

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant was arrested for five alcohol-related driving matters and a possession of marijuana charge from 1995 to 2003. Of the six incidents, only the last drunk driving case resulted in a conviction. Applicant completed an alcohol education program and has had no recurring alcohol problems since 2003. He has performed exemplary work for the same defense contractor for nearly 19 years following his discharge from the Navy in 1987. He has significantly moderated his prior drinking habits, genuinely inspired by other positive changes that have occurred in his personal life. Applicant successfully mitigated the security concerns raised by his alcohol consumption, personal and criminal conduct. Clearance is granted.

CASENO: 04-07714.h1

DATE: 02/15/2006

DATE: February 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07714

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested for five alcohol-related driving matters and a possession of marijuana charge from 1995 to 2003. Of the six incidents, only the last drunk driving case resulted in a conviction. Applicant completed an alcohol education program and has had no recurring alcohol problems since 2003. He has performed exemplary work for the same defense contractor for nearly 19 years following his discharge from the Navy in 1987. He has significantly moderated his prior drinking habits, genuinely inspired by other positive changes that have occurred in his personal life. Applicant successfully mitigated the security concerns raised by his alcohol consumption, personal and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On March 10, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline G - Alcohol Consumption, Guideline E - Personal Conduct, and Guideline J - Criminal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer to the SOR executed March 25, 2005, Applicant admitted the allegations of subparagraphs 1.a. - 1.g., and 3.a. of the SOR, denied the allegation of subparagraph 2.a., and requested a hearing before an administrative judge.

The case was assigned to me on July 21, 2005, and I conducted the hearing on November 9, 2005. The government submitted exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified and offered exhibit (AE) A, also admitted without objection. DOHA received the hearing transcript (Tr.) on December 1, 2005.

FINDINGS OF FACT

Applicant's admissions are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 46 years old and has been employed as an aircraft field service technician by the same contractor since April 1987. ⁽¹⁾ He is highly regarded by his supervisors and command personnel, and is considered reliable and dependable, an outstanding employee, and dedicated to the mission of his work. ⁽²⁾ He married in 1981 and has a 21-year-old son who is presently enrolled in college, and a 16-year-old son in high school. He was divorced in 1994 and has not remarried. He also has a seven-year-old son from another relationship who presently resides with him. The child's mother does not reside with them. ⁽³⁾

Applicant served in the United States Navy from March 1981 until March 1987. He was honorably discharged at paygrade E-5. ⁽⁴⁾ While on active duty he was assigned to a specialized flight squadron and provided intermediate level maintenance and automated testing services and assistance for the aircraft. ⁽⁵⁾ He separated from the Navy at his wife's insistence, and laments his decision to leave the Navy the worst decision he ever made. ⁽⁶⁾

Applicant has worked continuously for the same contractor since his discharge from active duty. Except for intermittent training he received at different locations, he has been assigned to the same base with essentially the same support mission with the contractor as he had in the Navy. He has held prior clearances while serving on active duty and with the contractor. ⁽⁷⁾

He admits he has consumed alcohol, at times in excess to the point of intoxication, from at least 1993 until January 2004, and acknowledges he began drinking beer when he was about 15 or 16 years old. ⁽⁸⁾ Applicant's beer drinking habits increased significantly in 1993 when he separated from his wife and his two children moved out of his home. ⁽⁹⁾

In late summer 1995, Applicant was charged with Driving Under the Influence of Alcohol (DUI), and was found not guilty of the offense following a jury trial. Applicant believed his arrest associated with the incident was expunged from his record as a part of the disposition of the case. ⁽¹⁰⁾

In November 1997, Applicant was arrested for possession of marijuana found in a coat belonging to a third party that was left in his vehicle earlier in the day. He served 100 hours of community service for the offense. Based on discussions he had with the police officer, his lawyer, and the court magistrate when the case was resolved, he believed the charge was expunged from his record when he completed the community service. [\(11\)](#)

After a motor vehicle incident in September 2000, Applicant refused to submit to a breathalyzer test and was charged with DUI. The charge was later reduced to Reckless Driving to which he pled guilty and paid a fine. [\(12\)](#)

In January 2001, Applicant was charged with Driving While Intoxicated (DWI) and refused to take a breathalyzer test when arrested for the offense. His driving privilege was suspended for 90 days as a result of his refusal, and he successfully completed a 16-hour alcohol substance abuse education program in order to be re-issued his license. No further treatment or counseling was recommended when he was released from the program in 2002. [\(13\)](#) The DWI charge was later dismissed.

