

DATE: October 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04237

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Edward F. Younger, Esquire

SYNOPSIS

Applicant's alcohol abuse--punctuated by alcohol-related arrests in December 2002 and October 2003--is mitigated by the passage of three years without recurrence of alcohol-related incidents as well as positive lifestyle changes supportive of sobriety. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 9 November 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of alcohol consumption and personal conduct. [\(1\)](#) Applicant answered the SOR on 7 December 2005, and requested a hearing. DOHA assigned the case to me 8 June 2006 and I convened a hearing 3 October 2006. DOHA received the transcript 18 October 2006.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of the SOR except for subparagraph 1.a., denying that she consumed alcohol to excess to March 2005. Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 35-year-old executive assistant for a defense contractor--seeks access to classified information. She has not previously applied for a clearance.

Applicant consumed alcohol to excess between December 2002 and October 2003. In December 2002, she was arrested and charged with DUI when she blew a .10% B.A.C. after a traffic stop. In May 2003, as a first-time offender, she negotiated a plea deal to a lesser charge of reckless driving on condition that she pay a \$1,500 fine, receive a suspended sentence of 30 days in jail, and complete the state alcohol safety action program (ASAP). Having received a light sentence, Applicant squandered the opportunity she had been given to avoid additional legal consequences.

Applicant entered ASAP as required in June 2003, agreeing in writing to the program requirements, including a pledge

to consume no alcohol during the 10-week program. During a July 2003 program meeting, she reported consuming alcohol the past Friday and Saturday nights. As a result of this breach of the program agreement, Applicant was placed in an intensive alcohol education class in August 2003. She continued to drink during this program as well. She just stopped reporting her alcohol consumption during the weekly program meetings. In October 2003, she was again arrested and charged with DUI, after blowing a .12% B.A.C. She reported this arrest to the counselors at ASAP.

As a result of the October 2003 DUI, Applicant was sentenced to 60 days in jail, suspended, fined \$400, given a restricted license for 12 months, and again ordered to complete ASAP. But the watershed event in Applicant's alcohol history occurred in January 2004, when she received an order to show cause why her suspended sentence from the December 2002 DUI should not be revoked because of her failure to comply with the terms and conditions of the suspended sentence. Applicant's suspended sentence was vacated, and she ultimately served 14 days in jail.

The jail time transformed her life. "Going to jail sucks. . . . It's humiliating, it's very humiliating. It will open your eyes . . . to see all the people in there. It just makes you think why did you do this to get in this position? Do you really want to do this." (Tr. 26) Determined to never go to jail again, Applicant re-entered ASAP in February 2004, this time complying strictly with the program requirements--including abstention from alcohol, bi-weekly Alcoholics Anonymous meetings, six weeks of program meetings, 36 sessions of outpatient substance abuse group therapy between February and May 2004 (with ten urine screen/breathalyzer tests, all negative), and ongoing monitoring until January 2005. Applicant satisfactorily completed all the program requirements.

Applicant's two DUIs occurred when she was married, and a principal activity was drinking while out with her husband and his friends. She has since divorced him and now spends her free time in activities that do not involve drinking. She works out regularly at her gym, and plays team sports. She consumed no alcohol for about a year after her October 2003 DUI. Since then, she has had a glass of wine on special occasions, no more than once a month. When she was drinking more heavily, she drank beer and spirits as well as wine.

Her character references, including her company supervisors as well as the government agency employees for whom she works, consider her an honest and trustworthy employee. They observe no evidence of continued alcohol abuse.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a case for disqualification under Guideline G by demonstrating Applicant's two DUI

convictions within a 10-month period.⁽³⁾ However, the alcohol abuse is mitigated. The two convictions were confined to a 10-month period when she was married and a principal social activity was hanging out with her husband and his friends and drinking. The arrests themselves did not indicate a pattern of abuse.⁽⁴⁾ She has had no alcohol-related arrests since her October 2003 DUI.⁽⁵⁾ Since her divorce and her completion of program requirements, she no longer associates with those friends and has found other activities that do not involve drinking.⁽⁶⁾ Although her alcohol consumption never affected her work, several of her references noted even better performance after she substantially reduced her alcohol consumption. She has never been evaluated as alcohol dependent or as an alcohol abuser. She recognizes the importance of a sober lifestyle for both her job and clearance. I conclude that she is unlikely to return to abusive levels of drinking. Accordingly, I resolve Guideline G for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph 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 granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. 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 abuse; E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
4. E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;
5. E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;
6. E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;