

KEYWORD: Alcohol

DIGEST: Applicant has a record of alcohol-related arrests and convictions. Although he has moderated his alcohol consumption to some extent, he denies having a drinking problem and continues to drink to the point of intoxication two or three times a year. The security concern based on alcohol consumption is not mitigated. Clearance is denied.

CASENO: 04-05673.h1

DATE: 11/23/2005

DATE: November 23, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05673

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Scott R. Casto, Personal Representative

SYNOPSIS

Applicant has a record of alcohol-related arrests and convictions. Although he has moderated his alcohol consumption to some extent, he denies having a drinking problem and continues to drink to the point of intoxication two or three times a year. The security concern based on alcohol consumption is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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 (Directive). The SOR alleges security concerns under Guideline G (Alcohol Consumption).

Applicant answered the SOR in writing on May 18, 2005. He admitted the allegations, offered explanations, and requested a hearing. The case was assigned to me on August 15, 2005 and heard as scheduled on October 6, 2005. DOHA received the transcript (Tr.) on October 17, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 25-year-old systems engineer for a defense contractor. He has worked for his current employer since his graduation from college in August 2002. He does not have a clearance. He previously held an interim clearance while a summer intern for a government agency in 1999. [\(1\)](#)

Applicant is the oldest of four children. [\(2\)](#) He began consuming alcohol in high school when he was 15 years old. At that time, he was consuming five to six beers once a week at parties. While in college, he consumed seven to eight beers twice a week with friends. [\(3\)](#)

In May 1999, Applicant was arrested for driving while under the age of 21 with a blood alcohol concentration of more than .02%. He was convicted of reckless driving, fined \$500, and required to complete an alcohol safety action program. [\(4\)](#) This incident occurred after Applicant had been drinking beer while fishing, lost control of his car, and spun off the road. He called the police, who administered a breathalyzer and determined he had been consuming alcohol. [\(5\)](#)

In October 1999, Applicant was arrested for underage possession of alcohol, use of a false driver's license used to obtain alcohol, and intoxication. The charges were dismissed after he completed a youth offender program. [\(6\)](#) Applicant testified he made the false driver's license on his computer and used it to purchase alcohol. He became intoxicated, was thrown out of a bar, and the police were called to arrest him. Applicant remembers very little about this incident. [\(7\)](#)

In November 2001, Applicant was arrested for public intoxication after a verbal argument with a tow truck driver. He pleaded guilty and was fined \$25. [\(8\)](#)

In December 2001, he was arrested for driving under the influence. He pleaded guilty and was sentenced to 60 days in jail (suspended), fined \$800 with \$400 suspended, and his driver's license was suspended for 12 months. [\(9\)](#) After this incident, Applicant reduced his customary consumption to about three or four beers once a week, usually consumed on Fridays after work. [\(10\)](#)

In June 2002, he was arrested for being drunk in public. On this occasion, Applicant had been drinking with a friend. As Applicant was riding home with his friend, he noticed a broken water main near his friend's house. He alerted the

residents and called the police. A police officer asked Applicant to move his truck, which was parked near the broken water main. Applicant declined, telling the officer he did not want to drive his vehicle because he had been drinking. The officer then arrested him for being drunk in public. Applicant pleaded not guilty and produced a witness who testified six or seven hours had elapsed since Applicant's last drink when he was arrested. Applicant was found not guilty. [\(11\)](#)

Applicant attended two Alcoholics Anonymous meetings in early 2002. He then decided he had already taken the right steps to control his drinking and did not attend any further meetings. [\(12\)](#)

Applicant testified he still drinks beer about once a week. He estimated he becomes intoxicated two or three times a year. [\(13\)](#) He starts to feel intoxicated at about four beers and at six beers he starts to "zone out." [\(14\)](#) On occasion, he has been out of control after drinking, "not so much physically violent, but yelling, screaming, things that [he] normally wouldn't do." [\(15\)](#)

Applicant's father is a senior security officer for a U.S. government agency. He holds a clearance and has access to sensitive compartmented information. At the hearing, he acknowledged his son's bad judgment in college. He testified Applicant has been gainfully employed in positions of increasing responsibility since his graduation from college and has matured into an honest, law-abiding citizen. [\(16\)](#)

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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole

person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions 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. "[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. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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. A disqualifying condition may arise from alcohol-related incidents away from work (DC 1), such as driving under the influence, or when there is habitual or binge consumption of alcohol to the point of impaired judgment DC 5). Directive ¶¶ E2.A7.1.2.1., E2.A7.1.2.5.

Applicant's arrest for being drunk in public in June 2002 appears to have been unjustified, as reflected by his acquittal. (17) However, his remaining record of alcohol-related arrests is sufficient to establish DC 1. His record also reflects instances of impaired judgment, and his testimony at the hearing establishes his tendency toward out-of-control behavior while intoxicated. Thus, I conclude DC 5 also is established.

A mitigating condition (MC 2) may be established when "[t]he problem occurred a number of years ago and there is no indication of a recent problem." Directive ¶ E2.A7.1.3.2. Applicant's last conviction of alcohol-related misconduct was almost four years ago. His last arrest was more than three years ago. All his arrests occurred before his graduation from college in August 2002. However, at the hearing he admitted he still drinks to excess two or three times a year. Although he may have learned to avoid being arrested, his drinking habits remain a problem. I conclude MC 2 is not established.

MC 3 applies when there have been "[p]ositive changes in behavior supportive of sobriety." Because Applicant continues to drink to the point of intoxication two or three times a year, I conclude MC 3 is not established.

At the hearing, Applicants impressed me as bright, articulate, well-mannered, and sincere. There is no doubt he is maturing, but he has not yet changed his conduct to the point where he no longer drinks to excess and risks out-of-control behavior. I conclude Applicant has not mitigated the security concerns based on alcohol consumption.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

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

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Tr. 57.
2. Tr. 31.
3. Government Exhibit (GX) 2, p. 5.
4. GX 3.
5. Tr. 42-43.
6. GX 4; GX 5..
7. Tr.45-46.
8. GX 6.
9. GX 7.
10. Tr.39.
11. GX 8; Tr. 50-52.
12. Tr. 52-53.
13. Tr. 54.

14. Tr. 57-58.

15. Tr. 40.

16. Tr. 25-26.

17. Under Guideline J (Criminal Conduct), acquittal does not negate a disqualifying condition, but it is a mitigating condition. Directive ¶ E2.A10.1.3.5.