

KEYWORD: Alcohol Consumption

DIGEST: Applicant was arrested for Driving While Under the Influence in December 2001. In lieu of pleading guilty, she entered into a deferred prosecution program. She was evaluated by a recognized alcohol treatment program and was diagnosed as an alcoholic and alcohol dependent. After being diagnosed as an alcoholic and alcohol dependent, she continued to drink while in her treatment program because she disagreed with her diagnosis. She offered no competent evidence to rebut the disputed diagnosis. Viewing the evidence as a whole, she has not mitigated alcohol consumption concerns raised. Clearance is denied.

CASE NO: 04-05059.h1

DATE: 04/28/2006

DATE: April 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05059

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was arrested for Driving While Under the Influence in December 2001. In lieu of pleading guilty, she entered into a deferred prosecution program. She was evaluated by a recognized alcohol treatment program and was diagnosed as an alcoholic and alcohol dependent. After being diagnosed as an alcoholic and alcohol dependent, she continued to drink while in her treatment program because she disagreed with her diagnosis. She offered no competent evidence to rebut the disputed diagnosis. Viewing the evidence as a whole, she has not mitigated alcohol consumption concerns raised. 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 April 25, 2005, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on May 24, 2005, and elected to have a hearing before an administrative judge.

Department Counsel indicated he was ready to proceed on July 1, 2005, and the case was assigned to me on July 7, 2005. On July 20, 2005, DOHA issued a notice of hearing scheduling a hearing for September 15, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered five documents, which were admitted without objection as Government Exhibits (GE) 1 through 5. The Applicant did not offer any exhibits. DOHA received the transcript on September 27, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 32-year-old divorced woman, who was married to her first and only husband from July 1998 to May 2000. She has no dependents. She graduated from high school in June 1992, and attended community college from March 1997 to June 1997. She testified she intended to return to community college and continue earning credits towards her bachelor's degree. Since July 2000, Applicant has been employed by a defense contractor and works in export compliance management. Tr. 30. She seeks a security clearance to enhance her opportunities within her company.

On December 14, 2001, Applicant and several co-workers went to a local bar after work. She arrived at the bar at approximately 4:00 p.m. In her statement to the Defense Security Service (DSS) on February 19, 2004, she claimed she "consumed approximately two beers, [brand name], every hour until I decided to head home at 7:00 or 8:00 p.m." GE 2. While driving home, she was involved in a single-car accident.

The police were summoned and Applicant was taken into custody. She was given two blood alcohol (BAC) tests at the police station. The first BAC reading was .137% and the second reading was .140%. GE 3. Applicant was subsequently arrested and charged with Driving While Under the Influence (DUI) of Intoxicants and/or Drugs and Reckless Driving. In her response to SOR, Applicant denied SOR ¶ 1.b., which referred to this arrest. She disputed that part of SOR ¶ 1.b. which dealt with the location of her arrest. She stated her arrest occurred in "[Location A] versus [Location B]. Other than this discrepancy, Applicant did not dispute the accuracy of the allegation except for the fact she believes the wording of the paragraph ". . . sounds like they made me have to do this. I chose, it was my decision, to go deferred." Tr. 41.

On March 14, 2002, a diagnostic evaluation to determine Applicant's suitability as a deferred prosecution candidate was completed by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. She was diagnosed as alcohol dependent and in the opinion of the treatment director was suffering from alcoholism. The treatment director further recommended a three-phase treatment program spanning a two-year period. Included in the treatment plan, among other things, was that Applicant attend Alcoholics Anonymous (AA) meetings for the entire two-year treatment plan. GE 5.

On April 9, 2002, Applicant through her attorney filed a Petition for Deferred Prosecution, Findings of Fact and Order Granting Deferred Prosecution. On April 12, 2002, the Order for Deferred Prosecution was signed by the presiding judge, and a plea of guilty was entered on the DUI charge. The presiding judge imposed the following sentence: prosecution was deferred for five years, Applicant was sentenced to 24 months probation, fined \$125.00, and ordered to attend a Victims' Impact Panel. GE 4. Applicant chose deferred prosecution to minimize the long term consequences of a DUI conviction.

Applicant admits that she still consumes alcohol ". . . on occasion, but confirm that I have not consumed alcohol and

driven an automobile since this accident (referring to her accident and arrest for DUI on December 14, 2001) and intend to keep it that way." Response to SOR.

