

KEYWORD: Alcohol

DIGEST: Applicant has a history of excessive alcohol consumption and was arrested for driving under the influence (DUI) in September 2002. She was discharged from an alcohol abuse treatment program as "non-compliant" in March 2003. She successfully completed a second program in October 2003, and she voluntarily returned for further treatment from September 2005 to January 2006. She has abstained from alcohol since September 2005. She is under stress from changes in her personal life. She is not participating regularly in Alcoholics Anonymous (AA) or found an AA sponsor, because she has not yet found an AA group where she is comfortable. She has not mitigated the security concern based on alcohol consumption. Clearance is denied.

CASENO: 04-12491.h1

DATE: 03/14/2006

DATE: March 14, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-12491

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jason R. Perry, Esq., Department Counsel

**FOR APPLICANT**

Anthony F. Vergnetti, Esq.

**SYNOPSIS**

Applicant has a history of excessive alcohol consumption and was arrested for driving under the influence (DUI) in September 2002. She was discharged from an alcohol abuse treatment program as "non-compliant" in March 2003. She successfully completed a second program in October 2003, and she voluntarily returned for further treatment from September 2005 to January 2006. She has abstained from alcohol since September 2005. She is under stress from changes in her personal life. She is not participating regularly in Alcoholics Anonymous (AA) or found an AA sponsor, because she has not yet found an AA group where she is comfortable. She has not mitigated the security concern based on alcohol consumption. Clearance is denied.

**STATEMENT OF THE CASE**

On July 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline G (Alcohol Consumption).

Applicant answered the SOR in writing on August 25, 2005, and requested a hearing. The case was assigned to me on December 9, 2005, and heard on February 16, 2006, as scheduled. I left the record open to permit Applicant to submit additional evidence. I received her additional evidence on February 24, 2006, and it is incorporated in the record as Applicant's Exhibit (AX ) H. DOHA received the transcript (Tr.) on February 27, 2006.

**FINDINGS OF FACT**

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 44-year-old senior systems engineer for a defense contractor. She has worked for her current employer since September 1993. She received a security clearance in April 1996.<sup>(1)</sup> She has worked as a software engineer for about 22 years.<sup>(2)</sup>

Applicant's father, who is deceased, was an alcoholic; and her mother, who suffers from osteoporosis, abuses prescription drugs.<sup>(3)</sup> Applicant experimented occasionally with alcohol between ages 14 and 21. In her 20s, she drank occasionally to the point of intoxication. When she was in her 30s, her use of alcohol increased. In her middle and upper 30s, she was having at least four drinks every day, occasionally drinking at lunch. She traveled frequently and worked in a very stressful job, confronting software developers about deficiencies in their products.<sup>(4)</sup>

In September 2002, Applicant was arrested for DUI. She pleaded guilty and was sentenced to 180 days in jail with 175 days suspended. Her driver's license was suspended for 12 months. She was fined, placed on probation for 12 months, and ordered to attend an alcohol awareness program.<sup>(5)</sup>

Applicant participated in an alcohol abuse treatment program from December 2002 until March 2003. She was diagnosed by a certified substance abuse counselor as alcohol dependent.<sup>(6)</sup> She was administered breathalyzer tests during treatment, and in January 2003 she tested positive.<sup>(7)</sup> She was discharged from the program as "non-compliant" because she refused to take Antabuse.<sup>(8)</sup> She testified she refused to take Antabuse because her doctor advised against it and her employer would not take responsibility if she had an Antabuse reaction at work.<sup>(9)</sup> Her doctor prescribed another medication to help her reduce her craving for alcohol.<sup>(10)</sup>

Antabuse is designed to cause violent illness if alcohol is consumed. For some users, it can cause respiratory depression, unconsciousness, convulsions, and sudden death.<sup>(11)</sup>

Applicant disputed the allegation she was involuntarily discharged from the alcohol treatment program. She testified she voluntarily left the program when she resigned from her position and no longer had health insurance. She remained with the same employer, but as a "consultant employee," with no medical benefits. Her new position has more flexible working hours and no travel requirements. She is using her more flexible schedule to attend college classes.<sup>(12)</sup>

In May 2003, Applicant was referred by the local alcohol awareness program to a licensed clinical social worker in a private counseling firm.<sup>(13)</sup> She successfully completed a 16-session group treatment program, and was required to regularly attend AA meetings while she was in the program. Unlike the evaluation she received in her first treatment program, she was regarded as an enthusiastic and cooperative participant. Whereas she found the first program aggressive and confrontational, she found the second program positive and supportive.<sup>(14)</sup> When she completed the program in October 2003, she assessed herself as not alcohol dependent. Her intent was to abstain from alcohol during her period of court-ordered probation and then drink infrequently and moderately at social events.<sup>(15)</sup>

In September 2005, Applicant returned to the same social worker who had treated her in May through October 2003. Applicant told the social worker she had been drinking infrequently for two years but was concerned about her craving for alcohol. She sometimes drank to the point of intoxication.<sup>(16)</sup> She was undergoing personal stress and needed support in completely abstaining from alcohol. She again enrolled in a series of group counseling sessions, which she completed in January 2006. She attended AA meetings during the treatment period.<sup>(17)</sup>

The social worker evaluated Applicant as an honest, reliable, trustworthy person.<sup>(18)</sup> She shared Applicant's reservations about Antabuse because of its potential side effects. She also questioned its effectiveness in cases where the patient was not fully committed to abstinence, because patients can stop taking Antabuse whenever they decide to resume drinking.<sup>(19)</sup> She agreed with the previous diagnosis of alcohol dependence made in 2003 by a certified substance abuse counselor.<sup>(20)</sup> The social worker "would strongly recommend" that Applicant attend AA meetings regularly for the rest of her life.<sup>(21)</sup>

