

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant's consumption of alcohol led to his arrest for minor in possession of alcohol in 1995, disorderly conduct in 1998, public drinking in 1999, and driving under the influence in 2002. Over the three years since the DUI, he has demonstrated maturity in fulfilling his obligations as an employee for a defense contractor and as a provider for his fiancée and their two-year-old daughter. While he continues to drink beer on occasion, he does so responsibly and exhibits no signs of an alcohol problem. Alcohol consumption concerns are mitigated. Applicant's failure to comply with his legal obligation to register for the Selective Service was unintentional. Clearance is granted.

CASENO: 04-04139.h1

DATE: 03/16/2006

DATE: March 16, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04139

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's consumption of alcohol led to his arrest for minor in possession of alcohol in 1995, disorderly conduct in 1998, public drinking in 1999, and driving under the influence in 2002. Over the three years since the DUI, he has demonstrated maturity in fulfilling his obligations as an employee for a defense contractor and as a provider for his fiancée and their two-year-old daughter. While he continues to drink beer on occasion, he does so responsibly and exhibits no signs of an alcohol problem. Alcohol consumption concerns are mitigated. Applicant's failure to comply with his legal obligation to register for the Selective Service was unintentional. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline G, alcohol consumption, and Guideline E, personal conduct, 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 the Applicant. [\(U\)](#)

On April 20, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. On September 7, 2005, I issued a notice scheduling the hearing for September 29, 2005. At the hearing, eight government exhibits were admitted and testimony was taken from Applicant and four other witnesses on his behalf, as reflected in a transcript received on October 19, 2005. At the government's request, administrative notice was also taken of the military Selective Service Act, consequences of failing to register, and potential remedial actions.

FINDINGS OF FACT

DOHA alleged under Guideline G that Applicant consumed alcohol at times to intoxication from about 1994 to at least February 3, 2004, was arrested and fined in 1994 or 1995 for minor in possession of alcohol, was arrested in August 1999 for public drinking, and was arrested and sentenced for an October 2002 DUI. Under Guideline E, Applicant was alleged to have failed to register with the Selective Service System. Applicant admitted the conduct, which he attributed to youth and irresponsibility, but submitted he had since settled down and matured. Applicant's admissions are accepted and incorporated as findings of fact. After a complete review of the evidence, I make the following additional findings:

Applicant is a 29-year-old machinist who has been employed by a defense contractor since February or March 2003. He seeks a secret-level security clearance for his duties, which include some of the more difficult jobs in his department. Applicant is considered "one of the bright lights" by his second-level supervisor because of his excellent work ethic.

Applicant started drinking beer in high school with friends on the weekends. He dropped out of high school in the 11th grade before his 18th birthday and two weeks later went to work for a plastics factory. He continued to socialize with the same friends, and drank six to ten beers on Friday and Saturday nights.

On one occasion in about 1995 when Applicant was out with a friend "cruising around," this friend was pulled over for speeding. Applicant, who had a bottle of vodka between his feet, was charged with minor in possession of alcohol. He was fined \$100.

In February 1996, he began working as a machinist. He refrained from drinking to intoxication during the work week, but went to work on occasion with a hangover from drinking on the weekend, although he still got the job done. In mid-May 1998, Applicant went out drinking with a couple of friends. Police observed one of Applicant's companions drinking in the street, confiscated the beer, and arrested Applicant's friend for public drinking. Applicant became verbally irate with the police and was arrested for disorderly conduct. He had consumed alcohol before his arrest.

Since he reached legal drinking age before most of his friends and did not want to drink in a bar by himself, Applicant's drinking habits did not change on reaching 21. In mid-August 1999, Applicant was observed drinking beer in the parking lot of a local fair ground and he was arrested for public drinking. In possession of a case of beer, he paid only minor court costs.

In early 2002, Applicant met his fiancée at a local bar where she worked as a bartender. Applicant regularly came into

the bar on Sunday afternoons to watch sporting events with his friends and generally consumed a few beers. They began dating, and Applicant began to have tardiness problems at work due in part to going out with his fiancée, but also to a lack of interest in a job that he perceived had no future and little monetary reward. He had not received a raise in three years. In September 2002, he was fired from his job as a mechanic for tardiness.

