

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant was convicted of driving while under the influence of liquor (DUI) in 2001, and several other relatively minor alcohol-related offenses in 1996, 1999 and 2001. Although he listed the DUI and one of the other 2001 offenses in a security clearance application he submitted in August 2003, he failed to list the other offenses. Applicant has successfully mitigated the alcohol consumption and personal conduct security concerns that existed in this case. Clearance is granted.

CASENO: 04-05521.h1

DATE: 02/09/2006

DATE: February 9, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05521

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Candace Le'I, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of driving while under the influence of liquor (DUI) in 2001, and several other relatively minor alcohol-related offenses in 1996, 1999 and 2001. Although he listed the DUI and one of the other 2001 offenses in a security clearance application he submitted in August 2003, he failed to list the other offenses. Applicant has successfully mitigated the alcohol consumption and personal conduct security concerns that existed in this case. Clearance is granted.

STATEMENT OF THE CASE

On April 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. Applicant submitted an answer to the SOR that was notarized on June 16, 2005, denied all SOR allegations except those described in subparagraphs 1.e., 1.f., and 1.h., and requested a hearing.

The case was assigned to me on August 15, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for November 1, 2005. The hearing was conducted as scheduled. The government submitted twelve documentary exhibits that were marked as Government Exhibits (GE) 1-12, and admitted into the record without objection. Applicant testified, called five witnesses to testify on his behalf, and submitted 11 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-11, and admitted into the record without objection. The record was held

open to allow Applicant the opportunity to submit additional evidence in support of his case. Four affidavits were timely received, collectively marked as AE 12, and admitted into the record without objection. The transcript was received on November 16, 2005.

PROCEDURAL MATTERS

Department Counsel's motion to amend SOR subparagraphs 1.c. and 1.d., made following the presentation of all evidence, by striking the word *Arizona* from each paragraph, and substituting therefore the word *Arkansas* was granted without objection.

FINDINGS OF FACT

Applicant's admissions to the three 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 51 years old and has been employed as an aircraft fuel system mechanic by a defense contractor since June 2003. He was previously employed as an airport security screener from January 2002 until January 2003, as a truck driver from August 1994 until July 2001, and as a commercial door installer from November 1993 until August 1994. He experienced periods of unemployment from January 2003 until June 2003, and July 2001 until January 2002. Applicant served on active duty in the United States Air Force as an aircraft fuel mechanic from February 1974 until November 1993, when he was honorably retired as a technical sergeant (paygrade E-6).

Applicant was married in January 1975, and that marriage ended in divorce in June 1996. He has been married to his current wife since July 1996. Applicant has two adult daughters and one adult stepson.

In April 1973, Applicant, who was then 19 years old, was a passenger in a car that was stopped by police. A search of the car disclosed a packet containing marijuana seeds in the glove compartment. Applicant was taken to a police station, questioned by police, and released. Although FBI arrest records (GE 3 and GE 12) indicate he was "arrested or received" by a police department for the offenses of "susp poss cont sub" and "unlawful poss of intox by minor 4105" no further action was taken by prosecuting authorities, and Applicant did not consider himself to have been arrested.

Applicant was charged with public intoxication in September 1996, and again, in the same town, in February 1999. Applicant was employed as an over-the-road truck driver at the time of both arrests, and he described the town where he was arrested as a place where drivers would regularly stop

to spend the night and obtain for maintenance on their trucks.

The first public intoxication arrest occurred after Applicant became involved in a disagreement over the telephone with a dispatcher and the dispatcher's supervisor that they interpreted as him making threats. The police were contacted, and they arrested Applicant outside a bar located in the motel in which he had been drinking. He was fined \$150.00, including court costs (the exact amount of the bail he was required to post in order to be released from custody), although he never actually appeared in court. The second public intoxication arrest occurred after Applicant was refused admission to a retail store because he had been drinking. He was fined \$175.00, including court costs (again the exact amount of the bail he was required to post in order to be released from custody), although he again never actually appeared in court.

Applicant was arrested on July 31, 2001, and charged with Driving Under the Influence of Liquor (DUI), DUI with a BAC of 10/100 of 1 PCT or more, DUI-Commercial with a BAC of 04/100 of 1 PCT or more, and Extreme DUI-BAC 15/100 of 1 PCT or more. He was convicted of the DUI and sentenced to 12 months probation, 180 days in jail (all but two days suspended), fined \$443.00 plus court costs, and ordered to complete an alcohol evaluation and treatment program. The remaining charges were dismissed. Applicant attended a MADD Victim Impact Panel on February 12, 2002, and successfully completed a 36-hour Level One Alcohol Education and Group on May 24, 2002.

