

KEYWORD: Alcohol

DIGEST: Applicant's periodic excessive consumption of alcohol resulted in four alcohol-related incidents within a five year period between 1998 and 2003. He was routinely abusing alcohol without realizing it, for his alcohol tests registered between .133% (in 1998) and .23% (in 2003). Since his last alcohol-related incident in 2003, and after completion of a second DUI program, Applicant reconsidered his options and focused on positive endeavors and eliminated his stressors, and at the same time, developed a diminished interest in alcohol. While he has not abstained from further alcohol consumption, he has reduced it to the point where he now drinks more responsibly. Applicant has successfully mitigated and overcome the government's case. Clearance is granted.

CASENO: 04-09648.h1

DATE: 05/16/2006

DATE: May 16, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09648

**DECISION OF CHIEF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

## **FOR GOVERNMENT**

Robert E. Coacher, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's periodic excessive consumption of alcohol resulted in four alcohol-related incidents within a five year period between 1998 and 2003. He was routinely abusing alcohol without realizing it, for his alcohol tests registered between .133% (in 1998) and .23% (in 2003). Since his last alcohol-related incident in 2003, and after completion of a second DUI program, Applicant reconsidered his options and focused on positive endeavors and eliminated his stressors, and at the same time, developed a diminished interest in alcohol. While he has not abstained from further alcohol consumption, he has reduced it to the point where he now drinks more responsibly. Applicant has successfully mitigated and overcome the government's case. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 22, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). [\(1\)](#) On June 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline G (alcohol consumption) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated June 29, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 23, 2006, and the case was assigned to me on March 23, 2006. A notice of hearing was issued on April 4, 2006, scheduling the hearing for April 28, 2006. It was held as scheduled. During the hearing, four Government exhibits, four Applicant exhibits, and Applicant's

testimony were received. The transcript (Tr.) was received on May 10, 2006.

### **FINDINGS OF FACT**

Applicant has admitted the factual allegations pertaining to alcohol consumption under Guideline G (subparagraphs 1.a. through 1.e.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor, and he is seeking to obtain a secret security clearance. He was previously granted an interim secret security clearance in January 2003.<sup>(2)</sup> He has been employed by the same government contractor since September 2002, initially on a temporary basis as a machinist, and subsequently permanently in January 2003.<sup>(3)</sup> He operates a computerized machining lathe.<sup>(4)</sup> His current and past supervisors support his application and characterize his work performance in positive terms. He is considered dependable and trustworthy, and pays attention to details.<sup>(5)</sup> Applicant was married in 1992,<sup>(6)</sup> but he and his wife are currently separated and close to divorcing.<sup>(7)</sup> They have two children together, born in 1998 and 2002, respectively.<sup>(8)</sup> He served on active duty in an enlisted status in the airborne infantry with the U.S. Army from May 1997 until he was honorably discharged in August 1999.<sup>(9)</sup>

Applicant was an alcohol abuser whose consumption of alcohol resulted in four incidents, including three arrests prosecuted in civilian courts, and one military incident, charged as a violation of the Uniform Code of Military Justice (UCMJ). He started consuming alcohol, primarily beer, when was 16 or 17 years old in about 1981, mainly for kicks with friends while camping out and fishing, about two times per month.<sup>(10)</sup> While the specific quantities of alcohol consumed have not been specified, Applicant drank enough alcohol to experience "a bit of a buzz," but no blackouts.<sup>(11)</sup> On two such occasions, he became sick.<sup>(12)</sup> During the period 1986-87 and in 1997, Applicant raced bicycles professionally and significantly reduced his alcohol consumption because the demands of training were not compatible with the consumption of alcohol.<sup>(13)</sup> During the off-seasons, generally from October to the following January, he might consume some beer with dinner about two times per month.<sup>(14)</sup> After he entered military service, he was generally in the field training for six months at a time, and alcohol was not available.<sup>(15)</sup> When he returned to his base, he consumed two to three beers at a time while shooting pool with his buddies.<sup>(16)</sup>