Applicant was arrested in June 2003 for DWI. When he went to court in August 2003, he pled guilty to a lesser alcohol-related driving offense, and paid a fine of \$385.00 and lost his driver's license for 90 days. [\(14\)](#)

Applicant was charged and convicted of public drunkenness in December 2003. The charge was modified to a simple traffic citation and not considered alcohol-related when he appeared in court. He did not contest the lesser modified charge and paid a \$128.00 fine as a result of the incident. [\(15\)](#)

Applicant completed his Security Clearance Application (SF 86) on March 14, 2003. In his answer to Question 24. **Your Police Record - Alcohol/Drugs Offenses** *(Have you ever been charged with or convicted of any offenses(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record)*, Applicant failed to disclose he was arrested on November 11, 1997, and charged with possession of marijuana.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*,

sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (disqualifying conditions), together with those factors that are considered in granting an employee's request for access to classified information (mitigating conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. ⁽¹⁶⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. ⁽¹⁷⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish by substantial evidence conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. ⁽¹⁸⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence. ⁽¹⁹⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽²⁰⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline G - Alcohol Consumption is a security risk 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.

Guideline E - Personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline G.

Based on all the evidence, 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*) applies in this case.

Applicant admits conduct that constitutes alcohol-related incidents away from work. He was arrested four times for alcohol-related driving offenses over the nearly eight year period from the summer of 1995 to June 2003. His driver's license was suspended for 90 days on two occasions as a result of the matters that occurred in 2001 and 2003. He was also involved in a fifth incident in late 2003 involving public intoxication. The suspensions of his driving privilege heighten the multiple offender status and seriousness of his case. Applicant's conduct during the time period constituted a lack of respect and disregard for the serious responsibilities associated with his driving privilege, exacerbated by the fact that he continued to drink and drive in spite of having numerous encounters with the law.⁽²¹⁾ His extensive involvement with alcohol at the time raises serious concerns about his judgment and reliability. The government's evidence and Applicant's admissions constitute substantial evidence of disqualifying conditions under Guideline G.

I have also considered the Alcohol Consumption Mitigating Conditions (AC MC), and specifically AC MC 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*). I conclude both apply in this case.

Security concerns raised by alcohol consumption may be mitigated under the Directive if the conduct is not recent. Applicant was found not guilty of his initial drunk driving charge in 1995. His offense in 2000 was reduced to reckless driving which is not considered to be alcohol-related with respect to his driving record. The charge resulting from the 2001 incident was ultimately dismissed upon Applicant's successful completion of an alcohol education course. These three matters were completely resolved within a short time after each occurred, and none of them are reflected on his driving record as alcohol-related. Regardless of the status of the cases on his driving record, I find they are not recent in any event. While under some circumstances the conviction in 2003 for the alcohol driving offense and his public drunkenness citation might be considered recent, I find in this matter the incidents to be not recent. The finding imposed in the driving case was for a less serious offense than originally charged, and disposition of the case was not deferred for any reason. He successfully endured the 90-day suspension of his driver's license without incident, and he was not required to attend alcohol education classes, treatment, or counseling. The later matter that occurred in December 2003 was resolved by Applicant paying a modest fine on a traffic citation which was not considered alcohol-related. There have been no recurring alcohol or other incidents of any kind since 2003. Accordingly, under the circumstances of this case, I find all the arrests that occurred from 1995 through 2003 to be not recent, and this mitigating condition applies.

More importantly, Applicant has shown positive changes in his behavior indicating increased recognition for his personal responsibilities and better judgment, inspiring more reasonable and responsible levels of alcohol consumption. Applicant's seven-year-old son came to live with him two years ago when he started kindergarten. He has been raising him as a 'single dad' for the last two years and he has been meaningfully involved in the child's life since birth. The child's mother has been something less than responsible, and Applicant clearly recognized the child's significant needs to undertake this dynamic change in his life. ⁽²²⁾ I find credible his claim the responsibilities associated with raising this child have become his top priority. It is reflected in his behavior by successfully moderating his drinking habits to acceptable social levels to no longer be a detrimental influence in Applicant's daily life. ⁽²³⁾

Based on all the evidence, I have considered the Personal Conduct Disqualifying Conditions (PC DC), and, specifically, PC DC E2.A5.1.2.2. *(The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)*. I conclude none apply in this case.

