

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is 53 years old and has worked as an electronics technician for a defense contractor for the past 10 years. On several occasions from 1972 to May 2006, he drank alcohol excessively and to the point of intoxication. In 2005, he was charged with DUI and served 120 days in jail, with probation for two years. His probation will end in October 2008. Applicant ceased drinking alcohol in May 2006 and has been alcohol-free since then. He has not mitigated the alcohol consumption security concerns. He has mitigated the personal conduct security concerns. Clearance is denied.

CASENO: 07-01608.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 07-01608
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

Peter W. Rotella, Esq.

**SYNOPSIS**

Applicant is 53 years old and has worked as an electronics technician for a defense contractor for the past 10 years. On several occasions from 1972 to May 2006, he drank alcohol excessively and to the point of intoxication. In 2005, he was charged with DUI and served 120 days in jail, with probation for two years. His probation will end in October 2008. Applicant ceased drinking alcohol in May 2006 and has been alcohol-free since then. He has not mitigated the alcohol consumption security concerns. He has mitigated the personal conduct security concerns. Clearance is denied.

## STATEMENT OF THE CASE

On May 3, 2006, Applicant executed an Electronic Questionnaire for Investigation Processing (e-QIP).<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)<sup>2</sup> on June 20, 2007, detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the Revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In a sworn statement, dated July 10, 2007, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the Government was ready to proceed on August 8, 2007. This case was assigned to me on August 9, 2007. Applicant's attorney filed a Notice of Appearance on August 10, 2007. A Notice of Hearing was issued on August 14, 2007, scheduling the hearing for August 29, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted exhibits 1-6, and Applicant submitted exhibits A-D, all of which were admitted into the record without objection. The record was left open to give Applicant time to submit additional documents. Applicant submitted two additional documents, which were not objected to by the Government. The documents were identified as exhibits E and F and admitted. The transcript (Tr.) was received on September 12, 2007.

## MOTION TO AMEND THE STATEMENT OF REASONS

On August 7, 2007, the Government submitted a Motion to Amend the SOR by adding a new allegation under subparagraph 1 and adding paragraph 2 as follows:

1.g In about January 1986, you were charged with Driving Under the Influence by the [state] Police Department.

2. Guideline E: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Available information raising this concern shows that:

2.a You falsified material facts on a Standard Form 86, Security Clearance Application, executed by you under date November 3, 2000, in response to "Question 24. Your Police Record – Alcohol/Drug Offense. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report

---

<sup>1</sup>Ex. 1 (Electronic Questionnaire for Investigation Processing, dated May 3, 2006).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

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 Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.” You deliberately failed to disclose that you had been arrested on April 21, 2000 and charged with illegal operation of a motor vehicle under the influence of alcohol/drugs. You were found guilty as charged on June 15, 2000.

Applicant objected to the amendment of the SOR. In a written response, Applicant stated “[t]he applicant has prepared his defense, the trial date has been set, and to now permit such an amendment would require him to alter his defense to his detriment.” As to subparagraph 1.g, Applicant argued that too much time had elapsed to review records in a 1986 incident, since those records may no longer be available. On August 22, 2007, the Government filed a reply objecting to Applicant’s objection to amend the SOR. At the hearing, after hearing the parties’ argument, the Government’s motion to amend the SOR was granted.<sup>3</sup>

### **FINDINGS OF FACT**

Applicant admitted all the factual allegations. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 53 years old and has worked as an electronics technician for a defense contractor for the last 10 years. He served in the Navy from 1980-1996, and retired as a Petty Officer First Class (E-6) with an honorable discharge. He is married and has a 13-year-old daughter.

Applicant started drinking at the age of 18. He continued to consume alcohol during his tour in the Navy. In 1986, in two separate incidents when he was out drinking, Applicant was charged with DUI. He admitted these allegations, but believes that both cases were dismissed.<sup>4</sup> The record is devoid of whether the charges were dismissed.