Applicant was caught for driving at an extremely high rate of speed in early September 2002. Since the police smelled alcohol on him, Applicant was administered field sobriety tests, which Applicant passed. He pleaded nolo contendere to reckless driving and was ordered to perform 40 hours of community service.

In mid-October 2002, Applicant went to the bar where his fiancée worked to pick up the keys to her residence. Since he had a job interview that next morning, he did not plan to make it a late night. After drinking between four and six beers at the bar, he was stopped for weaving. Applicant failed field sobriety tests and was arrested for driving under the influence (DUI) and refusal to submit to a chemical test. He pleaded nolo contendere and was sentenced to a \$694 fine and court costs, 10 hours community service, three months loss of license, and a driver retraining school, where the consequences of drunk driving were brought home to him by victims' family members. No other alcohol counseling was recommended. On completion of the driver retraining sessions, his driver's license was reinstated in May 2003.

With the assistance of his future mother-in-law's boyfriend, Applicant was hired on as a machinist by his present employer. Needing a secret clearance for his duties, Applicant executed a security clearance application on January 30, 2003. He disclosed his firing from his previous job for tardiness, and his DUI and his reckless driving offenses. Applicant responded "No" to inquiry into whether he had registered with the Selective Service System. The SF 86 submitted to the government includes the following remark, "SUBJECT STATES HE DOESN'T RECALL BEING ASKED TO REGISTER." After this requirement to register was brought to his attention, Applicant contacted the Selective Service as he was not certain whether he had complied. He was informed he had not filed and could no longer do so since he was over age 26.

In early 2003, Applicant learned that his fiancée was expecting their daughter, who was born in August 2003. The DUI and fatherhood helped him realize that he had to "grow up." He reduced his drinking to two or three beers weekly. He consumed alcohol to intoxication on his birthday in September 2003 and once in January 2004, but did not drive a vehicle on either occasion.

On February 3, 2004, Applicant was interviewed by a Defense Security Service (DSS) special agent about his alcohol consumption and related offenses, his failure to register for the Selective Service, and some minor indebtedness. Applicant admitted drinking in the past on weekends to intoxication and/or hangover with negative legal consequences, but explained that he had slowed his consumption to two or three beers weekly after the DUI with the exception of the two occasions (birthday and three weeks before his interview). He expressed his intent to continue drinking minimally. Concerning his failure to register with the Selective Service, Applicant indicated,

"When I completed my security clearance [sic] application I did not recall re-registering [sic] with Selective Service at the age of 19. I thought maybe that I did this and just forgot about it. I researched this and learned that I had not done this in the past. The Selective Service is sending me a form to complete." (Ex. 2)

In late January 2005, Applicant's half-brother died unexpectedly of hypothermia when he was out drinking with friends for his 21st birthday. During the first couple of weeks after his brother's funeral, Applicant drank more than usual, up to ten beers per occasion. He did not drive a vehicle after drinking in that quantity. Following this initial mourning period, Applicant went back to drinking a couple of beers occasionally while watching sporting events. Approximately once monthly, he and his girlfriend go out and he consumes about six beers, enough for "a slight buzz." They get a designated driver. As of his hearing in late September 2005, he had last consumed six beers in mid-August, when he and his fiancée went to a party hosted by her family. Applicant and his fiancée stayed at the host's residence that day and did not drive home. Applicant does not drink wine or hard liquor.

Applicant has been a good provider for his fiancée, a devoted father to his daughter, and a dedicated worker for his employer. Applicant spends his weekends and nights primarily caring for their daughter since his fiancée works as a bartender. He spends time with his parents on weekends, taking his daughter on camping trips with them. Before Applicant and his fiancée moved to their present apartment, they lived with her mother to save some money. Applicant was trusted to stay with his fiancée's 14-year-old sister, who is disabled and fed by a G-tube. Applicant cared for her responsibly. He has not exhibited signs of excessive drinking at home or at work.

