

KEYWORD: Alcohol

DIGEST: Applicant has a lengthy history of alcohol-related incidents. He was evaluated as alcohol dependent after a 2002 conviction for driving while intoxicated. He resumed drinking as soon as he completed a court-ordered DWI education course. Although he claims he has reduced his consumption of alcohol, sufficient time has not elapsed, in light of his alcohol dependence, to ensure his alcohol consumption does not represent a security risk. Clearance is denied.

CASENO: 04-01108.h1

DATE: 11/15/2005

DATE: November 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01108

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a lengthy history of alcohol-related incidents. He was evaluated as alcohol dependent after a 2002 conviction for driving while intoxicated. He resumed drinking as soon as he completed a court-ordered DWI education course. Although he claims he has reduced his consumption of alcohol, sufficient time has not elapsed, in light of his alcohol dependence, to ensure his alcohol consumption does not represent a security risk. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 29 March 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision ⁽¹⁾-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 16 May 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on 8 July 2005. On 17 August 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 25 August 2005.

FINDINGS OF FACT

Applicant is a 31-year-old radar technician for a defense contractor. He has held a security clearance for 10 years. Applicant is a single parent of a young daughter, and helps his girlfriend care for her children.

Applicant started to consume alcohol when he was 14 or 15 years old. By the time he was in high school, he was drinking every weekend. In 1990, he was arrested for being a minor in possession of alcohol. In 1993, while home from college, he was arrested for public intoxication.

Applicant began working for a defense contractor in 1995. In March 1996, he was arrested for driving while intoxicated (DWI) and reckless driving. He was drinking to "excess" once or twice a week at the time. Ex. 2 at 2. DWI charges were not filed, but Applicant was convicted of reckless driving and paid a fine.

In May 1997, Applicant was arrested for public intoxication-auto. The charge was dismissed. But by this time, Applicant was drinking "to excess" a couple of times a week. He was arrested again in June 1998 and eventually convicted of public intoxication.

Applicant was arrested in March 2000 and charged with public intoxication and breaking the public peace. In June 2000, the court dismissed the case after Applicant complied with the terms of an order to defer adjudication.

Applicant was arrested in March 2002 and charged with public intoxication.

In August 2002, Applicant lost control of his vehicle and it rolled into a ditch. A passing motorist took Applicant to a hospital. Applicant refused a police request to provide a breath/blood sample to determine if he was intoxicated. He was arrested for DWI. Applicant did not consume alcoholic beverages between his arrest and his court appearance in April 2003. Applicant pled nolo contendere and was found guilty of DWI. He was sentenced to 180 days in jail, but it was suspended and he was placed under supervision of the court for 10 months. He was also required to submit to urinalyses and attend a DWI education program.

In August 2003, as part of the court supervision, Applicant was admitted to an outpatient substance abuse program. He was diagnosed by a licensed clinical drug counselor as being alcohol dependent. He successfully completed the program, which included attending meetings of Alcoholics Anonymous, and was discharged in March 2004. He was instructed to attend an after care program, as needed, and "to continue to make changes in daily living routines to support ongoing abstinence." Ex. 5 at 7. He was also ordered to take Antabuse, but the court retracted this order after Applicant's doctor refused to administer the drug.

Applicant's last AA meeting was immediately before or immediately after he completed the alcohol education program in March 2004. He began consuming alcoholic beverages again by July 2004, and probably as early as March or April 2004. He still drinks, but he limits his drinking to social occasions. His wife last saw him drink a few weeks before the hearing. He had five or six beers throughout the day.

A supervisor opined that Applicant was a trustworthy employee who should get a clearance. Although he knew Applicant had been involved in at least one-alcohol-related incident, he was not aware that a court had ordered Applicant into an alcohol education course.

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 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). 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from 1988 to July 2004 (¶ 1.a); was convicted of minor in possession of alcohol in 1990 (¶ 1.b); was arrested in 1993 for public intoxication (¶ 1.c); was arrested in March 1996 for DWI and reckless driving (¶ 1.d); was arrested in ay 1997 for public intoxication auto, convicted, and fined (¶ 1.e); was arrested in June 1998 and convicted of public intoxication (¶ 1.f); was arrested in arch 2000 for public intoxication and breach of public peace for which he was granted deferred adjudication (¶ 1.g); was arrested in March 2002 for public intoxication and convicted (¶ 1.h); was arrested for DWI in August 2002, convicted, and required to participate in intensive outpatient substance abuse treatment in a state program, attend AA meetings, and have Antabuse therapy (¶ 1.i); received treatment for alcohol dependence from 11 August 2003-1 March 2004 (¶ 1.j); continues to consume alcohol (¶ 1.k). Applicant basically admits all of the allegations with some explanation. ⁽²⁾

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline G. Applicant has been involved in alcohol-related incidents away from work such as DWI. DC E2.A7.1.2.1. Applicant was diagnosed by a licensed clinical drug counselor as being alcohol dependent. *See* DC E2.A7.1.2.4. I find against Applicant on ¶ 1.a to the extent it alleges Applicant consumed alcohol to the point of intoxication from 1988 through his August 2002 arrest for DWI.

There are two mitigating conditions that could apply to this case: The problem occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2); and Applicant has made positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3). Applicant has made some changes in his behavior supportive of sobriety-he has decreased the amount of alcohol he consumes. His last DWI incident was more than three years ago. However, I am reluctant to grant him a clearance in light of his inability to recognize the depth of his problem. He failed to acknowledge he had been evaluated as being alcohol dependent. He began drinking again as soon as he was no longer under the court's supervision. Although some alcohol dependent persons have shown they can consume alcohol in moderation, there hasn't been sufficient time-a little over a year-to determine whether Applicant will be able to maintain his sobriety in the future. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: 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: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

DECISION

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

James A. Young

Administrative Judge

1. As required by Exec. Or. 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).

2. He disagreed with some of the dates for the incidents, the results of the arrest, and the period over which he consumed alcoholic beverages to the point of intoxication.