

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant, a 31-year-old employee of a defense contractor has three alcohol-related driving incidents within the past five years. He has not mitigated the security concerns regarding Guideline G, alcohol consumption and Guideline E, personal conduct as he admittedly continues to drink to the point of intoxication. Clearance is denied.

CASENO: 05-11538.h1

DATE: 05/31/2006

DATE: May 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-11538

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, a 31-year-old employee of a defense contractor has three alcohol-related driving incidents within the past five years. He has not mitigated the security concerns regarding Guideline G, alcohol consumption and Guideline E, personal conduct as he admittedly continues to drink to the point of intoxication. Clearance is denied.

### STATEMENT OF THE CASE

On December 12, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified, (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant because of security concerns arising under Guidelines G (Alcohol Consumption) and Guideline E (Personal Conduct).

In a sworn written statement, dated January 2, 2006, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 24, 2006. Department Counsel provided a complete copy of the file of relevant material (FORM) [\(1\)](#) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 30, 2006. Applicant did not submit a response to the FORM. The matter was assigned to an administrative judge on March 17, 2000 and was transferred to

me on May 12, 2006 due to caseload considerations.

### FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to alcohol consumption under Guideline G (subparagraphs 1.a through 1.e) of the SOR.<sup>(2)</sup> Those admissions are incorporated herein as findings of fact. He denied factual allegations 1.b., and 2.b. of the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a single, 31-year-old employee of a defense contractor.<sup>(3)</sup> He has worked for this contractor since 2003. On September 22, 2004, he submitted his security clearance application.<sup>(4)</sup>

Applicant's early drinking history is not documented, but his history of approximately 20 traffic (motor vehicle) violations from 1992 until 2005 is cited and acknowledged by Applicant.<sup>(5)</sup> Since 1997, he consumed alcohol, at times to excess, to the point of intoxication. Applicant's alcohol consumption continues to the present time.

On July 16, 1997, the police arrested and charged Applicant with operating a motor vehicle while intoxicated. Applicant was found guilty, and the court sentenced him to three days in jail and probation.<sup>(6)</sup>

On March 25, 1999, Applicant resigned from his employment in lieu of termination, due to two incidents of workplace violence. The record is devoid of any circumstances concerning the incidents.<sup>(7)</sup>

On August 4, 2000, the police charged Applicant with open container prohibited. He pled guilty, and assessed a fine and court costs of \$160.00.<sup>(8)</sup>

On March 8, 2002, Applicant was arrested and charged with (1) operating a motor vehicle while intoxicated; (2) blood alcohol content; and (3) marked lanes. The court found him guilty of reckless operation, and counts 2 and 3 above. The court ordered him to pay a fine of \$700.00, one year probation, and sentenced him to 180 days in jail with 170

suspended. His driver's license was suspended for two years.<sup>(9)</sup>

When completing his 2004 security clearance application (SF 86), Applicant responded "yes" to Question 24: **Your Police Record - Alcohol/Drug Offenses** Have you ever been charged with or convicted of any offenses(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C.

3607. He listed his two DUI charges but did not disclose the open container charge. This explanation is credible in light of the fact that Applicant denied being arrested for the open container charge in his answer. He believed he was given a citation and that it only involved a fine. It was an oversight on his part and not a deliberate falsification.

Applicant has not been diagnosed as an alcohol abuser or alcohol dependent. He consumes alcohol to the point of intoxication 1-2 times a month, at home on the weekends.<sup>(10)</sup> Applicant drinks beer a couple of times a week before going to bed, consuming about three 12 ounce bottles or 1 or 2 24 ounce bottles of beer while relaxing before bed. He also consumes hard liquor and shots (vodka, cognac, and mixed drinks) on the weekend.

