

KEYWORD: Alcohol

DIGEST: Applicant had two alcohol-related incidents away from work-one in 1998 and one in 2003. Since then, Applicant made positive changes supportive of sobriety. He has not had any alcohol-related incidents either at or away from work. He is married with two children, works full-time, and attends college full-time. He drinks only in moderation, and never before driving. Applicant mitigated the security concerns arising from his history of excessive alcohol consumption. Clearance is granted.

CASENO: 04-08778.h1

DATE: 03/07/2006

DATE: March 7, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08778

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two alcohol-related incidents away from work-one in 1998 and one in 2003. Since then, Applicant made positive changes supportive of sobriety. He has not had any alcohol-related incidents either at or away from work. He is married with two children, works full-time, and attends college full-time. He drinks only in moderation, and never before driving. Applicant mitigated the security concerns arising from his history of excessive alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On April 29, 2003, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On June 13, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline G, Alcohol Consumption.

Applicant answered the SOR in writing on July 11, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on October 6, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 9, 2005. The government introduced Exhibits 1 through 4. Applicant presented Exhibits A through H and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on

December 22, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.b and 1.c of the SOR, with explanations. Applicant's Answer to SOR, dated July 11, 2005. Those admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.a of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in August 1976. (Ex. 1 at 1.) He first began drinking alcoholic beverages when he was about 16 years old, consuming about two beers over a weekend at a party. (Ex. 2 at 1; Tr. at 20.)

Applicant enlisted in the U.S. Navy in July 1994. (Ex. 1 at 5). He was married in October 1994. (Ex. 1 at 4.) Applicant served as a gunner's mate and later as a police officer, and rose to the rank of petty officer second class (E-5). While in the Navy, his use of alcohol increased until he would drink four to five beers a night on a weekend or when visiting foreign ports. (Ex. 2 at 1; Tr. at 20.)

In August 1998, Applicant went out with friends to celebrate his birthday. (Ex. 2 at 2.) After consuming about four mixed drinks (Tr. at 21), he began driving home when he was pulled over by a local police officer. Applicant failed the field sobriety test, and a subsequent breath test revealed a blood-alcohol level of .16%. (Ex. 2 at 2.) He was charged with Driving Under the Influence of Alcohol (DUI) and released that night to his Navy supervisor. (*Id.*) Applicant pled guilty to a lesser offense of Reckless Driving and was sentenced to perform two days of community service, pay court costs of about \$800.00, and attend an alcohol education course. (Ex. 2 at 2; Tr. at 22.) The Navy did not take additional disciplinary action against Applicant. (Ex. 2 at 3.)

While on active duty, Applicant attended local colleges. In 2002, he received an associate's degree. (Ex. 1 at 2.)

Applicant received two good conduct medals while in the Navy. (Tr. at 18; Ex. A.) He decided to separate and was awarded an Honorable discharge from the U.S. Navy in March 2002. (Ex. 1 at 5; Tr. at 18.) In April 2002, he accepted a position as an engineering technician for a defense contractor. (Ex. 1 at 3.) In April 2003, Applicant submitted an application for a security clearance. (Ex. 1 at 1.) He properly reported his previous alcohol-related arrest.

In August 2003, Applicant and his wife spent a weekend at a popular resort to celebrate his birthday. Before going to a concert, Applicant consumed about eight alcoholic drinks-an unusually large amount for him-and became intoxicated. (Ex. 2 at 3.) At the concert, the crowd was boisterous and Applicant and his wife began to leave. On his way out, Applicant bumped into one of two local police officers, in uniform, standing by the exit. Applicant was agitated and yelled at the officer. He then rushed toward them and grabbed at them. The police officers forcibly subdued Applicant and took him to jail. (Ex. 3 at 2.) Applicant was later released on bond.

Authorities charged Applicant with Resisting an Officer with Violence, Battery on a Law Enforcement Officer, and Disorderly Conduct. (Ex. 4 at 1.) The state filed a *nolle prosequi* for the first and third charges. (Ex. 4 at 8.) In October 2003, Applicant pled guilty to Battery on a Law Enforcement Officer, but the court withheld adjudication of guilt. (Ex. 4 at 5; Tr. at 18.) The court ordered Applicant to pay a \$1,000.00 fine and court costs, to write a letter of apology to the victim, and not to return to the concert venue. (*Id.*) Applicant fulfilled the court's requirements. He was not required to attend alcohol counseling, and has not done so. (Tr. at 29.)

Applicant is a valuable employee of the defense contractor. (Ex. B.) He received a certificate of recognition for his work on a particular project. (Ex. C.) His first position as an engineering technician required extensive travel; his co-workers report that Applicant drinks responsibly and frequently serves as the designated driver for the safety of the group. (Exs. E, F, and G.) He now works as a test technician for the same company. (Tr. at 34.)

Applicant is enrolled full-time at a community college pursuing a bachelor's degree in information technology. (Tr. at 19.) Applicant and his wife have two children, both born after his last incident-a daughter who is 13 months old, and a son who is 2 months old. (Tr. at 19.) Their family activities focus on the children. Applicant drinks alcohol on occasion, but only in moderation. (Tr. at 24-25.)

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988)). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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.

(Directive, ¶ E2.A7.1.1.) Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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. (*Id.*)

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. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

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 a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "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." The evidence reveals two incidents-in August 1998 and August 2003-where Applicant committed alcohol-related offenses away from work. I conclude the evidence raises this potentially disqualifying condition.

The security concerns arising from excessive alcohol consumption can be mitigated. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." Even though both arose during birthday celebrations, Applicant's two incidents were dissimilar. One was a DUI offense after attending a party; the second occurred about five years later and involved disorderly/violent behavior at a concert. I conclude this potentially mitigating condition applies.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problems occurred a number of years ago and there is no indication of a recent problem." Applicant's first alcohol-related incident occurred in 1998-over seven years ago. The second incident happened in 2003. Applicant has had no further incidents since that time. I conclude this potentially mitigating condition is raised in this case.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following his last alcohol-related incident, Applicant gained increased appreciation of the dangers of excessive drinking. He and his wife have two children, greatly affecting his lifestyle. He now drinks alcohol only in moderation and does not drink before driving. I find this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating factors in light of the "whole person" concept. Applicant is a mature individual who has served the Department of Defense both as a sailor and as an employee for a defense contractor for many years. He consumed alcohol excessively, resulting in two incidents in 1998 and 2003. However, since then he drinks only in moderation. I conclude Applicant has mitigated the security concerns arising from his history of excessive alcohol consumption.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

In light of all of 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.

Michael J. Breslin

Administrative Judge