

KEYWORD: Alcohol

DIGEST: On at least three occasions over the last 21 years, Applicant has been advised to abstain from drinking. Because Applicant was diagnosed as alcohol dependent by a licensed clinical social worker in 1998, the Directive requires successful completion of treatment, aftercare requirements, Alcoholics Anonymous (AA) or related therapy, 12 months of abstinence, and a favorable prognosis. While the record substantiates Applicant's completion of treatment, the record does not show he has met the other requirements of the guideline. Also, he continues to drink alcohol. Clearance is denied.

CASENO: 04-03434.h1

DATE: 02/09/2006

DATE: February 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03434

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

On at least three occasions over the last 21 years, Applicant has been advised to abstain from drinking. Because Applicant was diagnosed as alcohol dependent by a licensed clinical social worker in 1998, the Directive requires successful completion of treatment, aftercare requirements, Alcoholics Anonymous (AA) or related therapy, 12 months of abstinence, and a favorable prognosis. While the record substantiates Applicant's completion of treatment, the record does not show he has met the other requirements of the guideline. Also, he continues to drink alcohol. Clearance is denied.

STATEMENT OF CASE

On April 13, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on May 10, 2005. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on September 27, 2005. Applicant received the FORM on October 11, 2005. His response to the FORM was due by November 10, 2005. No response was received. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

The SOR lists seven allegations under the alcohol consumption guideline (Guideline G). Except for subparagraph 1.a., Applicant admitted all allegations with explanations. Applicant is 54 years old and employed as an assembly mechanic by a defense contractor. He seeks a secret level security clearance.

Applicant's denial of subparagraph 1.a. is based on his claim he abstained from alcohol for two years after his discharge from the service in 1976. The medical records indicate he began using alcohol when he was 21 in 1972. He admitted abusing alcohol at various times in his life, including July 1998 when he consumed almost 24 beers shortly before he began treatment the same month.

In September 1983, Applicant was charged with driving while under the influence of alcohol (DUI) and a red light violation (subparagraph 1.b.). He was found guilty of DUI, sentenced to the driver's intervention program (subparagraph 1.c.), and was placed on one year probation. In his response to the SOR, Applicant noted the driver program was operated by deputy sheriffs.

Subparagraph 1.d. describes a 12-week outpatient treatment program Applicant attended in 1984. In his sworn statement dated January 2004, Applicant intimated he had been drinking too much alcohol prior to his 1984 admission but did not, and still does not consider himself an alcoholic. In his response to the SOR, Applicant regretted listening to "well-meaning people who convinced him he was a problem drinker because of the DUI (subparagraph 1.b.) that was really, according to Applicant, just an instance of poor judgment.

In his answer to subparagraph 1.e., Applicant blamed too much beer consumption at a picnic, followed by an argument with his wife (for his excessive drinking at the picnic) as the reasons for his treatment 1998. Applicant stated the program helped him and he abstained from alcohol for three years. The claim of abstinence does not appear anywhere else in the record.

In response to subparagraph 1.e., Applicant stated in his sworn statement (Item 5) he was under an inordinate amount of stress in 1998 over deciding whether he should file bankruptcy. Applicant stated:

I was drinking too much beer on a daily basis and could see that I was endangering my health. I considered myself abusing alcohol, but not an alcoholic. In 1998, I voluntarily entered the [alcohol program]. At that program, I was naturally considered an alcoholic and was advised to stay away from alcohol the rest of my life. I do not feel [it] is necessary to completely abstain from alcohol. I am not powerless over alcohol and I can manage my drinking habits (Item 5).

The sworn statement makes no reference to a three year period of abstinence.

The medical records from Applicant's outpatient treatment (subparagraph 1.e., July 31, 1998 to September 13, 1998) reflect a diagnosis of alcohol dependence by a chemical addiction counselor. Before entering the treatment program, Applicant indicated he consumed approximately 12 cans of beer at least once a week, and almost 24 cans of beer on July 19, 1998. The counselor identified Applicant's failure to understand the potential for relapse of his condition and the skills to prevent relapse. Applicant's attendance and participation in all aspects of the treatment were good. Applicant also completed the aftercare care meetings at the program site and was enrolled in continuing care for 12 months.

Regarding his drinking habits since his treatment in 1998. Applicant stated in Item 5:

These days, I usually drink a couple of glasses of wine or a cocktail if I go out to dinner, and once in a while, will have wine or a cocktail with dinner at home. I do not become intoxicated and I do not have an urge to drink more at a time, or more often. I do not drive after drinking alcohol.

Since his sworn statement in January 2004, Applicant has essentially provided the same description of his consumption patterns.

At the recommendation of the DOHA, Applicant consulted a chemical addiction counselor on August 24, 2004. After obtaining Applicant's treatment history contained in a letter from DOHA, the counselor conducted his clinical interview in which he talked with Applicant about his alcohol use. Then, the counselor touched on several areas. The counselor stated:

Mr. [Applicant] was questioned regarding symptoms of dependency to chemicals both past and present, his living situation, his social history, employment history, legal history, medical history, and regarding any possible emotional conditions that may be interfering with his ability to function normally. Mr. [Applicant] had a negative history for issues related to emotional conditions or chemical dependency issue other than what is noted above (Item 8).

