

KEYWORD: Alcohol

DIGEST: Applicant is a 25 year old operations coordinator/financial analyst for a defense contractor. He had a minor alcohol-related incident while in college and two minor incidents shortly after graduation. He completed an alcohol safety action program and attended Alcoholics Anonymous while in the program. He is now married with two children and has no alcohol-related incidents in over two years. Applicant has mitigated security concerns for alcohol consumption. Clearance is granted.

CASENO: 04-14270.h1

DATE: 03/31/2005

DATE: March 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14270

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant is a 25 year old operations coordinator/financial analyst for a defense contractor. He had a minor alcohol-related incident while in college and two minor incidents shortly after graduation. He completed an alcohol safety action program and attended Alcoholics Anonymous while in the program. He is now married with two children and has no alcohol-related incidents in over two years. Applicant has mitigated security concerns for alcohol consumption. Clearance is granted.

## **STATEMENT OF THE CASE**

On May 6, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on May 10, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption) of the Directive.

Applicant answered the SOR in writing on May 24, 2004. He admitted three of the allegations and denied one allegation under Guideline G and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 1, 2004. Department Counsel was prepared to proceed with the case on February 10, 2005, and the case was assigned to me on February 16, 2005. A notice of hearing was issued on February 16, 2005, and the hearing was convened on March 8, 2005. Five government exhibits and the testimony of the Applicant were received during the hearing. The transcript was received on March 16, 2005.

## **FINDINGS OF FACT**

Applicant is a 25 year old working for the last three years, after graduating from college, as an operations coordinator/financial analyst for a defense contractor. He is now married with two children. [\(1\)](#)

Applicant did not drink alcohol until he was a college student. While an 18 year old college student in September 1998, Applicant was stopped by police walking on a road between two college campuses. He admitted to drinking alcohol, was arrested, and fined for underage drinking. [\(2\)](#)

Applicant was married in July 2001, after graduating from college. While his wife was out of town in October 2001, he went to a bar to drink alcohol with friends. When he left the bar, Applicant was staggering and was arrested, convicted, and fined for drunk in public. [\(3\)](#)

While his wife was again out of town in October 2002, Applicant went to a bar with friends to drink alcohol. After leaving the bar, Applicant started to drive home. He realized he was not in a condition to drive, so he pulled into the parking lot of a fast food restaurant and fell asleep with the keys in the ignition and the motor running. He was apprehended by police for driving while intoxicated, convicted, fined, and order to attend an alcohol safety action program. Applicant completed the program while also attending Alcohol Anonymous meetings. [\(4\)](#)

Applicant drank alcohol from 1998 to 2002. Every time he drank alcohol, he did not drink to excess. However, at times he did drink to excess to the point of intoxication. [\(5\)](#) Applicant and his wife discussed Applicant's drinking after his arrest for driving while intoxicated. Applicant realized he must mature and take responsibility for his actions. He stopped drinking and has not had any alcohol-related incidents since his 2002 driving while intoxicated incident. His two children were also born after this incident. [\(6\)](#)

## **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." [\(7\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(8\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a 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.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(9)</sup> 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 of recurrence.<sup>(10)</sup>

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 necessarily a determination as to the loyalty of the applicant.<sup>(11)</sup> 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.

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.<sup>(12)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(13)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(14)</sup> "[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."<sup>(15)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(16)</sup>

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

**Guideline G - Alcohol Consumption:** Excessive alcohol consumption often leads to the exercise of questionable judgment, reliability, 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 section below.

## **CONCLUSIONS**

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

The government has established its case under Guideline G. Applicant's arrests and convictions for alcohol-related incidents brings the matter under Alcohol Consumption Disqualifying Condition Directive ¶ E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use*). Applicant admitted, and the record shows, he was arrested for driving while intoxicated, drunk in public, and underage drinking of alcohol. He also drank to excess during his time as a college student and shortly thereafter. I conclude the aforementioned Alcohol Consumption Disqualifying Condition has been established.

The Alcohol Consumption Mitigating Conditions that apply in this case are Directive ¶ E2.A7.1.3.1 (*the alcohol related incidents do not indicate a pattern*); Directive ¶ E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); and Directive ¶ E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). The alcohol related incidents were spaced out over time with at least a year between the last two events and do not indicate a pattern of alcohol abuse. The last incident occurred a little more than two years ago and there is no indication of any recent problems. In fact, there is a clear indication of a positive change in behavior supportive of sobriety. Applicant completed the alcohol safety action program and attended Alcoholics Anonymous meetings while in the program. He realized he needed to mature and change his behavior, particularly since he is now a father. His alcohol related incidents can be attributed to his youth and actions as a college student. I conclude Applicant has mitigated any security concerns under Guideline G for Alcohol Consumption.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

## **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations 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

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 15.
2. Tr. 18; Government exhibit 2 (Applicant's statement, dated May 7, 2003), at 1.
3. Tr 19-20; Government exhibit 2 (Applicant's statement, dated May 7, 2003) at 1; Government exhibit 3 (Arrest Warrant, dated Oct. 24, 2001).

4. Tr. 21-23; Government exhibit 2 (Applicant's statement, dated May 7, 2003) at 2; Government exhibit 4 (Arrest summons, dated Oct. 4, 2002).
5. Tr. 14.
6. Tr. 27-28; Government exhibit 2 (Applicant's statement, dated May 7, 2003) at 2.
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.