The social worker explained the difference between a licensed clinical social worker and a certified substance abuse counselor. A licensed clinical social worker treats a broad range of psychiatric disorders and substance abuse disorders, often very intertwined, but a substance abuse counselor works primarily with substance-abusing clients, not those with psychiatric disorders. While the social worker's training is broader, the training of a substance abuse counselor may have more depth because it is a narrow specialty.<sup>(22)</sup>

At the time of the hearing, Applicant had not attended an AA meeting for about two weeks. She was looking for an AA group where she was comfortable, and she had not yet found a sponsor.<sup>(23)</sup> She was relying on the social worker to be her "de facto sponsor."<sup>(24)</sup>

Applicant testified she is committed to abstaining from alcohol. She testified she last had a "sampling" of alcohol in September 2005.<sup>(25)</sup> The day before the hearing, she experienced a very stressful breakup of a close personal relationship.<sup>(26)</sup> Her high degree of stress was obvious from her demeanor at the hearing. She is looking forward to completing her college education and continuing to work for her current employer, but with more time spent on research and without the pressure of travel and confrontational software evaluations.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

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. A disqualifying condition (DC 1) may arise from alcohol-related incidents away from work, such as driving under the influence. Directive ¶ E2.A7.1.2.1. Applicant's DUI arrest establishes DC 1. Although there are no other documented "incidents" in the record, her DUI arrest culminated years of excessive alcohol consumption.

A disqualifying condition may arise from a diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional, e.g., a physician, clinical psychologist, or psychiatrist (DC 3), an evaluation of alcohol abuse by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program (DC 4), or consumption of alcohol after a diagnosis of alcoholism<sup>(27)</sup> by a credentialed medical professional and following completion of an alcohol rehabilitation program (DC 6). Directive ¶¶ E2.A7.1.2.3., E2.A7.1.2.4, E2.A7.1.2.6. DC 3 and DC 6 are not established because there is no evidence of diagnosis by a "credentialed medical professional." DC 4, however, is established by the diagnosis of the licensed clinical social worker who treated Applicant from May through October 2003 and again from September 2005 until January 2006.

Finally, a disqualifying condition may (DC 5) arise from habitual consumption of alcohol to the point of impaired judgment. Directive ¶ E2.A7.1.2.5. Applicant's admission of habitual heavy drinking and her DUI arrest establish DC 5.

Once the Government produced substantial evidence to establish a disqualifying condition, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Several mitigating conditions (MC) are relevant. MC 1 (alcohol-related incidents do not indicate a pattern) and MC 2 (no indication of a recent problem) are not established. Directive ¶¶ E2.A7.1.3.1., E2.A7.1.3.2. Applicant has a lifelong pattern of excessive drinking and continues to crave alcohol. She consumed alcohol and had difficulty controlling her craving for alcohol as recently as September 2005.

A mitigating condition (MC 3) may be established if there are "positive changes in behavior supportive of sobriety." Applicant has finally realized she must abstain from alcohol. She has recognized the importance of regular AA participation. While looking for a suitable AA sponsor, she has leaned on her social worker as a "de facto sponsor." She has voluntarily left her high-stress job, accepted a less demanding position, and resumed her college education. I conclude C 3 is established.

Finally, a security concern under this guideline can be mitigated (MC 4) if, "[f]ollowing diagnosis of alcohol abuse or alcohol dependance, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Directive ¶ E2.A7.1.3.4. Applicant has met some but not all the components of this mitigating condition. She has successfully completed a rehabilitation program. She has participated frequently but not regularly in AA. At the time of the hearing she had lapsed somewhat in her AA participation and did not have a sponsor, because she was searching for a comfortable AA group. She has received a favorable prognosis from a licensed clinical social worker, but she has not yet abstained from alcohol for a period of at least 12 months.

Given Applicant's long history of alcohol dependance, the changes in her professional life and the stresses in her personal life, I conclude insufficient time has passed to conclude she has changed her behavior and gained control of her alcohol consumption sufficiently to make recurrence unlikely, especially in times of stress. *See* Directive ¶¶ 6.3.5, 6.3.6. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on alcohol consumption.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Government Exhibit (GX) 1 at 1, 2, 6.

2. Tr. 58.

3. Tr. 60-61.

4. Tr. 63-64.

5. GX 5.

6. GX 2 at 2; Hearing Exhibit I.

7. *Id.* at 4.

8. GX 3 at 1.

9. Tr. 73-75.

10. Tr. 74.

11. Margaret T. Shannon, Billie Ann Wilson, & Carolyn L. Stang, *Health Professional's Drug Guide* 515 (Prentice-Hall 2004), admitted in evidence as Applicant's Exhibit (AX) C.

12. Tr. 75.



13. AX A, B; Tr. 33..

14. Tr. 78.

15. Tr. 34-37.

16. Tr. 50.

17. Tr. 38.

18. Tr. 45-46.

19. Tr. 43-45.

20. Tr. 47.

21. Tr. 56.

22. Tr. 51-52.

23. Tr. 92.

24. Tr. 99.

25. Tr. 95.

26. Tr. 96.

27. The term "alcoholism" is no longer used by medical professionals and does not appear in DSM IV-TR. In previous versions of the DSM, it was synonymous with alcohol dependence.