On April 21, 2000, Applicant was arrested and charged with illegal operation of a motor vehicle under the influence of alcohol/drugs. On June 15, 2000, he pled guilty as charged. He was fined, sentenced to community service, and his driver’s license was suspended for one year. He applied for and received a permit so he could continue to drive to and from work.

Applicant executed a SF 86 in 2000.<sup>5</sup> In response to Question 24, “*Your Police Record – Alcohol/Drug Offense. Have you ever been charged with or convicted of any offense(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 Substances Act for which the court issued*

---

<sup>3</sup>Tr. 9-29.

<sup>4</sup>Applicant’s Answer, dated July 10, 2007.

<sup>5</sup>Ex. 2 (Security Clearance Application).

and expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607,” Applicant failed to disclose that he was found guilty of a DUI in June 2000.<sup>6</sup> Applicant stated that he did not intentionally omit this information.<sup>7</sup> Applicant objected to the admissibility of Ex. 2 because of authentication. The document proffered by the Government was unsigned. The Government relied on the date on the “Authorization for Release of Medical Information,” signed by Applicant on October 31, 2000. Applicant indicated that he signed the SF 86 on a different date, and he proffered a sworn statement indicating that the document was executed on March 28, 2000.<sup>8</sup> He too relied on the date on the “Authorization for Release of Medical Information” form and did not proffer an executed copy of the 2000 SF 86. In May 2007, Applicant completed interrogatories. During the interview, Applicant made this statement: “the subject [Applicant] volunteered that in the summer of 1999 or 2000 (exact date not recalled) he was arrested for DUI.”<sup>9</sup>

For three weeks in 2004, Applicant was treated at an inpatient alcohol-related program. A certificate from the facility indicated that Applicant successfully completed the 10-week outpatient program at an institute recognized for providing alcohol and drug abuse treatment.<sup>10</sup>

In April 2005, Applicant was arrested and charged with DUI and evading the police. He pled guilty to DUI and was sentenced to two years in jail, which was suspended after he served 120 days. He was ordered to serve 100 hours of community service and two years of probation. His driver’s license was suspended for three years starting in 2006. The suspension was reduced to a year based on the installation of a special Breathalyzer device in his car. He has to breathe into the Breathalyzer device before he could start the car. The system would not allow him to drive if he has consumed alcohol. The charge for evading the police was *nolle prosequere*. The probation will end in October 2008.

In December 2006, Applicant participated in an alcohol counseling and education program and completed the program in July 2007, which included counseling and attendance at local meetings to talk about alcohol issues.<sup>11</sup> In May 2006, Applicant ceased drinking alcohol.<sup>12</sup>

On July 13, 2007, Applicant received an assessment of his condition from the institute that treated him for his alcohol problem. His diagnostic impression was alcohol abuse, sustained and in

---

<sup>6</sup>Tr. 7-20. During the hearing, Applicant argued that the Government’s Ex 2 (SF 86), did not have a signature page and that the Government was relying on the signature date that Applicant authorized release of his medical records.

<sup>7</sup>Tr. 116.

<sup>8</sup>Ex. I (Applicant’s Affidavit, dated September 10, 2007).

<sup>9</sup>Ex. 3 (Interrogatories, dated May 25, 2007).

<sup>10</sup>Ex. D (Certificate, dated March 27, 2006).

<sup>11</sup>Tr. 98.

<sup>12</sup>*Id.* at 99.

full remission. The report revealed that Applicant is not in need of any treatment at this time and his prognosis for continued long-term recovery was good.<sup>13</sup>

Two witnesses testified on behalf of Applicant. One witness, who has worked with Applicant for over a year, was skeptical about Applicant returning to work after treatment in an alcohol rehabilitation program. This witness indicated that when Applicant returned to work, he was more focused than ever and was once again a good worker.<sup>14</sup> The other witness was in the Navy with Applicant and is currently his supervisor.<sup>15</sup> He was aware of Applicant's issues with alcohol. He stated that after his incarceration, Applicant was "much more comfortable with himself," and his job performance has never been an issue.<sup>16</sup>

### POLICIES

"[N]o one has a 'right' to a security clearance."<sup>17</sup> As Commander in Chief, the President has "the authorities to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>18</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clear consistent with the national interest to do so."<sup>19</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>20</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>21</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>22</sup>

---

<sup>13</sup>Ex. A (Assessment, dated July 13, 2007).