The counselor noted Applicant's current alcohol use was not impairing his social functioning or physical health. The counselor recommended abstinence due to past issues related to alcohol use.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Alcohol Consumption

Habitual or binge consumption of alcohol can result in acts of poor judgment such as security violations or the intentional or careless disclosure of classified information.

CONCLUSIONS

Excessive alcohol consumption (AC) often leads to the exercise of questionable judgment and security violations. The Government has established its case under AC disqualifying condition (DC) E2.A7.1.2.4. (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program*). Applicant was advised not once but four times to discontinue alcohol use; he has continued to use alcohol, albeit at reduced levels. I agree that the advice to stop drinking Applicant received during the driver's intervention program in 1983 is probably given to all individuals required to satisfy the program. The driver's education plan is usually designed to alert the miscreant of how alcohol alters judgment, particularly the judgment of a person who has decided to drive a car after alcohol consumption. Those programs are

not designed to diagnose or treat as the 1984 and 1998 treatment programs Applicant participated in.

In 1984, Applicant voluntarily participated in 12 weeks of outpatient treatment for alcohol abuse. Applicant was again instructed to avoid alcohol. Though he was certain in his response to the SOR he made the worst mistake in his life by choosing to participate in the 1984 treatment (subparagraph 1.d.), Applicant implied in his sworn statement (January 2004) he had been drinking excessively in the 1984 period before beginning the program. In addition, he opined his participation in the 1984 program exemplified his willingness to receive help when needed.

After consuming an excessive amount of alcohol for an unknown period of time in early 1998, Applicant voluntarily entered treatment for alcohol dependence, and was instructed a third time to discontinue alcohol use. However, he declined to stop then and also declined to stop even after being placed on notice of the August 2004 recommendation to forego future alcohol use.

There are two mitigating conditions (MC) under the AC guideline that have potential mitigating value to this case. AC MC E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*) generally includes a commitment to recovery that embodies fundamental lifestyle changes and a network of support that fosters and reinforces sobriety. Though Applicant has reduced his drinking, he still drinks, albeit at reduced levels, in the face of at least three recommendations to abstain. Accordingly, Applicant has not implemented sufficient changes in his lifestyle to overcome the adverse evidence under AC DC E2.A7.1.2.4.

Because Applicant has been diagnosed as alcohol dependent, sufficient evidence of all elements of AC MC E2.A7.1.3.4. (*following 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 (AA) or 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) must be adduced to demonstrate Applicant warrants a security clearance. While Applicant has successfully completed an outpatient treatment program, there is no independent evidence indicating whether Applicant completed aftercare or AA.

Since AC MC E2.A7.1.3.4. requires a period of abstinence of 12 months or more, Applicant's claim of more than three years of abstinence after his 1998 treatment may satisfy this time element of the guideline. However, that claim cannot be summarily accepted without considering the entire record to determine whether the claim is credible. The abstinence claim does not appear in Applicant's January 2004 sworn statement when Applicant was interviewed about his alcohol history and treatment. Even if Applicant had not recognized that his consumption was a security issue in January 2004, he knew or should have known the information regarding his consumption was important in August 2004 when he spoke to the addiction counselor, and in November 2004 when he was asked to comment on his alcohol history. Those two situations would have provided logical opportunities for Applicant to indicate he had been alcohol-free for over three years as he claimed. By not revealing a long period of abstinence on three previous occasions in 2004, I am unable to assign much probative value to his abstinence claim.

Considering (1) there is no evidence of completion of AA or similar therapy, (2) no evidence of a favorable prognosis by a medical professional or a licensed clinical social worker, and (3) discredited evidence of abstinence, Applicant cannot satisfy AC MC E2.A7.1.3.4. Finally, Applicant continues to drink in face of advice to abstain.

Even though a finding against Applicant is made under the AC guideline, the circumstances of this case must also be evaluated under the general factors of the whole person concept. Deciding whether to file bankruptcy after prolonged financial problems can provide the impetus to consume excessive amounts of alcohol. Applicant exercised good judgment in enrolling and participating in treatment in 1998. However, Applicant has demonstrated poor judgment by continuing to drink against the advice of at least three counselors in three different decades of his life. Applicant's decision to continue drinking, without any independent evidence of AA or support group participation, escalates the risk of relapse. Applicant's reduced consumption levels are insufficient to satisfy E2.2.1.6. (*the presence or absence of rehabilitation and other pertinent behavioral changes*) and E2.2.1.9. (*the likelihood of continuation or recurrence*) under the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Alcohol Consumption, Guideline G): AGAINST THE APPLICANT.

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. Against the Applicant.

Subparagraph 1.f. Against the Applicant.

Subparagraph 1.g. 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.

Paul J. Mason

Administrative Judge