

KEYWORD: Alcohol

DIGEST: Applicant, a 46-year-old employee of a defense contractor, has four convictions for alcohol-related driving offenses over a 17-year period, and has not mitigated the security concerns regarding Guideline G, alcohol consumption. His most recent conviction was in 2003. Although he believes alcohol has created some difficulties in his life, he claims it does not affect his work or ability to perform his job. Clearance is denied.

CASENO: 05-12288.h1

DATE: 05/09/2006

DATE: May 9, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-12288

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 46-year-old employee of a defense contractor, has four convictions for alcohol-related driving offenses over a 17-year period, and has not mitigated the security concerns regarding Guideline G, alcohol consumption. His most recent conviction was in 2003. Although he believes alcohol has created some difficulties in his life, he claims it does not affect his work or ability to perform his job. Clearance is denied.

STATEMENT OF THE CASE

On December 21, 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 Guideline G (Alcohol Consumption).

In a sworn written statement, dated January 12, 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 February 2, 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 February 16, 2006. Applicant did not submit a response to the FORM. The case was assigned to me on April 10, 2006.

FINDINGS OF FACT

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

Applicant is a single, 46-year-old senior project manager for a defense contractor.⁽³⁾ Applicant has worked for this contractor since 1997. On November 26, 2003, he submitted his security clearance application.⁽⁴⁾

Applicant began socially drinking in college at parties. In his late twenties he drank beer on a limited basis at parties.⁽⁵⁾ Since 1987, he consumed alcohol, at times to excess, to the point of intoxication. Applicant's alcohol consumption continued until at least July 2003.

On May 15, 1987, the police arrested and charged Applicant with Driving Under the Influence (DUI). Applicant was found guilty. The court placed him on supervised probation for eight months with the county Alcohol Safety Action Program. The court assessed a fine of \$100.00, and his license was suspended for 60 days.⁽⁶⁾

On June 3, 1995, Applicant was arrested and charged with a DUI, First Offense. The court found him guilty, and placed him on six months probation. He paid a \$300.00 fine, and his license was suspended for 60 days, and he was ordered to attend Alcohol Anonymous (AA) meetings.⁽⁷⁾

On March 13, 1999, the police arrested and charged Applicant with a DUI. He was found guilty, and sentenced to 10 days in jail (suspended), if he successfully completed 18 months of probation. His license was suspended for 180 days with the placement of an ignition interlock device on his vehicle.⁽⁸⁾

On July 4, 2003, Applicant was arrested and charged with a DUI. The court found him guilty, ordered him to pay a fine of at least \$250.00, and was placed under house arrest. He was placed on probation until September 2004. He could drive only with an ignition interlock system on his vehicle.⁽⁹⁾

Applicant has not been diagnosed as an alcohol abuser or alcohol dependent. He was evaluated by licensed counselors and has not attended any inpatient alcohol rehabilitation. He has not had any accidents associated with the DUI's. Applicant claims he has been abstinent since the last alcohol related driving charge and he plans to remain so in the future. [\(10\)](#)

Applicant manages east coast projects for his company with contracts valued in excess of \$3.5 million. Applicant has access to many government and military facilities as part of his job. His company works in secure areas but never handles secure material. He is disappointed in himself because he may have put his job in jeopardy. Applicant does not drink at work and has never had any reprimands for such. He notes his drinking has not caused any difficulties at work or ability to perform his job. However, he does admit the drinking incidents reflect impaired judgment in operating a motor vehicle. [\(11\)](#) His drinking pattern between 1987 and 2003 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. [\(12\)](#) Applicant's drinking meets the criteria for "binge drinking" according to the National Institute on Alcohol Abuse and Alcoholism. [\(13\)](#)

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 guideline 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.

The Guideline G 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.⁽¹⁴⁾ 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.⁽¹⁵⁾

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:

The government has established its case under Guideline G. 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. Over a period of seventeen years, the police arrested and charged Applicant with four 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 1987 to 2003.

In addition to the above incidents, Applicant's consumption of alcohol reflects a pattern of binge drinking, according to NIAA criteria, since his twenties. 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 2003 (his last alcohol conviction). Applicant implies his drinking problem is under control because he reports abstinence since his last charge. However, the record contains no evidence to support this claim.

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 intends to abstain in the future but his past conduct demonstrated a pattern of periodic drunk-driving arrests. Only 2.5 years have passed since the 2003 arrest, and based on Applicant's pattern, insufficient time has passed to be able to conclude confidently that he will not engage in such behavior in the future. Despite the fact that he completed prior probations successfully, he is not currently receiving any professional counseling. Applicant failed to mitigate the security concerns regarding his alcohol consumption.

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. Accordingly, Guideline G is 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

Subparagraph 1.e: Against Applicant

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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 12, 2006) at 1-2.
3. Item 4 (Applicant's Security Clearance Application (SF 86), dated November 26, 2003) at 1.
4. *Id.*
5. Item 5 (Applicant's Statement, dated September 9, 2004) 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. Item 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.