Applicant does not drink at work. He notes his drinking does not affect his work performance. However, he does admit the drinking incidents reflect impaired judgment in operating a motor vehicle.<sup>(11)</sup> His drinking pattern between 1997 and the present indicates consumption of alcohol to the point of periodic impaired judgment. Binge drinking is a pattern of drinking alcohol that brings blood-alcohol concentration to .08 gram percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours.<sup>(12)</sup> Applicant's drinking meets the criteria for "binge drinking" according to the National Institute on Alcohol Abuse and Alcoholism.<sup>(13)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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 individual'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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines pertinent to an evaluation of the facts of this case:

**Guideline G -Alcohol Consumption: 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.**

**Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

The disqualifying and mitigating conditions applicable to this case are set forth and discussed in the Conclusion section below.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(14)</sup> If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(15)</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security. [\(16\)](#)

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to each allegation set forth in the SOR:

### **Alcohol Consumption**

The government has established its case under Guideline G. Over a period of five years, the police arrested and charged Applicant with two DUI offenses. These incidents qualify as alcohol-related incidents away from work. During this same period, his drinking was excessive on a regular basis, causing impaired judgment, court convictions for DUI, and jail time. Applicant admitted to excessive consumption of alcohol to the point of intoxication from 1997 to the present time. By continuing to drink on a daily basis, he places himself in jeopardy for future DUIs and other alcohol related problems. In addition to the above incidents, Applicant's consumption of alcohol reflects a pattern of binge drinking, according to NIAA criteria. He repeatedly drove while intoxicated. Although he had a gap between alcohol-related arrests, his recurrent arrests reveal a pattern of alcohol abuse through at least 2002 (his last alcohol conviction). Applicant's described drinking habits are consistent with habitual or binge consumption of alcohol. Based on all the evidence, Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*), and AC DC E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*) apply in this case.

I considered all the Alcohol Consumption Mitigating Conditions (AC MC) and conclude that none apply in this case. Applicant continued to drink and drive and has not participated meaningfully in any alcohol rehabilitation program. He has continued to deny that he has a problem with alcohol use. His alcohol consumption still meets the criteria for "binge drinking." There is no evidence in the record to support behavior changes or the elimination of high risk behavior of drinking and driving. He reports his latest intoxication on November 2005. Only 3.5 years have passed since the 2002 arrest. Based on Applicant's pattern, insufficient time has passed to conclude confidently that he will not engage in such behavior in the future. Despite the fact that he completed a prior probation successfully, he is not currently receiving any professional counseling. Applicant failed to mitigate the government's security concerns under Guideline G.

## **Personal Conduct**

The government has established its case under Guideline E. Applicant does not deny the 20 motor vehicle violations over the years. Nor does he deny his 1999 workplace violence incidents which led to his resignation rather than termination from his employment. I conclude Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), and PC DC E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply.

The government has not established its case as to allegation 2.b. under Personal Conduct. Applicant answered "yes" to Question 24 on his security clearance application. In response, he listed his other alcohol incidents. He denies falsifying his application. When a falsification allegation is denied, the government has the burden of proving it. Proof of omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. (17) An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurs. Applicant was forthright in listing two DUIs in other questions on the security form, and information about the workplace violence. I find it credible that the open container violation was genuinely overlooked, especially in light of his denial to the charge in his response to the SOR. He believed he was not arrested at all, but rather, just given a citation. PC DC E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) does not apply.

I considered all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. 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. For the reasons, stated, Applicant has failed to mitigate the security concerns caused by Applicant's alcohol consumption and personal conduct. Accordingly, Guidelines G and E are 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, Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: 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 or continue a security clearance for Applicant. Clearance is denied.



**Noreen A. Lynch**  
**Administrative Judge**

1. The government submitted five items in support of its contentions.
2. Item 3 (Response to SOR, dated January 2, 2006) at 1-2.
3. Item 4 (Applicant's Security Clearance Application (SF 86), dated September 22, 2004) at 1.
4. *Id.*
5. Item 5 (Applicant's Response to DOHA Alcohol Interrogatories, dated November 25, 2005 ) at 2.
6. *Id.*
7. Item 3, *supra* note at 2.
8. *Id.*
9. *Id.*
10. Item 5, *supra* note at 5.
11. Item 3, *supra* note 12, at 2.
12. (Binge Drinking Defined, National Institute on Alcohol and Alcoholism (NIAA) Newsletter, Winter 2004 Number 3) at 1.
13. *Id.*
14. ISCR Case No. 96-0277 (July 11, 1997) at 2.
15. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.
16. Directive, Enclosure 2, Para. E2.2.2.
17. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-231333 at 5(App. Bd. Jun. 9, 2004)).