

KEYWORD: Alcohol

DIGEST: Applicant has a history of excessive consumption of alcohol between about 1993 and 2002. On numerous occasions, he consumed alcohol to the point of intoxication and was arrested or detained by police. In October 1998, Applicant drove a vehicle while under the influence of alcohol, resulting in a conviction and sentence. Applicant's pattern of excessive use of alcohol is recent, and he has not enrolled in or completed appropriate treatment. I find Applicant has not mitigated the security concerns arising from his excessive alcohol consumption. Clearance is denied.

CASENO: 04-00718.h1

DATE: 02/17/2005

DATE: February 17, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00718

**ISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant has a history of excessive consumption of alcohol between about 1993 and 2002. On numerous occasions, he consumed alcohol to the point of intoxication and was arrested or detained by police. In October 1998, Applicant drove a vehicle while under the influence of alcohol, resulting in a conviction and sentence. Applicant's pattern of excessive use of alcohol is recent, and he has not enrolled in or completed appropriate treatment. I find Applicant has not mitigated the security concerns arising from his excessive alcohol consumption. Clearance is denied.

## **STATEMENT OF THE CASE**

On August 2, 2000, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 3, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive in Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on August 19, 2004. Item 3, Answer to SOR, dated August 19, 2004. He elected to have the matter decided on the written record in lieu of a hearing. *Id.*

Department Counsel submitted the Government's written case on October 27, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 8, 2004, and provided a response. Additional Matters, Applicant's Letter dated December 3, 2004. I was assigned the case on December 29, 2004.

## **FINDINGS OF FACT**

Applicant admitted all the factual allegations in the SOR. Item 3, *supra*. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 29 years old. Item 4, Security Clearance Application, dated August 2, 2000, at 1. He is employed by a defense contractor as an associate mechanical engineer. *Id.* at 4; Item 5, Applicant's Statement, dated May 15, 2002, at 1. He seeks a security clearance.

Applicant attended college between September 1993 and June 1999. Item 4, *supra*, at 4. During that time, he frequently drank alcohol to excess and became intoxicated. Item 5, *supra*, at 1. On several occasions, the local police arrested or detained him for public intoxication, took him to the police department, and kept him between about four hours and overnight to become sober. *Id.*

One of these incidents occurred in about 1993 or 1994. *Id.* Applicant was arrested by the local police for disorderly conduct and held until he was sober. *Id.* Applicant was not prosecuted for the offense. Item 4, *supra*, at 9.

In October 1998, Applicant embarked on a three-hour drive while intoxicated. Item 5, *supra*, at 2. The highway patrol arrested him for driving under the influence of alcohol, and a breath test revealed Applicant's blood-alcohol level was .17 %. *Id.* Applicant pled no contest to the misdemeanor count of driving under the influence of alcohol. Item 6, Court Records. The court sentenced him to a fine, community service, and attendance at an alcohol awareness class. *Id.*; Item 5, *supra*, at 2. Applicant completed his punishment. Item 5, *supra*, at 2.

Applicant graduated from college in June 1999 and began working for the defense contractor in January 2000. Item 4, *supra*, at 4. In May 2002, Applicant went out with some friends and consumed about 15 shots of alcohol over a 2 to 3 hour period. Item 5, *supra*, at 2. He was detained by the local police and held in the "drunk tank" for about four hours before being released. *Id.*

A security investigator interviewed Applicant and took his sworn statement on May 15, 2002. Item 5, *supra*, at 3. Applicant wrote:

I think I have a drinking problem. I often engage in binge drinking when I go out drinking with friends. I drink too much

over a short period of time. I realize I have a problem and plan on getting help either through joining Alcoholics Anonymous and/or some sort of counseling from mental health professionals. I have not received any such counseling or medical treatment in the past for my drinking problem.

Item 5, *supra*, at 2.

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for protecting classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline G, Alcohol Consumption - 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Under ¶ E2.A7.1.2.1 of the Directive, "[a]lcohol-related incidents away from work, such as driving while under the influence," may be disqualifying. Applicant admitted, and the substantial evidence demonstrates, that he drank alcohol to excess resulting in his arrest or detention on several occasions. He also drove a vehicle under the influence of alcohol on one occasion which led to conviction and sentencing. I conclude this potentially disqualifying condition applies.

Paragraph E2.A7.1.2.5 of the Directive also states that "[h]abitual or binge consumption of alcohol to the point of impaired judgment" may be disqualifying. Applicant admitted that he engaged in binge drinking on several occasions. The fact that his conduct during those occasions resulted in his arrest or detention indicates his judgment was impaired. I conclude this potentially disqualifying condition applies.

Under the Directive, it is possible to mitigate the the security concerns arising from excessive alcohol consumption. Paragraph E2.A7.1.3.1 of the Directive indicates it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." Applicant's repeated use of alcohol to excess between 1993 and 2002 shows a pattern of behavior. I conclude this mitigating condition does not apply.

It may be mitigating 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 drunk driving offense happened over six years ago. However, his latest incident of excessive drinking occurred in May 2002, after Applicant had applied for a security clearance. I conclude this potentially mitigating condition does not apply.

It is possible to mitigate security concerns where the individual shows "[p]ositive changes in behavior indicative of sobriety." Directive, ¶ E2.A7.1.3.3. The available evidence shows Applicant completed the court-ordered alcohol awareness training after his alcohol-related driving offense in 1998. Although Applicant has not had another alcohol-related driving offense, he continued to drink alcohol to excess thereafter. Applicant expressed his intent to seek help for his drinking problem, but has not provided any information indicating he is enrolled in or has successfully completed an appropriate program. I am not persuaded that Applicant has shown positive changes in his behavior supportive of sobriety. I find this mitigating condition does not apply.

Finally, ¶ E2.A7.1.3.4 of the Directive provides it is potentially mitigating where,

[f]ollowing a 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 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 or licensed social worker who is a staff member of a recognized alcohol treatment program.

In this case, there is no evidence of a diagnosis of alcohol abuse or alcohol dependence, no proof Applicant completed a rehabilitation program and its aftercare requirements, and no suggestion that Applicant participates in Alcoholics Anonymous or a similar program. Finally, there is no evidence of a favorable prognosis. I conclude this potentially mitigating condition does not apply.

I considered all the potentially disqualifying and mitigating conditions in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from his excessive alcohol consumption.

## **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline J: 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

### **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 or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge