

KEYWORD: Alcohol

DIGEST: Applicant's alcohol abuse--punctuated by two alcohol-related incidents between July 2001 and January 2003--was not mitigated where Applicant demonstrated no insight into her alcohol abuse and continued to drink at potentially abusive levels. Clearance denied.

CASENO: 04-00775.h1

DATE: 06/27/2005

DATE: June 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00775

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol abuse--punctuated by two alcohol-related incidents between July 2001 and January 2003--was not mitigated where Applicant demonstrated no insight into her alcohol abuse and continued to drink at potentially abusive levels. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 28 July 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of alcohol consumption. [\(1\)](#) Applicant answered the SOR on 21 August 2004, and requested a hearing. DOHA assigned the case to me on 29 September 2004 and I convened a hearing on 14 December 2004. DOHA received the transcript on 22 December 2004.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of SOR subparagraphs 1.b. and 1.c., but denied subparagraphs 1.a. and 1.d. Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 26-year-old administrative assistant for a defense contractor--seeks access to classified information. She has not previously applied for a clearance.

Applicant has a history of alcohol abuse from approximately January 1998 to at least March 2003. During this time, she

has two alcohol-related arrests and convictions. She was arrested in July 2001 for public intoxication, and ultimately paid a fine.⁽²⁾ In January 2003, she was arrested for DUI and refusing to consent to a breathalyzer test.⁽³⁾ In March 2003 she described her current alcohol consumption as "four to five glasses of beer or two to three glasses of wine . . . once to twice a week."⁽⁴⁾ (GE 2)

The January 2003 arrest occurred the day before she applied for her clearance (GE 1) and she reported both arrests on her application. During her subject interview in March 2003, she stated her determination to plead "not guilty" to the January 2002 DUI. However, when she went to court on 9 May 2003, she pled guilty to the DUI charge (GE 3). She did so because conviction on the implied consent charge required suspension of her license while conviction on the DUI also required suspension of her license, but she could obtain a restricted operator's license to drive to work.

However, Applicant's restricted license required--as a condition of continuing validity--that Applicant enroll in the ASAP program order by the court as part of her sentence and obtain a validating signature on her restricted license confirming enrolment in ASAP. Without the required signature, the restricted license order expires 15 days after the license is issued.⁽⁵⁾ Applicant failed to comply with the requirements of her restricted license after her sentencing in May 2003. On 30 June 2003, Applicant was arrested for driving 50 mph in a 30 mph zone, as she was driving to work, late. She was also charged with driving on a revoked license (DUI related)(AE D) because she had not enrolled in ASAP. She eventually enrolled in ASAP on 2 July 2003 (AE G) and obtained a valid restricted license later that month (AE E). As a result of these offenses, Applicant was issued a "show cause" order in September 2003 (GE 3) for reinstatement of the previously-suspended portions of her May 2003 sentence. She was ultimately ordered to serve 10 days of jail time that had been suspended.

Applicant's ASAP program began 11 July 2003 and ended 19 September 2003 (AE G). Applicant completed the program requirements satisfactorily, if perfunctorily. The program's requirements included verified attendance at AA meetings (AE H). Applicant satisfied this requirement by attending meetings on 24 July 2003, 8 September 2003, 9 September 2003 (2), 10 September 2003, and 11 September 2003 (2). Applicant acknowledges that she did not get much out of the AA meetings because she does not think she has a problem with alcohol, and only attended to meet the program requirements (Tr. 86-69).

Applicant's two work references consider her an excellent employee and have not observed any evidence of alcohol consumption at work. Neither has any social contact with her.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under

each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Burden of Proof

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

The government established a Guideline G case under disqualifying condition 1 and 5,⁽⁷⁾ and Applicant failed to mitigate the security concerns. She had two alcohol-related arrests in less than 18 months, less than two years ago. She continues to drink alcohol episodically at the approximate level that caused her two arrests. Her misconduct demonstrates a pattern of alcohol abuse which is recent. She appears to have done the bare minimum to comply with the terms of her ay 2003 sentence, including grudging attendance at AA meetings. I found her answers at the hearing evasive and indicative of someone who has no insight into her past conduct. The record evidence establishes her alcohol abuse and she had the burden of establishing extenuation, mitigation, or rehabilitation--a burden she did not meet. I cannot conclude that she is unlikely to continue or return to abusive levels of drinking. Accordingly, I resolve Guideline G against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant drank 5-6 beers over a three-hour period without eating. She became involved in a confrontation with police when she confiscated a friend's car keys--ostensibly to keep the friend from driving home alone--and the friend told the police her keys had been stolen (GE 2).
3. Applicant drank 4-5 beers over a three hour period without eating. She was stopped by local police for erratic driving and failed the field sobriety tests. Although she did not consider herself intoxicated, she knew enough about how bodies metabolize alcohol that she would be considered "legally drunk" if she took a breathalyzer test. Consequently, she declined the test in a state that has an implied consent statute (GE 2).
4. However, she recanted this estimate at the hearing (Tr. 32), claiming that she only has one beer/wine one night a week. She also changed her story on the January 2003 arrest, claiming to have had only a "couple" beers (Tr. 35) and having passed her field sobriety tests (Tr. 36). I find this testimony unconvincing in view of her earlier statement.
5. cf, AE E.
6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. 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 abuse.

