

KEYWORD: Alcohol

DIGEST: Applicant's excessive alcohol consumption has been mitigated by his successful completion of 16 weeks of treatment and aftercare in February 2004. Though Applicant was drinking then arrested in March 2005 after he completed aftercare, he was not driving nor was he acting in a way to support the charges. More importantly, the charges were dismissed. The record of excessive alcohol consumption against Applicant has also been mitigated by the passage of more than two years since his last alcohol-related incident. Clearance is granted.

CASENO: 06-24556.h1

DATE: 09/06/2007

DATE: September 6, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-24556
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
PAUL J. MASON**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

David E. Grisham, Esq.

SYNOPSIS

_____Applicant's excessive alcohol consumption has been mitigated by his successful completion of 16 weeks of treatment and aftercare in February 2004. Though Applicant was drinking then arrested in March 2005 after he completed aftercare, he was not driving nor was he acting in a way to support the charges. More importantly, the charges were dismissed. The record of excessive alcohol consumption against Applicant has also been mitigated by the passage of more than two years since his last alcohol-related incident. Clearance is granted.

STATEMENT OF CASE

On January 10, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant indicating that based on alcohol consumption (Guideline G), 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On March 22, 2007, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

On May 9, 2007, this case was assigned to me. On July 10, 2007, this case was scheduled for hearing on July 31, 2007. The Government submitted two exhibits (GE), and Applicant submitted eight exhibits (AE) that have been admitted in evidence. Testimony was taken from Applicant. The transcript (Tr.) was received on August 15, 2007.

FINDINGS OF FACT

Applicant, single, is 23 years old and employed as systems integration and test engineer with a defense contractor. He has been employed in the position since May 2007. Before May 2007, Applicant worked at a similar position for another defense contractor (Tr. 37) while completing his college curriculum.

Paragraph 1 of the SOR contains four allegations relating to alcohol consumption (Guideline G). Applicant admitted all allegations with explanations. Under subparagraph 1.a., Applicant indicated that the January 2003 alcohol-related incident and subsequent counseling convinced him to reduce his alcohol consumption. In addition, he does not operate an auto if he has been drinking. Applicant realizes he made a serious mistake on January 20, 2003, when he drove home after consuming alcohol (subparagraph 1.b.). Applicant admitted receiving counseling (subparagraph 1.c.) for alcohol abuse. Significantly, he was not found to be suffering from a more serious alcohol problem like alcoholism or alcohol dependence. On March 25, 2005, Applicant was arrested for resisting arrest without violence, and disorderly intoxication (subparagraph 1.d.). While he had been drinking before the confrontation with the police, he was not intoxicated. Moreover, the charges were dismissed.

Before the driving while under the influence of alcohol (DUI) offense in January 2003, Applicant described his drinking (subparagraph 1.a.) as weekend only due to the fact he was underage; and his access to alcohol was much more limited. After consuming about three or four drinks at a sports bar on January 20, 2003, Applicant got into his car and began driving home. On his way, he failed to yield the right of way and was stopped by the police. The officer asked him to take a blood-alcohol test. He refused because he was under age when stopped and assumed a failed test would make a regrettable situation even worse. Applicant was arrested for DUI (subparagraph 1.b.). After pleading no contest, he was placed on 12 months probation, his driver's license was suspended, and he was ordered to attend alcohol counseling.

Applicant was referred to the counseling agency on June 30, 2003. (AE A) After Applicant indicated his last alcohol use was in July 2003, the licensed clinical social worker (LCSW) administered some tests. When those tests showed Applicant susceptible on at least one level for substance dependence, and on two levels for alcohol abuse, the counselor recommended Applicant for counseling. (Tr. 40) He received counseling (subparagraph 1.c.) from July 2003 to February 2004.

The counseling consisted of 12 weeks of group sessions and two months of aftercare. Applicant also attended 22 twelve-step meetings, a critical part of the Alcoholics Anonymous (AA) recovery program. During the course of group therapy, Applicant learned about the course of alcoholism as a disease, denial, the basic skills of recovery and relapse prevention. Applicant tested negative on four random alcohol tests. The LCSW noted that Applicant met the requirements of his program and furnished a good prognosis. (AE A) Significantly, the LCSW allowed him to end his counseling early because she concluded he understood the objectives of his counseling. (Tr. 32-34) After an unknown period of regular attendance in AA, Applicant's belief he had his drinking under control convinced him to stop attending AA sometime in 2004.

On March 25, 2005, Applicant rode downtown on a bus with friends to celebrate another friend's birthday. He had three or four drinks. At some point in the evening, Applicant and a group of friends decided to go to another location in another friend's car. This friend, who Applicant thought was also the designated driver, failed to yield and was stopped by the police. The driver was arrested after the officer thought he had been drinking. The other occupants of the car got out and began walking away from the car when they concluded the driver would be arrested. Some of them became belligerent and began shouting profane language at the police officer. The officer thought Applicant was one of the shouters of profanity. The officer arrested him after he asked why he was being arrested. Applicant was arrested and charged with resisting arrest without violence and disorderly intoxication. A no information was filed on both charges. The charges were dismissed. (Tr. 29-30) Applicant believes the arresting officer overreacted.

