

KEYWORD: Alcohol

DIGEST: Applicant was convicted of alcohol-related offenses in 1982, 2002 and 2004. He has mitigated the security concerns that arise from his alcohol consumption. Clearance is granted.

CASENO: 05-02977.h1

DATE: 05/17/2006

DATE: May 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02977

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of alcohol-related offenses in 1982, 2002 and 2004. He has mitigated the security concerns that arise from his alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On September 16, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G, concerning alcohol consumption. Applicant submitted an answer to the SOR that was received by DOHA on October 18, 2005, admitted SOR allegations 1.c-1.e, denied allegations 1.a and 1.b, and requested a hearing.

The case was assigned to me on March 29, 2006. A notice of hearing was issued on April 7, 2006, scheduling the hearing for April 24, 2006. The hearing was conducted as scheduled. The government submitted 13 documentary exhibits that were marked as Government Exhibits (GE) 1-13, and admitted into the record without objection. Applicant testified, and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without objection. The transcript was received on May 4, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 47 years old, and has been employed as an assembler/technician by a government contractor since September 2002. He graduated from high school in 1977, and was employed as an aircraft mechanic outside the defense industry from October 1981 until September 2002. He left that job due to the company relocating to a different state. The letters of recommendation, performance evaluations, and certificates submitted by Applicant establish that he is an excellent and dependable employee.

Applicant has been married since September 1979. He has a 26-year-old son and a 22-year-old daughter. He has lived in the same residence since April 1992.

Applicant was charged with and pled guilty to driving under the influence of alcohol (DUI) in 1982. He was fined approximately \$300.00 and ordered to complete a defensive driving course. He was again charged with DUI in August 2002, but was allowed to plead guilty to reckless driving in August 2003. He was sentenced to 12 months probation, and ordered to pay a fine and costs totaling \$1,230, and attend a DUI, Alcohol or Drug Risk Reduction Program. He completed the program on August 24, 2003, and paid the fine and costs by September 2003, at which time his probation was terminated.

Applicant was charged with Open Container of Alcohol while Driving in February 2004. He testified the incident was the result of him throwing an empty beer bottle and other trash inside his truck after he and friend had eaten lunch near the truck after they had done some work together. Applicant was given a breath test which registered 0.06 (below the state's presumed intoxication level of 0.08). Applicant pled guilty and was fined \$130.00.

Applicant provided a statement to a special agent from the Defense Security Service in May 2004 in which he indicated he consumed one or two beers daily and about six beers over the course of a weekend. He also indicated he believed the consumption of two beers would be enough to cause a person to be considered intoxicated or alcohol impaired. He credibly testified he does not actually drink beer every day but rather was trying to say he drinks beer whenever he feels like it and then generally consumes one or two beers.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant has twice been convicted of alcohol-related driving offenses and on an additional occasion with having an open container of alcohol in his vehicle. Although the SOR alleges another set of offenses that supposedly occurred in 1979 (subparagraph 1.b), there is insufficient evidence to establish that whatever occurred at that time was alcohol-related. Disqualifying Condition (DC) 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* applies.

Applicant's two alcohol-related driving arrests were separated by 20 years. The only other alcohol-related incident of record was minor in nature and consistent with Applicant's testimony and statement that he was just attempting to properly dispose of litter after helping a friend move and then eating lunch by his vehicle. Mitigating Condition (MC) 1: *the alcohol related incidents do not indicate a pattern* applies. Further, while Applicant's testimony and statement establish he consumes beer on a regular basis, there is no indication he routinely abuses alcohol or that he has an alcohol addiction. In fact, his long and steady family, work and residential history are inconsistent with an individual who would be considered an alcohol abuser.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline G is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: For Applicant

Subparagraphs a - 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.