

KEYWORD: Alcohol

DIGEST: Applicant failed to mitigate security concerns about alcohol abuse and two alcohol-related criminal offenses in 2000 and 2002. While he claims he has matured and drinks less because of additional responsibilities at work, he still drinks, sometimes to excess and to the point of intoxication. Clearance is denied.

CASENO: 04-04657.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04657

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant failed to mitigate security concerns about alcohol abuse and two alcohol-related criminal offenses in 2000 and 2002. While he claims he has matured and drinks less because of additional responsibilities at work, he still drinks, sometimes to excess and to the point of intoxication. Clearance is denied.

### **STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On April 12, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline G (alcohol consumption). Applicant timely answered the SOR, denied all of the allegations therein, and requested a hearing.

The case was assigned to me on August 24, 2005, and I convened a hearing October 19, 2005. The parties appeared as scheduled and the government presented four exhibits (GE 1 through 4), which were admitted without objection. Applicant testified in his own behalf, but submitted no documents. DOHA received the transcript (Tr) on November 1, 2005.

### **FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 27-year-old supervisor of pipefitters employed by a defense contractor at a U.S. Navy shipyard, where he has worked since January 1998. After graduating high school in 1996, Applicant spent one year in college where he had hoped to play intercollegiate baseball. After deciding school was not for him, he withdrew and found work as a cook until beginning his apprenticeship at the shipyard. Applicant completed his training around the spring of 2002, and was promoted to a supervisory position around February 2004. For a few years after he was hired, Applicant played on the company baseball team. He is not married and spends his free time playing recreation league softball and socializing with friends.

Applicant has been arrested twice for alcohol-related conduct, which he disclosed in a February 2003 security clearance application (SF 86). The first arrest was for driving under the influence (DUI) in April 2000. He had been out celebrating his birthday with friends and had consumed at least seven beers over a four-hour period. Driving home, he was stopped by police because his car was swerving, administered a field sobriety test, and arrested. He was found guilty of DUI, and sentenced to 30 days in jail, of which 29 were suspended. He was also ordered to attend alcohol awareness counseling.

Applicant's second arrest occurred in May 2002. He was on travel with the company baseball team, and went out with his teammates one evening to a club, but Applicant had too much to drink. On his way out of the club at the end of the evening, he kicked out a floor light. When he got outside, he ran from club employees, but was also pursued by two policemen who were nearby. He was tackled, handcuffed, and taken to jail. Applicant was charged with felony battery on a law enforcement officer, felony resisting an officer with violence, and criminal mischief. Applicant pled nolo contendere to all three charges, was assessed \$500 in court costs, and judgment was withheld for two years on condition of good behavior. Applicant has had no other arrests, and there is no information available regarding any other adverse conduct since May 2002. He is planning to have this arrest expunged from his record as allowed by the law of the state where it occurred.

Applicant started drinking around 1996, when he was 18 years old. Between age 18 and age 21, he would drink with irregular frequency averaging one to two beers in a sitting with friends on weekends. However, he reports he blacked out from drinking more than once between age 18 and age 20. From about 1999 until 2003, Applicant drank twice weekly, averaging five or six beers each time. By his estimation, Applicant became intoxicated to the point of having slurred speech, red eyes, and some physical impairment about four times a year. When Applicant was in college or sometime soon thereafter, his father expressed concern about Applicant's drinking.

Applicant testified he has curtailed his drinking primarily because of his new responsibilities as a supervisor. He also realized his drinking concerned the government after he was interviewed about it by a Defense Security Service (DSS) agent in September 2003. He now estimates he becomes intoxicated once or twice each year, but usually drinks two or three beers one or two nights during a weekend. Applicant has never missed work due to drinking, nor has he ever reported for work intoxicated or hung over.

## POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(2)</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.<sup>(3)</sup> 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.<sup>(4)</sup>

The Directive sets forth adjudicative guidelines<sup>(5)</sup> for consideration when evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case. 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 of a conclusion for or against an applicant. However, specific applicable 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. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline G (alcohol consumption).

## CONCLUSIONS

The security concern about alcohol consumption, as expressed through Guideline G, is that 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.<sup>(6)</sup> The government alleged in the SOR that Applicant drank alcohol at times to excess between 1996 and 2003 (SOR ¶ 1.a); that he was arrested and convicted of DUI in April 2000 (SOR ¶ 1.b); and that he was arrested for and pled nolo contendere to battery on a law enforcement officer, resisting arrest, and criminal mischief, he being intoxicated when he was arrested (SOR ¶ 1.c). This record presents sufficient evidence to support these allegations and the government's preliminary decision to deny or revoke a clearance for this applicant under Guideline G. Specifically, disqualifying condition (DC) 1<sup>(7)</sup> and DC 5<sup>(8)</sup> apply to these facts.

This record also requires some consideration of Guideline G mitigating condition (MC) 1, MC 2, and MC 3. Two incidents do not constitute a pattern, and there has been no similar conduct in more than three years. Further, Applicant, now in his late 20s, avers he appreciates the gravity of his past conduct and the potentially dire consequences from any such conduct in the future. In combination with his past experiences, Applicant cites his new responsibilities as a supervisor as motivation to drink less and behave in a more mature fashion. However, he still engages in conduct - drinking - that was the underlying cause for his arrests in 2000 and 2002. Social drinking, without more, is not usually cause for concern in assessing one's suitability for a security clearance. But Applicant engages in social drinking which still at times becomes excessive, despite his experiences in 2000 and 2003. Without information from Applicant showing more definitively he is not likely to engage in excessive or even binge drinking in the future, he cannot overcome the government's concerns about his drinking. I conclude Guideline G against the Applicant.

A fair and commonsense assessment<sup>(12)</sup> of the entire record before me shows the government properly expressed reasonable doubts about Applicant's suitability to have access to classified information. The SOR was based on sufficient, reliable information about Applicant's history of alcohol use, as well as the criminal aspects of that conduct. Such issues bear directly on an applicant's ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. The record further shows that, despite Applicant's claims he drinks less and understands the import of his conduct, available information about his current circumstances is not sufficient to show it is clearly consistent with the national interest to grant Applicant a security clearance.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

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

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.
5. Directive, Enclosure 2.
6. Directive, E2.A7.1.1.
7. Directive, 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;
8. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
9. Directive, E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;
10. Directive, E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;
11. Directive, E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;
12. Directive, E2.2.3.