Applicant's testimony reflects that he has resumed using alcohol sporadically since the 2005 incident. Although he did not provide much detail about his present consumption, his counseling has convinced him of the necessity to maintain control over alcohol use when he does drink. His last alcohol use was about two months before the hearing. (Tr. 36)

All of Applicant's character references come from his previous employer before he was hired by his current employer in May 2007. Two former officials considered Applicant to be a superb employee and a diligent worker. One former coworker, who knew Applicant at work and in school,

assessed Applicant as a real professional and welcomed his contributions to the overall success of the mission. Applicant's former supervisor extolled Applicant's team worker attitude while working on projects.

Having weighed Applicant's demeanor and conduct with the information he provided to the referral counselor, there is some discrepancy as when Applicant resumed alcohol use after his DUI arrest in January 2003. I attribute the discrepancy to nervousness by Applicant rather than an attempt to misrepresent the times in which he used alcohol after the January 2003 DUI offense.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Alcohol Consumption

Excessive alcohol consumption impairs judgment and can raise security concerns about an individual's reliability and trustworthiness.

CONCLUSIONS

Excessive alcohol use can pervade other aspects of a person's life in a negative way. The abusive level of alcohol use can lead to minimization and denial of the harmful consequences that consumption may be having on various aspects of a person's life, including the person's health. Applicant's alcohol problem raises security concerns under alcohol consumption (AC) disqualifying condition (DC) 22.a. (*alcohol-related incidents away from work, such as DUI, fighting, child or*

spouse abuse . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent) and 22.e. (*evaluation of alcohol abuse or alcohol dependence by and a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) The DUI offense (January 2003) described in subparagraphs 1.b. was an alcohol-related incident away from work. Applicant pled guilty to the offense and received 12 months of probation, had his license suspended for 12 months, and was required to attend 12 weeks of counseling.

The 12 weeks of counseling were recommended following Applicant's referral to the recognized counseling program. AC DC 22.e. applies due to the LCSW's evaluation of Applicant in July 2003. Based on her clinical interview and testing, she determined he was an alcohol abuser in need of counseling. The evaluation meets the elements of AC DC 22.e.

Applicant began treatment in July 2003 and successfully completed the program in February 2004. In that period, he participated in 12 weeks of group sessions, and two months of aftercare. Throughout the treatment and aftercare, he attended 22 AA meetings. Applicant's treatment has helped him to drink alcohol responsibly. AC MC 23.b. (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*) applies.

While the March 2005 arrest described in subparagraph 1.d. is also viewed as an alcohol-related incident within the scope of AC DC 22.a., there are certain factors about the arrest that are extenuating. First, Applicant believed a designated driver was operating the car at the time of the stop. Second, Applicant's recount of his arrest by the police officer appears to support his opinion that the officer overreacted to the situation, particularly after hearing the profane language. Since there is no evidence that any blood tests were taken at the arrest location to determine whether Applicant was intoxicated, it is difficult to comprehend how the arresting officer could have interpreted Applicant's query about why he was being arrested as constituting behavior supporting a resisting arrest without violence charge and a disorderly conduct charge. Although there is no evidence as to why the arresting officer decided not to file charging papers, it probably is based on his conclusion that there was an inadequate foundation for the charges.

Applicant's character evidence provides a positive picture of a 23-year person who has in the last two years compiled a good record at work among his peers and supervisors. After his DUI in January 2003, he exercised good judgment by taking to heart the objectives of the group sessions and aftercare. Though he was involved in a second alcohol-related incident in March 2005, there was nothing in his behavior that warranted his arrest and charge. Finally, there have been no alcohol-related incidents or behavior since March 2005, and those charges were dismissed.

Applicant's case in mitigation also meets the elements of AC MC 23.d. (*the individual has successfully completed outpatient counseling or rehabilitation along with aftercare, has demonstrated a clear established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of AA or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker whose is a staff member of a recognized treatment program*) as Applicant completed every component of the program, and was given a good prognosis. Considering the evidence as a whole under the specific guidelines and the whole person model, I find for Applicant under

subparagraphs 1.a., 1.b., 1.c., and 1.d. Applicant has satisfactorily established his excessive alcohol consumption will not recur.

FORMAL FINDINGS

Paragraph 1 (Alcohol Consumption, Guideline G): FOR THE APPLICANT.

Subparagraph 1. a.	For the Applicant.
Subparagraph 1.b.	For the Applicant.
Subparagraph 1.c.	For the Applicant.
Subparagraph 1.d.	For the 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.

Paul J. Mason
Administrative Judge