

DATE: July 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-07357

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol abuse--punctuated by alcohol-related arrests in April 1995 and March 2000, and incidents of blacking out or passing out until July 2004--was not mitigated because Applicant demonstrated little insight into his alcohol abuse and provided no corroboration of his claimed changes in lifestyle. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 28 May 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption. [\(1\)](#) Applicant answered the SOR on 17 August 2005, and requested a hearing. DOHA assigned the case to me 26 January 2006 and I convened a hearing 1 March 2006. DOHA received the transcript 8 March 2006.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of SOR subparagraphs 1.b.-1.g., but denied subparagraphs 1.a. and 1.h. Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 47-year-old security maintenance engineer for a defense contractor--seeks to retain the access to classified information he appears to have held since approximately 1995. He previously held a clearance while in the military.

Applicant has a history of alcohol abuse from approximately 1985 to at least July 2004. During this time, he has two alcohol-related arrests and convictions, was counseled once at work for reporting to duty drunk, and experienced episodes of blacking out or passing out on many occasions.

Applicant was arrested in April 1995 for driving while intoxicated (DWI)(.12% blood alcohol content [B.A.C.]) and sentenced to probation before judgment. Among the conditions for his probation, he was to attend an alcohol education course and attend Alcoholic Anonymous (AA). He successfully completed his probation, but acknowledges that he got nothing out of AA and the education course because he was only there to satisfy the terms of his probation. Sometime

between 1999-2000, he reported to work drunk, and was counseled that he would lose his job if he did it again.

In March 2000, he was arrested for driving while under the influence of alcohol (DUIA)(.13% B.A.C.) while on his way to work one morning, and ultimately convicted and sentenced. As a condition of his probation, he was required to attend an alcohol safety action program (ASAP). He successfully completed the terms of his probation. However, he acknowledges he got nothing out of the ASAP because he was only there to satisfy the terms of his probation. He considers himself lucky to have been arrested because if he had actually gotten to work, he probably would have been fired.

After his March 2000 arrest, he did not drink and drive, but he did continue to drink, occasionally to excess. In his September 2002 sworn statement (G.E. 4) he described what he referred to as his decreased level of drinking: 18 beers, a liter of gin, and a liter of rum every 60 days or so. However, when he traveled overseas on business, which he did frequently, he often drank to the point of passing out or blacking out. His mother and sister had asked him to cut back on his drinking, and he thought he might have a problem with alcohol.

In August 2004, Applicant answered DOHA alcohol interrogatories (G.E. 2). He described his drinking pattern as 12 beers per week and five hard liquor drinks per month. He indicated that he drank to the point of intoxication about four times a year, the last time being in July 2004.

At hearing, Applicant stated he began drinking while still underage in 1977. His alcohol intake increased in 1985, when he entered the U.S. Air Force. After his DWI in April 1995, stopped drinking for a while before returning to alcohol. In 1996, he was drinking alone on occasion. After his March 2000 DUIA, he no longer drove after drinking, but did drink heavily while on his frequent business travel overseas, often while drinking alone in his hotel room. He estimates that between 2000 and July 2004 he drank to the point of blacking out or passing out 20-25 times.

Applicant states, without corroboration, that he has not consumed any alcohol since July 2004, because the DOHA interrogatories were kind of a nuisance and he was tired of dealing with questions about his alcohol consumption. He acknowledges that stopping was not part of any concerted effort to do something about his drinking. He has not been involved in any counseling, AA participation, or 12-step type programs that he took seriously. He now states that he has a problem with alcohol, but it took him awhile to recognize it.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a Guideline G case in support of disqualifying conditions 1, 2, and 5, ⁽³⁾ and Applicant failed to mitigate the security concerns. He has a long history of drinking to excess, with adverse consequences at work (counseling), while driving (two arrests), and while traveling (blackouts). His misconduct demonstrates a pattern of alcohol abuse which is recent. He did only the minimum to comply with the terms of his probations for his April 1995 and March 2000 arrests. While there is some evidence that Applicant has taken steps supportive of sobriety, and has not consumed alcohol since July 2004, those changes appear to be rooted in nothing more substantial than being tired of answering question about his drinking. The record evidence establishes his alcohol abuse and he had the burden of establishing extenuation, mitigation, or rehabilitation--a burden he did not meet. I cannot conclude that he is unlikely to return to abusive levels of drinking. Accordingly, I resolve Guideline G against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against 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 or continue a security clearance for Applicant. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

3. 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 abuse; E2.A7.1.2.2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition. . . ; E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;