Applicant certainly knew when he completed his SF 86 in March 2003 he had been charged with possession of marijuana in 1997. As often happens, particularly with first time drug offenders, he believed the 'record' of his case had been 'expunged' based upon comments made by others involved in the matter when the case went to court. He likely did not fully understand what the term actually meant. In his mind, expungement of the 'record' of the case meant all aspects of the case would not exist after he completed the community service he performed. ⁽²⁴⁾ This inference is supported by the fact the case does not appear on his FBI rap sheet, ⁽²⁵⁾ together with his description of the specific facts of the case questioning his actual culpability. ⁽²⁶⁾ While Question 24 of the questionnaire is clear and he should have disclosed the incident, I find his testimony credible that he did not fully comprehend the question correctly. ⁽²⁷⁾ *He admitted his mistake, and I do not believe his failure to disclose the case information was intended to influence the application process. He openly discussed the matter with the investigator when required. Applicant's testimony was reasonable and credible, and I find his omission regarding his marijuana arrest was not made deliberately. Accordingly, PC DC E2.A5.1.2.2. does not apply.*

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (Allegations or admissions of criminal conduct, regardless of whether the person was formally charged), applies in this case. Applicant was arrested and charged with four alcohol-related driving offenses from 1995 to 2003. He was also charged with possession of marijuana in 1997, and issued a public drunkenness citation in 2003. Although he was actually convicted of only the last drunk driving charge and the citation, the pattern of Applicant's conduct during the period raises potentially disqualifying conditions under Guideline J.

I have considered all the mitigating conditions and specifically Criminal Conduct Mitigating Condition (CC MC) E2.10.1.2.1. (The conduct was not recent), and CC MC E2.10.1.2.6. (There is clear evidence of successful rehabilitation), and conclude both apply. Applicant's first three driving offenses and the illegal drug possession charge occurred between 1995 and 2001. No convictions resulted from any of these incidents and all were resolved in Applicant's favor shortly after they happened. Applicant's last driving offense and the citation occurred in 2003, and could be considered recent. However, for the reasons set forth under Guideline G, I find the offenses not recent under Guideline J. Moreover, Applicant has demonstrated positive changes in his behavior inspired by other events in his personal life and has significantly reduced the likelihood of future recurring criminal events. Accordingly, I find Applicant has successfully mitigated the criminal conduct concerns raised by his conduct between 1995 and 2003.

I have further reviewed all the record evidence including Applicant's credibility and demeanor, and have also considered the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. Applicant is a mature individual who has successfully held the same important position with the same contractor for about 19 years after his discharge from the Navy. The same exemplary respect and dedication to the soldiers and sailors he supported while in the Navy has followed him in his civilian position. He has held long-time security clearances without infractions while both serving on active duty and as an employee of a defense contractor. He had an admirable record of service in the Navy and Applicant's loyalty to the United States is not in question. Although he encountered serious difficulties with respect to his alcohol consumption primarily from 1995 to 2003, Applicant successfully completed an alcohol education program and has never been recommended for further counseling or treatment. He has also shown a genuine commitment to change his life for meritorious reasons and has not had any recurring difficulties since 2003. I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has met the strict guidelines for issuance of a clearance, and he has successfully mitigated the security concerns raised by his use of alcohol, personal and criminal conduct. Accordingly, Guidelines G, E, and J are decided in favor of Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Alcohol Consumption (Guideline G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant Subparagraph 1 b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Paragraph 2. Personal Conduct (Guideline E) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Paragraph 3. Criminal Conduct (Guideline J) FOR THE APPLICANT

Subparagraph 3.a. For the 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.

David S. Bruce

Administrative Judge

1. *GE 6 (Applicant's Security Clearance Application (SF 86) dated March 25, 2003), at 1 and 3.*
2. *AE A (Applicant's employer performance documents), at 2.*
3. *Tr. at 15-16, and 18.*
4. *GE 6, supra note 1, at 6.*
5. *Tr. at 14.*
6. *Id. at 15.*
7. *Tr. at 17-18. See also GE 6, supra note 1, at 10, and AE A, supra note 2, at 1 and 9.*
8. *GE 2 (Applicant's sworn statement dated January 26, 2004), at 6.*
9. *Id.*
10. *Id. at 1. See also Tr. at 25.*
11. *Id. at 2. See also Tr. at 27.*
12. *Id. at 3.*
13. *Id. at 4. See also GE 4 (Alcohol and Drug Abuse Department memo dated February 2, 2004).*
14. *GE 2, supra note 8, at 5.*
15. *Id.*
16. *Directive, Enclosure 2, Para. E2.2.2.*
17. *Executive Order 10865 § 7.*
18. *ISCR Case No. 96-0277 (July 11, 1007) at p. 2.*
19. *Department of the Navy v. Egan, 484 U.S. 518, 531 (1988).*
20. *ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.*
21. *GE 2, supra note 8, at 6.*

22. *Tr. at 18, 37 and 42.*

23. *Id. at 37-39, 46-49, 57, and 64-65.*

24. *Tr. at 27.*

25. *GE 5 (FBI electronic Rap Sheet dated April 4, 2003, consisting of 2 pages).*

26. *Tr. at 28-29*

27. *Id. at 28.*