Applicant disagrees with the treatment director's diagnosis that she was alcohol dependent. She stated she began consuming alcohol at the age of 14 or 15 and continued to drink alcohol on a regular basis until she was arrested for DUI. She stated she typically consumed alcoholic beverages two to three times monthly and consumed alcohol in social settings at dance clubs on Friday or Saturday night with friends. At most, she drank approximately six beers over the course of the evening and the alcohol typically made her feel "social and friendly." She denied ever blacking out or consuming alcohol during work hours. She stated, "I do not have a problem." GE 2.

She admits that she continues to consume alcohol since her December 2001 DUI arrest and since she's been attending AA meetings. She describes her alcohol consumption as once quarterly, during Thanksgiving, Christmas, and other special events. She further stated she consumes approximately two glasses of wine at these events and often feels a "buzz" after these two glasses of wine. She stated, "I intend to continue my consumption of alcohol in social settings however, I will never drive intoxicated again." GE 2.

Although Applicant disagreed with her diagnosis as being alcohol dependent, she has not sought a second opinion to refute or rebut that diagnosis. She testified at hearing she "wouldn't mind" seeking a second opinion. Tr. 34. She expressed general dissatisfaction with the treatment center where she was diagnosed as alcohol dependent. Tr. 34-38. Applicant further testified while attending AA meetings during her two-year treatment program following her DUI, she used the words, "I'm an alcoholic," but did not believe she was one. She testified she did drink while attending AA meetings and further testified her program monitors did not know she was drinking. Tr. 39. Applicant does not believe there are any prohibitions against her drinking at present. Tr. 39. She testified describing her present drinking habits, "If I drink, I'll drink on a Saturday. And it's usually poker night, and it's probably two to three times a month. And I can't recall the last time I have been drunk. It's not a need for me." Tr. 41.

Although Applicant did not submit any character evidence or work performance evaluations, she testified in addition to pursuing her bachelor's degree, she was being promoted to the next level in November 2005. Tr. 31.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to

an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

### **Guideline G - Alcohol Consumption**

In the SOR, DOHA alleged Applicant consumed alcohol, sometimes to the point of intoxication, from approximately 1988 to 2004, that she had a DUI arrest in December 2001, that she was subsequently diagnosed as alcohol dependent and received treatment, and she consumed alcohol notwithstanding her treatment for alcohol dependence (¶¶ 1.a. through 1.d). *The Concern:* 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. Directive ¶ E2.A7.1.1.

The government established its case under Guideline G either by Applicant's admissions or evidence submitted to ¶¶ 1.a. through 1.d. These allegations give rise to Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use*); and AC 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 alcohol treatment program*).

After Applicant's DUI arrest in December 2001, she was accepted into a deferred prosecution program, which resulted in her being evaluated at a recognized alcohol treatment program. The treatment director of that program diagnosed her as an alcoholic and alcohol dependent. Applicant disagreed with this diagnosis, however, she completed the prescribed treatment program to comply with deferred prosecution requirements. Applicant disagreed with the program to the point of continuing to consume alcohol notwithstanding her treatment for alcohol dependence. Applicant has not submitted any evidence, other than her assertions that she does not have a drinking problem, to rebut the diagnosis submitted by the government. Absent competent evidence rebutting what the government has submitted, I am unable to accept Applicant's assertions. As such, she has not met her burden of rebuttal.

I have reviewed the Alcohol Consumption Mitigating Conditions (AC MC) and find none apply. In particular, I am unable to apply 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 or a 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 licensed clinical social worker who is a staff member of a recognized alcohol treatment program.*)

In this case, Applicant has not only continued to consume alcohol, she continued to consume alcohol while in a

treatment program. Based on available evidence, I am unable to assess whether Applicant is in some form of denial. The un rebutted evidence provided by the government suggests her alcohol consumption is not under control. I find against Applicant on this concern.

In fairness to Applicant, this decision should not be construed as a determination that she cannot or will not attain the true state of reform and rehabilitation necessary to justify the award of a DoD security clearance. To the contrary, her mitigating evidence suggests a sound potential for positive reform and outstanding accomplishments in the defense industry. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness.

Based on the totality of the circumstances, I find against Applicant on SOR ¶ 1., ¶¶ 1.a. through 1.d.

### **FORMAL FINDINGS**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1: Guideline G: AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant, however, excepting the words "Bellevue, Washington," and substituting the words,

"Kent, Washington."

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

## **DECISION**

In light of all of 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. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Pursuant to 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.