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 has 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 that the applicant has not met the strict guidelines the President and the Secretary of

Defense have established for issuing a clearance.

Concerning the evidence as a whole, the following adjudicative guidelines are most pertinent to this case:

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. (¶ E2.A7.1.1.)

Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (¶ E2.A10.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines G (alcohol consumption) and E (personal conduct):

Excessive alcohol consumption is of concern because it 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. Applicant consumed alcohol irresponsibly and frequently to intoxication from his late teens (circa 1994) to October 2002. In addition to the 1995 minor in possession of alcohol, 1999 public drinking, and October 2002 DUI offenses that were alleged by the government, Applicant had been drinking before his arrest in May 1998 for disorderly conduct. Guideline G disqualifying conditions 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 E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment,* apply.

In mitigation, Applicant has made positive changes in his behavior supportive of sobriety (*see* MC E2.A7.1.3.3.) since late 2002. The DUI program left an impression, particularly the accounts of those victimized by drunk drivers. His fiancée's pregnancy cemented the realization that he had to change his drinking behavior. Applicant reduced his consumption of alcohol to two or three beers weekly, with rare episodes of intoxication. As the primary caregiver for his daughter during the evenings and on weekends, Applicant has neither the desire nor the opportunity to resume the

irresponsible lifestyle of his youth. While he drank excessively (up to ten beers at a sitting) over a couple of weeks in February 2005, it was due to grief over the unexpected death of his brother and he has since resumed moderate consumption. Those who know Applicant best, his fiancée and family at home and his second level supervisor at work, testified credibly they have seen no evidence of a drinking problem. Although he still drinks up to six beers on occasion when he goes out with his fiancée, Applicant has shown good judgment in not driving home. Applicant's maturation in age and his responsibilities militate against recurrence of any alcohol-related criminal incidents. Favorable findings are returned as to SOR ¶¶ 1.a., 1.b., 1.c., and 1.d.

Applicant's noncompliance with the Military Selective Service Act is potentially security disqualifying under Guideline E. ⁽²⁾ Failure to register between the ages of 18 and 26 is punishable as a crime, ⁽³⁾ and makes one ineligible for some Federal student loan and grant programs (50 App. U.S.C. § 462(f)), Federal job training, and employment in the Executive Branch of the Federal government and U.S. Postal Service (*see* 5 U.S.C. § 3328). However, the statutory disqualifications do not apply, and a person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and subject to registration if:

(1) the requirement for the person to so register has terminated or become inapplicable to the person; and

(2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register. (50 App. U.S.C. § 462 (g)).

There is nothing in the Directive that specifically bars the grant of a security clearance to males born after December 31, 1959, who fail to register for the Selective Service. Yet, given the government must be able to impose an even higher degree of trust in those with classified access than in Federal or Postal Service employees in non-sensitive positions, grant of a clearance to Applicant would not be warranted in the event of a knowing and willful noncompliance.

When he completed his SF 86 in January 2003, Applicant indicated he did not recall being asked to register with the Selective Service. On direct examination, he testified that when the requirement to register was brought to his attention, he went down to the post office, obtained registration information, and contacted the Selective Service "to double check to make sure that [he] hadn't registered." (Tr. 72) Had Applicant intentionally failed to register, it is unlikely he would have checked with the Selective Service. Applicant, who dropped out of school before he turned 18, testified credibly he did not recall receiving any notice to register in the mail, and it was not a topic of discussion amongst his friends. Nor had it occurred to him that he might be drafted ("I had always heard the story I'll-we'll never have drafts again and this and that. And it never occurred to me that I-I had never registered, no." Tr. 99). SOR ¶ 2.a. is also found in his favor as his failure to register with the Selective Service was not knowing and willful.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

1.

2. Under 50 App. U.S.C. § 453, with certain enumerated exceptions found in sections 451 to 471a of the Military Selective Service Act, every male citizen of the United States and every other male person (except an alien admitted lawfully as a nonimmigrant) residing in the United States between the ages of 18 and 26 is to register.

3. A knowing evasion or refusal to register is punishable by up to five years in prison and a fine up to \$250,000. 50 App. U.S.C. § 462(a).