

DATE: December 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09918

ECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old and has worked for a federal contractor as an avionics technician since 2000. Applicant served in the Marine Corps, had an alcohol-related incident in 1988, and was ordered on two occasions, three years apart, to attend Level I and II Alcohol Education. Applicant continues to drink excessively on the weekends, admits to driving while intoxicated every couple of months, and although he previously stated his wife thought he had an alcohol problem, now contradicts himself in that regard. Applicant failed to mitigate the security concerns regarding his alcohol consumption under Guideline G. Clearance is denied.

STATEMENT OF THE CASE

On July 5, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements 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. [\(1\)](#) The SOR, which is in essence the administrative complaints, alleged a security concern under Guideline G (Alcohol Consumption).

In a sworn statement dated July 22, 2005, Applicant responded to the SOR allegations and admitted allegations 1.c. and 1.d. and denied allegations 1.a., 1.b., 1.e., and 1.f. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on September 8, 2005. The FORM was mailed to Applicant on September 21, 2005, and received on September 28, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object nor did he file any additional evidence to be considered. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Applicant is 37 years old and has worked for a federal contractor as an avionics technician since 2000. Applicant is married and served in the Marine Corps from 1991 to 1997. Applicant referred to serving on active duty in support of

Operation Iraqi Freedom, but no specific information was provided as to the length of time. Applicant is married and has two stepchildren.

Applicant consumed alcohol, at times to excess and to the point of intoxication, three times a week, up to at least January 30, 2004. No information was provided to determine when Applicant began drinking and for how long he maintained his drinking consumption style.

Applicant was arrested on August 27, 1988, and charged with driving while ability impaired (DUI) and speeding. He was sentenced to one year of probation and ordered to attend an alcohol screening. Applicant completed the probationary period and screening. Applicant believed the prosecution was deferred, but no evidence was provided to verify if Applicant was convicted of DUI or if the prosecution was actually deferred and eventually dismissed.

Applicant attended a Level 1 Alcohol Education Program in about 1992 that was ordered by his command. He was required to attend due to his previous alcohol related incident. He was again ordered by his command to attend a Level II Alcohol Education Program in about 1995.

Applicant made a sworn statement on January 30, 2004, stating "I do continue to consume alcohol but have not been arrested or involved in any other alcohol-related incident[s], since this last event. I have driven after consuming alcohol and have even driven when I was intoxicated approximately once every couple of months to this date. My wife has told me that she believes I may have a drinking problem and I have even felt that I should cut down or change my drinking habits." (2) Applicant further stated, "As of right [now] I drink about three times weekly. During the week, I will consume about two 12 oz. cans of beer and on a Friday or Saturday I might drink eight to 10 or 12 cans of beer depending on who is over. I believe that over the next couple of years, I will change my alcohol habits and will cut down." (3) In Applicant's answer he modifies his statement in that he "might drive after having a drink with dinner at a restaurant." (4) He also denied in his answer that a family member has stated that he may have a drinking problem. Applicant directly controverted his previous sworn statement. Applicant also now claims he no longer drinks during the week and only drinks one night on the weekend. Applicant's subsequent comments on his answer are not believable.

Those that work with Applicant consider him a valuable asset who is seen as a mentor to those around him. They consider him hardworking, trustworthy, and mature. He is very knowledgeable about his area of expertise, and considered a dedicated professional with impeccable integrity.

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, 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. (5) The government has the burden of proving controverted facts. (6) The burden of proof is something less than a preponderance of evidence. (7) 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. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ 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 guidelines 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 under Guideline G.

Based on all the evidence, I considered all the disqualifying conditions and especially 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 conclude it applies. Applicant was arrested and charged with driving while ability impaired in 1988; Applicant continues to drink alcohol, at times in excess and to the point of intoxication and Applicant continued, at least until January 2004, to drive while intoxicated.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), 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 had one arrest for an alcohol related incident, however his command on two occasions thought it necessary to have him attend Level I and Level II Alcohol Education Programs. He attended them three years apart. Applicant's one incident does not constitute a pattern. AC MC E2.A7.1.3.1 applies. However, the primary concern is Applicant's admissions in January 2004, that he continues to drive while intoxicated, once every couple of months, an obvious illegal and dangerous act. He continues to drink large amounts of alcohol on the weekends, and some during the week, and his wife believes he has an alcohol problem. Applicant's later denials of his sworn assertions are not credible. Applicant discredited himself by minimizing his admissions and denying his family believes he has a problem with alcohol, a statement in direct conflict with his previous admission. The fact is Applicant continues to drink and has provided no corroborating information to suggest his behavior has changed or in support of sobriety. Applicant has merely attempted to minimize the issues raised about alcohol concerns and has not provided any substantive evidence to verify a problem does not exist. Applicant has failed to mitigate the security concerns raised by his alcohol consumption.

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 various 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 considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I have considered Applicant's conflicting statements about his alcohol use. 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. Applicant has failed to mitigate the security concerns caused by his alcohol consumption. Accordingly, Guideline 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 Alcohol Consumption(Guideline G) AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the 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. Govt Ex. 6 at 2.(Sworn statement dated January 30, 2004).
3. *Id.* at 3.
4. Govt Ex. 3.
5. ISCR Case No. 96-0277 (July 11, 1997) at 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. at 531.
11. *Id.*

12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

13. Executive Order 10865 § 7.