Applicant lost his job as a commercial truck driver as a result of his DUI arrest and was forced to reside with his mother-in-law while looking for a new job. He got in an argument with his mother-in-law in September 2001, left the apartment after having consumed alcohol, and was arrested when a security guard, apparently for the building in which they were residing, called the police. He was arrested, charged with drinking in public, and sentenced to time served. He got into another argument with his mother-in-law after having consumed some alcohol in October 2001, and she called the police. This time he was arrested, charged with disorderly conduct and disturbing the peace-domestic violence, and ordered to obtain domestic violence counseling. He completed the counseling and the charges were dismissed. There is no evidence that he was intoxicated preceding either of these arrests.

Applicant has significantly modified his drinking habits since the 2001 DUI arrest. He seldom frequents bars, and only consumes a couple of beers once or twice a week in situations such as when he is at home and watching football on television. He does not drive after drinking, and when he is out of the house and consumes alcohol his wife acts as a designated driver.

Applicant's many witnesses and letters of recommendation from co-workers and supervisors establish that he is a very good aircraft fuel mechanic and considered by his employer to be a valuable asset on the job. He is never late for work, willingly puts in the needed overtime to complete assignments, and has never exhibited any indication at work that he has an alcohol problem. He has earned a reputation for being honest, trustworthy, reliable, responsible, and possessed of impeccable integrity. He possessed a security clearance for virtually his entire military career and while employed as an airport security screener, and there have never been any allegations made that he mishandled classified information.

Upon being hired by his current employer, Applicant was given a Questionnaire for National Security Positions (SF 86) which he hand filled out and executed on June 12, 2003. (AE 10) In that form, he disclosed his 2001 DUI arrest (Q. 23), that he had been fired from his job as a truck driver because of that arrest (Q. 22), his alcohol treatment as a result of the DUI arrest (Q. 25), and his domestic violence arrest (Q. 29). He also disclosed two delinquent debts dating back to 2001 (Q. 28), and in the continuation space indicated there was an old bill from 1992 that he was disputing.

Although he is not computer literate, Applicant was required to transfer the requested information into a computer to produce an EPSQ version of the SF 86. (GE 1) In that version of the SF 86 which Applicant executed on August 6, 2003, he disclosed his 2001 DUI arrest (Q. 24), his domestic violence arrest in 2001, incorrectly listed as having occurred in 2002, (Q. 26), and one of the delinquent debts from 2001 (Q.38).

Applicant did not list the arrest and release from custody for "poss intox by minor 4105" that occurred in 1973, the arrests for public intoxication that occurred in 1996 and 1999, or the drinking in public arrest that occurred in 2001 in either form. His credible effort to explain the omissions was that they must have been the result of him either not having remembered or thought about them when he was filling out the SF 86s, or else believing he was not required to disclose those arrests that had occurred more than seven years prior to the submission of the SF 86s.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present

substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high-risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was convicted of DUI and drinking in public in 2001, and minor public intoxication offenses in 1996 and 1999. Although he consumed alcohol prior to being arrested for disorderly conduct and disturbing the peace-domestic violence in 2001, there is no evidence that those charges were as a result of his drinking. DC 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* applies.

The public intoxication offenses occurred almost two and one-half years apart, and the DUI almost two and one-half years after those. The nature and location of the public intoxication offenses strongly indicate they were a product of Applicant's profession as an over-the-road truck driver and the layovers he had in that particular town. The drinking in public charge arose from the stressful situation Applicant found himself in after being fired as a result of the DUI arrest.

Although Applicant still consumes alcohol to moderation, the record does not indicate he has an alcohol problem that requires him to remain abstinent, and the pattern of drinking he disclosed is consistent with what can be described as social drinking. Applicant's many recommendations from his co-workers and supervisors strongly support a finding that there is no continuing drinking problem. His work performance has been perceived as excellent, and he displays punctuality and a willingness to work long hours to get a job done.

Considering all the evidence, Mitigating Conditions (MC) 1: *The alcohol-related incidents do not indicate a pattern*; MC 2: *The problem occurred a number of years ago and there is no indication of a recent problem*; and MC 3: *Positive changes in behavior supportive of sobriety* apply. Guideline G is decided for Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant listed many negative aspects of his background, including criminal convictions, alcohol treatment, being fired from a job, and financial delinquencies in the SF 86s he submitted. The only negatives he failed to list were comparatively minor offenses. All but one of those offenses occurred a number of years prior to the submissions of the SF 86s. His explanation for the omissions is they were either forgotten or oversights and due to his believe that he was only required to list offenses that had occurred in the preceding seven years. Considering his disclosure of the recent convictions and the much more serious negative aspects of his background, there is little motivation for Applicant to have deliberately omitted the earlier arrests and/or convictions.

Having viewed Applicant's appearance, demeanor, and manner of testifying, and considering the substance of his testimony, I find his explanations credible. Further, Applicant does not present himself as a sophisticated or detail oriented individual in matters such as filling out an SF 86. I find Applicant's failure to disclose the several earlier offenses was not a deliberate omission. No disqualifying condition applies, and Guideline E is decided for Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: For Applicant

Subparagraphs a-h: For Applicant

SOR ¶ 1-Guideline E: For Applicant

Subparagraph a: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.