<sup>14</sup>Tr. 74.

<sup>15</sup>*Id.* at 80.

<sup>16</sup>*Id.* at 83.

<sup>17</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>18</sup>*Id.* at 527.

<sup>19</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>20</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>21</sup>*Id.*; Directive, ¶ E2.2.2.

<sup>22</sup>Exec. Or. 10865 § 7.

The Revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

## CONCLUSIONS

I carefully considered all facts in evidence and the applicable legal standards, and I reach the following conclusions.

### **Alcohol Consumption**

Alcohol Consumption may be a security concern because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” (AG ¶ 21)

Applicant has four different DUIs. There were two DUIs in 1986, and in each case he was arrested and spent a night in jail. However, the record does not reveal why those charges were dismissed. Applicant had a 2000 DUI and was found guilty. He was ordered to serve 100 hours of community service and he lost his driver’s license but got it back after a Breathalyzer interlock system was installed, which prohibits Applicant from driving if he has consumed alcohol. In April 2005, he was charged with DUI. He was sentenced to 20 months of incarceration, but served 120 days. He was also sentenced to two years of probation. The probation will not end until October 2008. On July 13, 2007, he received a diagnostic impression of alcohol abuse, sustained and in full remission and favorable prognosis for recovery. Consequently, Alcohol Consumption Disqualifying Conditions AG ¶ 22(a) (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*) and AG ¶ 22d (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) apply.

Various factors can mitigate alcohol consumption security concerns. Applicant participated in a 10-week alcohol treatment program in 2004. Then in December 2006 through July 2007, he was an inpatient at an alcohol treatment program. In July 2007, his diagnostic impression was alcohol abuse, sustained and in full remission and favorable prognosis for recovery. Applicant ceased drinking alcohol in May 2006. His driver’s license was suspended for three years starting in 2006. The suspension was reduced to a year, because of the installation of a special Breathalyzer device, which will not allow him to drive if he has been drinking. His probation continues through October 2008. Applicant has worked hard to combat his abuse of alcohol. I applaud him for being alcohol-free for more than a year. Because his probation will not cease until October 2008, I cannot conclude that Applicant will not abuse alcohol during this probationary period. More time is needed for Applicant to prove that his excessive alcohol consumption and periodic drinking and driving days are over. Thus, Alcohol Consumption Mitigating Conditions AG ¶ 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) and AG ¶ 23(d) (the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) do not apply.*

## **Personal Conduct**

“Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” (AG ¶ 15)

In response to a question on the 2000 SF 86, he failed to disclose that he was found guilty of a DUI in June 2000. The document proffered by the Government, Ex. 2, is unsigned by Applicant. Moreover, the date on the exhibit is the date Applicant offered release of medical information. Moreover, in the SF 86 executed by Applicant on May 3, 2006, he does not list either the 1986 or 2000 DUIs. However, during an interview on May 25, 2007, Applicant volunteered information about his 2000 DUI. Consequently, I conclude that the Government received an honest answer to the question when Applicant volunteered information about his 2000 DUI during an interview in May 2007. Thus, AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant 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 of the evidence in the case. I have also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant has made substantial progress in dealing with his long history of excessively consuming alcohol. He participated in a 10-week alcohol treatment program in 2004. Moreover, he participated in a different alcohol treatment program from December 2006 to July 2007. His diagnosis was alcohol abuse, sustained and in full remission and favorable prognosis for recovery. He has been alcohol-free since May 2006. However, his behavior is still being monitored by the State and his probation will end in October 2008. I conclude that while Applicant is on probation, he is still a potential risk. Based on the evidence of record, it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

## **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 F (Alcohol Consumption):

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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all of the circumstances in the case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams  
Administrative Judge