

KEYWORD: Alcohol

DIGEST: Applicant admitted to drinking alcohol to the point of intoxication from 1986 to January 2004. He was arrested for and convicted of driving while under the influence of alcohol five times during this same period. He admits he was arrested for and convicted of being drunk in public. Applicant last used alcohol in January 2004. He was evaluated by an alcohol use counselor who found Applicant was an individual with alcohol abuse/dependency issues who indicates numerous alcohol dependency characteristics in remission. The counselor stated Applicant does not have a healthy support network. He has not presented sufficient positive indicators of future sobriety. He has not mitigated security concerns for alcohol consumption. Clearance is denied.

CASENO: 04-06000.h1

DATE: 01/26/2006

DATE: January 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06000

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

Stephanie Hess, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant admitted to drinking alcohol to the point of intoxication from 1986 to January 2004. He was arrested for and convicted of driving while under the influence of alcohol five times during this same period. He admits he was arrested for and convicted of being drunk in public. Applicant last used alcohol in January 2004. He was evaluated by an alcohol use counselor who found Applicant was an individual with alcohol abuse/dependency issues who indicates numerous alcohol dependency characteristics in remission. The counselor stated Applicant does not have a healthy support network. He has not presented sufficient positive indicators of future sobriety. He has not mitigated security concerns for alcohol consumption. Clearance is denied.

## **STATEMENT OF THE CASE**

On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on March 31, 2005. The SOR alleges security concerns under Guideline G (Alcohol Consumption) of the Directive.

Applicant answered the SOR in writing on April 16, 2005, admitting all of the allegations under Guideline G, and requested a hearing before an administrative judge. The request was received by DOHA on April 20, 2005. Department Counsel was prepared to proceed with the case on September 28, 2005, and the case was assigned to me on September 30, 2005. A notice of hearing was issued on October 25, 2005, and the hearing convened on November 17, 2005. Eight government exhibits, one Applicant exhibit, the testimony of two Applicant witnesses, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documents. Applicant timely submitted two additional documents received without objection by Department Counsel. The transcript (Tr.) was received on December 8, 2005.

## FINDINGS OF FACT

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

Applicant is 36 years old and worked as a communications technician for a defense contractor for six years. He submitted a security clearance application<sup>(1)</sup>, but when his clearance was denied, the defense contractor released him from employment. He has worked at other positions while awaiting final action on his security clearance. If his clearance is granted, he will return to his employment with the defense contractor.<sup>(2)</sup>

Applicant started drinking alcohol when he was 16 or 18 years old and in high school. The only alcohol he drank then and now is beer. When he started drinking alcohol, he would drink on week-ends a few times a month, and consume 6 or 8 beers to the point of intoxication.<sup>(3)</sup> He was arrested for and convicted of driving under the influence of alcohol in April 1988 when he was 19 years old. He was ordered to attend and successfully completed a 12 week outpatient alcohol and driving treatment program. He stopped drinking for approximately 6 months.<sup>(4)</sup>

Applicant was arrested and convicted of driving under the influence of alcohol in the fall of 1990, and again attended and successfully completed a 12 week outpatient alcohol and driving treatment program. He stopped drinking for approximately 3 months.<sup>(5)</sup> Applicant was again arrested for and convicted in 1992 of driving under the influence of alcohol. He was 23 at the time and again attended and successfully completed a 12 week outpatient alcohol and driving treatment program. His blood alcohol was .13, but the charges were dropped and the case dismissed.<sup>(6)</sup> He did not stop drinking at the time and his then employer terminated his employment. At the time, he was drinking six to 12 beers at least one week-end a month to the point of intoxication.<sup>(7)</sup>

Applicant was again arrested for and convicted of driving under the influence of alcohol in November 1994 and attended and successfully completed a 12 week outpatient alcohol and driving treatment program. He stopped drinking for approximately 6 months.<sup>(8)</sup> In August 1999, he was a passenger in a car stopped because the driver was intoxicated. Applicant was also intoxicated and was arrested for and convicted of being drunk in public. He had 6 beers that evening.<sup>(9)</sup>

Applicant was arrested for and convicted of driving under the influence of alcohol in August 2001.<sup>(10)</sup> Applicant

successfully completed the 12 week outpatient alcohol and driving treatment program.<sup>(11)</sup> After completing this program, Applicant did not drink until New Years Eve of 2003/2004 when he had six beers to the point of intoxication. He also drank six beers to the point of intoxication while watching the Super Bowl in January 2004.<sup>(12)</sup> Applicant attended a few Alcohol Anonymous meeting in 2004 but has not attended any meetings since then. He has not participated in any counseling since 2004.<sup>(13)</sup>

Applicant presently lives in a house with his parents. A cousin also has a room in the house. His father testified that he sees his son daily and has not seen him drink in over two years.<sup>(14)</sup> His cousin also testified that he sees Applicant multiple times during the week and socializes with him outside the house. He has not seen him drink in over two years.<sup>(15)</sup>

Applicant presented an extract of his State driving record showing he has not had a motor vehicle violation since 2001.<sup>(16)</sup> Applicant also obtained an additional substance abuse evaluation from a substance abuse counseling and treatment center. The licensed substance abuse counselor opined:

