medication for his ADD and depression.⁽²¹⁾ He continued to meet with the psychiatrist every three months through

October 2003. ⁽²²⁾ The record contains no documentation of an affirmative diagnosis of alcohol dependence or alcohol abuse.

In April 2001, he again attended the spring gala for a local bar, intending only to gather information to write a story. He took his video camera with him. ⁽²³⁾ He drank two mai tais before leaving the gala. On his way home, he stopped and interviewed a police officer at a sobriety checkpoint. He also video taped the interview. ⁽²⁴⁾ He left the checkpoint, but was stopped shortly thereafter and arrested for drunk driving. His breathalyzer showed a .08 blood alcohol level. ⁽²⁵⁾ The state prosecutor agreed to *nolle pros* his case after reviewing the video tape. Applicant agreed to donate \$500. ⁽²⁶⁾

After the 2001 arrest, Applicant continued to drink, but less frequently, and in much lower quantities. He would drink about every other week and sometimes not for two months or more. He drank one or two beers, instead of ten. He stopped his weekly drinking at bars and parties. He, however, occasionally drank too much and to intoxication when he "let himself go" at parties. He reduced his drinking to set a good example for his children. In his response to the SOR, Applicant stated that less than twelve months ago, he stopped drinking altogether. Applicant did not admit that he has an alcohol abuse or dependency problem. ⁽²⁷⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2, Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 participation; (6) the presence or absence of rehabilitation and other 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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁸⁾ The government has the burden of proving controverted facts.⁽²⁹⁾ The burden of proof is something less than a preponderance of the evidence.⁽³⁰⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁽³¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³²⁾

No one has a right to a security clearance⁽³³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁶⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Alcohol Consumption - Guideline G: 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.

Under this guideline, 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's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in not sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty and patriotism. Nothing in this Decision should be construed to suggest I have this Decision, in whole or in part on any express or implied decisions as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline G. Based on all the evidence, Alcohol Consumption Disqualifying Condition (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*), and AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*) apply in this case. Applicant has two convictions for alcohol related incidents, and a third alcohol related charged which the court placed on the stet docket.

I considered all the Alcohol Consumption Mitigating Conditions (AC MC) and concluded that none apply in this case. His first two alcohol related offenses occurred ten years ago. As a result of his court sentence, he attended an alcohol treatment program. He also independently sought medical treatment for a possible alcohol problem. Nevertheless, he continued to drink regularly and to excess. Four years ago, he was arrested a third time for driving under the influence. Subsequent to this arrest, he continued to drink for several more years, although less frequently and in lower quantities. He still occasionally drank to excess when he "let himself go". Applicant did not view his drinking behavior as problematic enough to quit until very recently.

In 1995, Applicant actively sought medical treatment for a possible alcohol problem. He attended counseling sessions with a psychologist for eight years, during which time he continued to drink regularly with friends at parties and bars. His inability to stop drinking after three arrests and eight years of counseling raises security concerns about his ability to exercise judgment and make appropriate decisions in regards to the confidential and secret materials to which he will have access. He drinks to enable himself to be more outgoing and social. This more talkative effect of alcohol on his personality also raises security concerns Although he recently decided to cease drinking altogether, this decision is not enough to mitigate the security concerns arising from his drinking.

Finally, I also considered "the whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. In his twenties, he stopped drinking. When he found himself in a new work and residential situation at age thirty, he chose to use alcohol consumption at bars and parties as the conduit to make friends because alcohol made him more outgoing and acceptable. Although he has taken positive steps and is making strides towards resolving his alcohol problem, his decision not to drink at all has only been recent. He did not accept the fact that he had a problem with alcohol nor did he recognize the potential impact his conduct could have on protecting the national interests. I conclude that Applicant has not mitigated or overcome the government's case under Guideline G.

Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR dated March 5, 2005) at 1-2.
2. Item 5 (Applicant's Statement dated October 3, 2003) at 15, 17.
3. *Id.* at 15.
4. *Id.*
5. *Id.* at 9-10.
6. *Id.* at 9.
7. *Id.*
8. Item 4 (Security Clearance Application dated March 12, 2003) at 8; Item 6 (Documents related to April 1995 alcohol related arrest); Item 7 (Documents related to October 1995 DWI arrest); and Item 8 (Documents related to April 2001 DWI arrest).
9. Item 5, *supra* note 2, at 10.
10. *Id.*
11. *Id.*
12. *Id.*
13. Item 6, *supra* note 8, at 2.
14. *Id.* at 2.
15. Item 5, *supra* note 2, at 11.
16. *Id.*
17. Item 7, *supra* note 4, at 3.
18. Item 5, *supra* note 2, at 11.

19. Item 7, *supra* note 4, at 10.
20. Item 5, *supra* note 2, at 12.
21. *Id.* at 12-14.
22. The record lacks information on whether Applicant has continued his counseling and psychiatric treatment since 2003.
23. Item 5, *supra* note 2, at 14.
24. *Id.*
25. *Id.*
26. Item 8 (Stet Agreement dated July 17, 2001) at 5.
27. Item 5, *supra* note 2, at 13-17.
28. ISCR Case No. 96-0277 (July 11, 1997) at 2.
29. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
30. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
31. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
32. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
33. *Egan*, 484 U.S. at 531.
34. *Id.*
35. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
36. Executive Order No. 10865 § 7.