One night in January 1998, after returning to the barracks after two weeks in the field, Applicant and the rest of his platoon of seven or eight individuals consumed a beer or two in the barracks before heading across the street to a bar for some drinking, dancing, and some pool.<sup>(17)</sup> Over a five hour period of consuming beer, estimated as four or five beers, including the ones consumed in the barracks,<sup>(18)</sup> a fight erupted when Applicant was jumped by another person, "out of the blue."<sup>(19)</sup> The military police intervened and both combatants were taken to the police station where Applicant was

administered a breath test which registered a .133%.<sup>(20)</sup> Although he was charged with assault consummated with a battery, in violation of Article 128, UCMJ, the commander made no recommendation for discipline because it was determined that Applicant was not at fault.<sup>(21)</sup> He was given an oral reprimand.<sup>(22)</sup> There were no other alcohol-related incidents while Applicant was on active duty.<sup>(23)</sup>

Upon his discharge from active duty, Applicant's alcohol consumption increased to the point where he consumed two to six beers with friends on weekends or on days off, sometimes resulting in his becoming inebriated.<sup>(24)</sup> He did not experience any blackouts.<sup>(25)</sup>

In July 2000, after consuming four or five beers at a local bar with a friend, and while driving to his friend's residence after work, they stopped by the side of a secluded road for his friend to relieve himself.<sup>(26)</sup> The police approached them, smelled alcohol on their breath, and arrested and charged them with public intoxication.<sup>(27)</sup> Applicant did not contest the charge and forfeited his cash bond.<sup>(28)</sup>

In April 2001, after arguing with his wife, Applicant went to a friend's residence to watch a sports program on television. He consumed about three to six beers.<sup>(29)</sup> As he was driving home, he made a wide turn around a corner and was stopped by the police. He acknowledged having consumed alcohol. He was arrested and transported to a local hospital, where he was administered a blood test which registered .16% or .18%.<sup>(30)</sup> He was charged with driving under the influence, 1<sup>st</sup> offense.<sup>(31)</sup> Applicant pled guilty and was sentenced, in part, to one year in jail, with all but 48 hours suspended, placed on probation for 11 months and 29 days, and his operator's license was restricted for one year.<sup>(32)</sup> Applicant attended a mandatory three week DUI program consisting of six to eight hours of alcohol education films per Saturday.<sup>(33)</sup> The program was rather basic in content.<sup>(34)</sup>

Two years later, in April 2003, after arguing with his wife, Applicant checked into a hotel. He slept for awhile, and then while watching television, he consumed about three or four beers.<sup>(35)</sup> He left the hotel for a bar where, over a two to three hour period, he consumed another three to six beers.<sup>(36)</sup> His total estimated consumption that night was approximately six to eight beers.<sup>(37)</sup> On his way back to the hotel he was stopped by the police for speeding. He was arrested and administered a breathalyzer test which registered .23%.<sup>(38)</sup> He was charged with (1) driving under the influence, 2<sup>nd</sup> offense, (2) speeding, (3) violation of open container law, and (4) violation of proof of insurance.<sup>(39)</sup> He pled guilty to the lesser offense of driving under the influence, 1<sup>st</sup> offense,<sup>(40)</sup> and the other charges were dismissed.<sup>(41)</sup> He was able to furnish satisfactory proof of insurance and successfully explained the open container was empty and only used to dip snuff and spit into.<sup>(42)</sup> He was eventually sentenced, in part, to one year in jail with all but 10 days suspended, placed on probation for one year, and his operator's license was restricted for one year.<sup>(43)</sup> Applicant attended another mandatory three week DUI program for multiple offenders consisting of six to eight hours of alcohol education films, speakers, and doctors, as well as group therapy, per Saturday.<sup>(44)</sup>

Since his last alcohol-related incident in 2003, and after completion of the second DUI program, Applicant began to contemplate events and see where he had not always made the best choices.<sup>(45)</sup> His rekindled interest in bicycling and his separation from his wife were accompanied by a diminished interest in alcohol<sup>(46)</sup> and the elimination of stress motivators.<sup>(47)</sup> Now, on the few occasions when he does drink alcohol, he generally has no more than one or two beers.<sup>(48)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider 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 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.