(Applicant) reported that he has been abstinent from alcohol since early 2004. However, he did identify numerous characteristics of alcohol dependency in remission. (Applicant) did report he had received four (4) alcohol related driving offenses in the past. In lieu of these prior charges, he did successfully complete an Outpatient Substance Abuse Treatment Program as well as attended Alcoholics Anonymous Meetings while involved in the legal component of his prior charges. (Applicant) continues to express a strong desire to maintain lifelong abstinence from alcohol and his prognosis is favorable. However, his current lack of involvement in self help is of concern. With continuation of an alcohol free lifestyle, involvement in self help is formidable for this process to be effective. Although (Applicant) did state that he is comfortable with his abstinence at this time, a healthy support network only strengthens the success of recovery. In conclusion, no formal recommendations for participation in our outpatient Substance Abuse Treatment Program are being made at this time.<sup>(17)</sup>

## **POLICIES**

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."<sup>(18)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(19)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a 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.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(20)</sup> 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 of recurrence.<sup>(21)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(22)</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(23)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(24)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(25)</sup> "[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."<sup>(26)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(27)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline G - 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline G. Applicant's numerous driving while intoxicated arrests and convictions, his conviction for drunk in public, and his attendance and completion of five alcohol and driving treatment programs supports application of Alcohol Consumption Disqualifying Conditions E2.A7.1.2.1 (*Alcohol-related incidents away from work, such as driving while under the influence . . .*), and E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*). Driving while under the influence of alcohol and drunk in public are alcohol related-incidents away from work. His admitted drinking six to eight beers on week-ends for a number of week-ends each month to the point of intoxication is habitual or binge drinking. Binge drinking is a pattern of drinking alcohol that brings the blood alcohol concentration (BAC) to .08 or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), in about 2 hours.<sup>(28)</sup> Since his consumption of alcohol was consistent and frequent it is also considered habitual. Applicant has not presented any information that his consumption of alcohol did not lead to impaired judgment. In fact, his repeated arrests for driving under the influence of alcohol shows impaired judgment. I conclude the above disqualifying conditions have been established.

The issue for this case is whether Applicant's claim of not consuming alcohol in over two years meets his burden to present sufficient information to mitigate the security concerns arising from his alcohol consumption. I have considered Alcohol Consumption Mitigating Conditions E2.A7.1.3.1 (*The alcohol-related incidents do not indict a pattern*); E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*); and E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). Applicant's alcohol-related arrests indicate a pattern since alcohol was involved in each of them. Applicant's involvement with drinking and driving started over 17 years ago and the latest was 4 years ago. His latest admitted use of alcohol to the point of intoxication was twice in January 2004. After each of his driving under the influence arrests, he completed an alcohol treatment program but started drinking again within months. His last drinking and driving incident was in August 2001, but this time he did not drink again until almost 30 months later in January 2004. There has been a pattern of alcohol abuse to the point of intoxication, completion of a treatment program, short periods of abstinence, and then back to the abuse of alcohol. The time between treatment and further abuse of alcohol may have lengthened, but there is a pattern of a return to abusing alcohol.

Applicant has shown some recent positive changes supportive of sobriety. He and his family state he has not drunk

alcohol for over 2 years. But, Applicant admits he is not now involved in any alcohol treatment or prevention program. Applicant presented a recent evaluation from an alcohol treatment professional concerning his prognosis for alcohol use. The evaluation shows some good indications of sobriety with a favorable prognosis. It also indicates Applicant is a person suffering from alcohol abuse/dependency issues, and has alcohol dependency in remission. The alcohol counselor has a concern because of Applicant's current lack of a support network to assist him in his self-help program to abstain from alcohol. A support network strengthens the success of continued sobriety. The report is not a fully positive indicator of future sobriety. While Applicant has presented information that his alcohol problem is in remission, he has not met his heavy burden to show that there is no security concerns from a potential for future alcohol abuse. I conclude Applicant has not presented sufficient information to meet his burden to mitigate the security concerns for alcohol consumption.

I carefully considered all of the circumstances in light of the "whole person" concept. I considered Applicant's supervisor's statement concerning Applicant's work performance and his evaluation of Applicant's character. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G 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.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

## **DECISION**

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated Jan. 8, 2003).
2. Tr. 19-20.
3. Tr. 20-21.
4. Tr. 21; Government Exhibit 2 (Applicant's statement, dated Feb. 11, 2004) at 5.
5. Tr. 21-22; Government Exhibit 2 (Applicant's statement, dated Feb. 11, 2004) at 4.
6. Government Exhibit 2 (Applicant's statement, dated Feb. 11, 2004) at 4.
7. Tr. 22-23.
8. Tr. 24.
9. Tr. 24; Government Exhibit 6 ( Warrant of Arrest, dated Aug 1, 1999).
10. Tr. 25; Government Exhibit 7 (Warrant of Arrested and other court documents, dated Aug 5, 2001).
11. Government Exhibit 8 (ADAPT Counseling evaluation and discharge summary, dated Nov 11, 2002).
12. TR. 27-28; 30-31.
13. Tr. 28.



14. Tr. 38-44.
15. Tr. 50-51.
16. Applicant Additional Exhibit B (Motor Vehicle Record, dated Dec. 14, 2005).
17. Appellant Addition Exhibit A (Substance Abuse Counselor's Letter, dated Dec 12, 2005).
18. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
19. Directive ¶ E2.2.1.
20. *Id.*
21. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
22. *See* Exec. Or. 10865 § 7.
23. Directive ¶ E3.1.14.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
26. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
27. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
28. *See*, National Institute of Alcohol Abuse and Alcoholism National Advisory Council approval dated Feb. 5, 2004.