

KEYWORD: Alcohol

DIGEST: Applicant is 24 years old and works as a computer help desk technician for a federal contractor. Applicant has been drinking alcohol since he was 16. He consumes six beers every day and more on the weekends. In the past he would drink and drive three times a week. Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Clearance is denied.

CASENO: 04-06371.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. 04-06371

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant is 24 years old and works as a computer help desk technician for a federal contractor. Applicant has been drinking alcohol since he was 16. He consumes six beers every day and more on the weekends. In the past he would drink and drive three times a week. Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Clearance is denied.

**STATEMENT OF THE CASE**

On September 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence an administrative complaint, alleged security concerns under Guideline G (alcohol consumption).

In a sworn statement, dated October 3, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted SOR allegations in ¶¶ 1.a. and 1.b. and denied the allegation in ¶ 1.c. The case was assigned to me on November 22, 2005. A notice of hearing was issued on December 21, 2005, scheduling the hearing for January 10, 2006. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and three witnesses testified on his behalf. He submitted two exhibits that were marked as Applicant's Exhibits A-B. The exhibits were admitted without objection. Department Counsel moved to amend the SOR and delete the word "arrested" in ¶ 1.c. of the SOR and substitute the word "cited." Applicant concurred and the motion was granted. DOHA received the hearing transcript (Tr.) on January 18, 2006.

**FINDINGS OF FACT**

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

Applicant is a 24-year-old computer help desk technician for a federal contractor. He has been employed as a permanent employee since February 2005, and prior to that he worked part-time there. Applicant is not married.

Applicant started drinking alcohol while in high school at the age of 16. He drank alcohol regularly from the age of 16 through 19. By time he was 19 years old he was drinking approximately 12 beers every night of the week. Later, he started to cut back on his drinking.

Applicant was living at his parent's house until approximately May 2005, and they did not permit alcohol in the house, so Applicant did not consume as much beer due to this restriction. He estimates that, since he moved to his own apartment, he has now consumed six beers every night, and between 15 and 20 beers on the weekend, averaging around 10 beers a weekend day. Two or three days of the week, Applicant will consume alcohol with friends, but the other days he drinks alone.

While living with his parents, Applicant would go to bars to consume his alcohol. He would consume approximately six beers and then he would drive to his parent's house. <sup>(2)</sup> He estimates he did this three times a week for an undetermined amount of time. <sup>(3)</sup> Since moving to his own apartment he no longer has the need to drink and drive because he can drink in his own home. <sup>(4)</sup> Applicant knew he was over the legal level of alcohol in his body when he drove. <sup>(5)</sup> The last time he drove after drinking was in April 2005. <sup>(6)</sup> Applicant was aware he was breaking the law when he drove after he had consumed alcohol above the legal limit. <sup>(7)</sup> He was also aware of the danger he created for himself and every other person on the road by drinking and driving. <sup>(8)</sup>

Applicant estimates he gets intoxicated approximately four times a month. The six beers Applicant consumes every night he believes is not enough to make him intoxicated. All of Applicant's friends drink alcohol. Once or twice a month, Applicant will consume a mixed alcoholic beverage, but his drink of choice is beer. Applicant believes alcohol is addictive, but does not believe he is addicted. <sup>(9)</sup>

Applicant was cited on September 2, 2002, and charged with Theft of Services. He left a restaurant without paying his bill. He and a friend had been drinking earlier in the evening and forgot to pay their bill. Applicant was convicted and fined \$520.00. He was intoxicated at the time of the incident.

When being interviewed by the Defense Security Services in March 2004, Applicant stated "I intend to cut back on my use of alcohol to about once a week because I do not like the feeling of getting intoxicated and not remembering part of the evening, or having friends tell me about something I did the night before and not remembering." <sup>(10)</sup> In response to why he had not cut back, Applicant stated he had changed his mind and probably said that because he thought that is what the investigator wanted to hear. <sup>(11)</sup>

Applicant has used drugs in the past when he was consuming alcohol. He has not used illegal drugs in the past four years. <sup>(12)</sup>

Applicant claims he has insomnia and that is the reason he drinks alcohol because it helps him to relax and sleep. He has had insomnia since he was a child, but has never sought medical attention.

Applicant answered an internet questionnaire on the Alcoholic Anonymous' website that he believed was meant to show indicators of whether one taking the survey was an alcoholic. <sup>(13)</sup> He provided only his final score on the survey and not what the questions were or how he answered them. Several character witnesses testified that they have seen no indications that Applicant has a drinking problem or that he consumed alcohol before work. They were aware he drinks alcohol, but believe it has not affected his work. They also testified that he is conscientious about abiding by security regulations.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(14)</sup> The government has the burden of proving controverted facts.<sup>(15)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(16)</sup> 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.<sup>(17)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(18)</sup>

No one has a right to a security clearance<sup>(19)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(20)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(21)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an 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.

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

Guideline G-Alcohol Consumption-a security risk may exist 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.

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 below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G.

Based on all the evidence I considered Alcohol Consumption Disqualifying Condition (AC DC) 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*), and AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*) and conclude both apply. Applicant drinks six beers every single day and more on the weekend. He has been drinking at least this heavily since he was 16 years old, and more at other times. He drinks to intoxication four times a month. In the past, he would drink alcohol and drive approximately three times a week, knowing it was a violation of the law and dangerous to himself and others. These actions reflect poor judgment. Although Applicant claims he no longer drinks and drives, his admissions regarding his drinking habits, and his lack of concern regarding the consequences of his actions raise concerns about his judgment and reliability that increase his vulnerability to carelessness. The reason he no longer drinks and drives is not because it was illegal, but because he now has his own apartment and can drink there, whereas before he had to drive to places to drink. I am not convinced that, if circumstances were to change, because of Applicant's commitment to alcohol, he would not resort to his illegal and careless activities. He has used drugs while using alcohol, has left a restaurant without paying after consuming alcohol, and regularly drove after using alcohol. Applicant habitually drinks alcohol and as evidenced by his decisions, it is obvious it impaired his judgment.

I have considered all the mitigating conditions especially Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). I conclude none of the mitigating conditions apply. Applicant provided no evidence that he intends to alter his drinking habits in any way. In 2004, he told the Defense Security Service Investigator what he thought they wanted to hear, that he was going to cut back on his drinking, when in fact he had no intention of doing so. He admits he sometimes cannot remember things that happened when he was drunk. Despite knowing his drinking was a concern with regards to a security clearance, he did not make any changes in his behavior. To the contrary, Applicant continues to consume alcohol and there is no indication that Applicant correlates his alcohol consumption to poor decisions he has made. Applicant has merely been lucky he has not been arrested for driving under the influence or caused an accident where others were injured.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have also considered the whole person concept and conclude that Applicant's alcohol consumption led to impaired judgment and irresponsibility. I find Applicant failed to mitigate the security concerns regarding his alcohol consumption. Applicant's obvious lack of respect for the law is also a serious concern. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines G is decided against Applicant.

## **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

## **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Tr. 23-24.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*
7. Tr. 27.
8. *Id.*
9. Tr. 38.
10. GE 2 at 2-3.
11. Tr. 36.
12. Tr. 25.
13. AE B.
14. ISCR Case No. 96-0277 at p.2 (App. Bd. Jul. 11, 1997).
15. ISCR Case No. 97-0016 at p.3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
16. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
17. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
18. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
19. *Egan*, 484 U.S. at 531.
20. *Id.*
21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
22. Executive Order 10865 § 7.