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

**Alcohol Consumption--Guideline G: 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 could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."<sup>(49)</sup> For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## **CONCLUSIONS**

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline G. Applicant's periodic excessive consumption of alcohol, resulting in four alcohol-related incidents within a five year period, comes within 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*). His acknowledged post-military consumption of two to six beers with friends on weekends or on days off, which sometimes resulted in his becoming inebriated, also comes within AC DC E2.A7.1.2.5. (*habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant was routinely abusing alcohol without realizing it, for there was evidence that, at least on certain occasions, his alcohol tests registered between .133% (in 1998) and .23% (in 2003).

Applicant completed a DUI program in 2001, but subsequently slipped back into alcohol abuse. However, since his last alcohol-related incident in 2003, and after completion of the second DUI program, Applicant reconsidered his options upon the realization that he had not always made the best choices in his life. He focused on positive endeavors and eliminated his stressors, and at the same time, developed a diminished interest in alcohol. While he has not abstained from further alcohol consumption, he has reduced it to the point where he now drinks responsibly. In fact, his most recent alcohol consumption occurred two weeks prior to the hearing. Applicant's new pattern of alcohol consumption raises Alcohol Consumption Mitigating Condition (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 AC MC E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*).

Applicant should not be held forever accountable for his past conduct because there is a clear indication of subsequent reform, remorse, or rehabilitation. In this instance, while his drinking was excessive for a number of years, Applicant has had no alcohol-related incidents since April 2003--over three years ago--and has dramatically decreased his alcohol consumption to a point to where it is now negligible.

In considering the "whole person concept," I find substantial presence of rehabilitation and other pertinent behavioral changes, the absence of potential for pressure, coercion, exploitation, or duress, and the likelihood that recurrence will not occur now that Applicant and his wife are separated and on the threshold of divorce. Consequently, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline G. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is 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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For 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.

Robert Robinson Gales



Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated October 1, 2002).
2. Applicant Exhibit B (letter from company program supervisor, dated April 18, 2006).
3. Applicant Exhibit C (letter from company manufacturing operations supervisor, dated April 17, 2006).
4. Tr. at 17.
5. Applicant Exhibit C, *supra* note 3; Applicant Exhibit B, *supra* note 2.
6. Government Exhibit 1, *supra* note 1, at 4.
7. Tr. at 36.
8. Government Exhibit 1, *supra* note 1, at 5-6.
9. *Id.* at 6; Applicant Exhibit A (Certificate of Release or Discharge from Active Duty (DD Form 214), undated).
10. Government Exhibit 3 (Statement, dated June 25, 2004) at 1.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. Tr. at 20, 23.
18. *Id.* at 23.
19. *Id.* at 20.
20. Government Exhibit 4 (Report of Unfavorable Information for Security Determination, dated March 17, 1998, part of Applicant's administrative disciplinary file).
21. *Id.*
22. Government Exhibit 4 (Commander's Report of Disciplinary or Administrative Action, dated June 18, 1998, part of Applicant's administrative disciplinary file).
23. Tr. at 24.
24. Government Exhibit 3, *supra* note 10, at 2.
25. *Id.*
26. *Id.*

27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. Response to SOR, dated June 29, 2005.
32. *Id.*
33. Tr. at 35, 41.
34. *Id.* at 41.
35. *Id.* at 29-31.
36. *Id.* at 30; Government Exhibit 3, *supra* note 10, at 2.
37. Tr. at 30.
38. Response to SOR, *supra* note 31.
39. *Id.*
40. Government Exhibit 3, *supra* note 10, at 3.
41. *Id.*
42. *Id.*
43. *Id.*; Government Exhibit 2 (Company Adverse Information Report, dated October 7, 2003).
44. Tr. at 41-42.
45. Tr. at 44.
46. Government Exhibit 3, *supra* note 10, at 2.
47. Tr. at 44.
48. *Id.* at 34.
49. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).