



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 07-08113
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: Jerrilynn Hadley, Esq.

March 13, 2008

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern caused by his alcohol consumption which resulted in two relatively recent alcohol-related driving convictions.

On October 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H (alcohol consumption). Applicant's response to the SOR was received by DOHA on November 26, 2007. Applicant denied all SOR allegations and requested a hearing.

The case was assigned to another administrative judge on January 3, 2008, and reassigned to me on January 4, 2008, to be heard in conjunction with other cases I had

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

scheduled in the same region. A notice of hearing was issued on January 14, 2008, scheduling the hearing for February 5, 2008. The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1 & 2, and admitted into the record without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant Exhibits (AE) 1 & 2, and admitted into the record without objection. The transcript was received on February 27, 2008.

### **Findings of Fact**

After a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 54 years old and has been employed by a defense contractor since October 1997. He served on active duty in the U.S. Air Force from May 1976 until his retirement in June 1996. He was a technical sergeant (paygrade E-6) at the time of his retirement. Applicant has held a security clearance for approximately 30 years. No prior adverse action has been taken to revoke or downgrade his security clearance eligibility.

Applicant was first married in July 1974. That marriage ended in divorce in June 1984. He again married in January 1988. That marriage ended in divorce in July 2006. He has two adult children and one adult step-child.

In October 2004, Applicant was arrested on suspicion of Driving a Vehicle While Under the Influence (DUI). Applicant admits to consuming about six beers while bowling prior to his arrest. The arrest resulted from him almost striking a police car that was stopped with its lights off in a road crossover. Applicant pled nolo contendere to a charge of reckless driving and was placed on probation, fined, and required to attend six alcohol awareness counseling sessions.

Applicant was arrested and charged with DUI in May 2006. His wife had unexpectedly announced she was leaving him earlier the day of his arrest and had him drive her to the airport. After dropping her off, Applicant attended a Memorial Day picnic at a veteran's organization where he consumed a large number of alcoholic beverages. His blood alcohol concentration (BAC) was measured at 0.20 when he was arrested. Applicant pled nolo contendere to the DUI charge, was placed on probation, fined, required to attend an alcohol awareness program, had a ignition lock system installed on his vehicle, and attended 20 weeks of outpatient alcohol counseling from June to December 2006. He was told during his counseling sessions he had "a potential alcohol problem" (Tr. p. 32).

Applicant admits to being a "heavy drinker" while in the Air Force, but claims the heavy drinking was confined to a period extending from the late-1970s to the mid-1980s. However, he also admits attending Alcoholic Anonymous (AA) meetings during the 1994-95 time frame. He claims his attendance at those meetings was motivated at the suggestion of a person who presented an alcohol awareness lecture as part of routine military training and because "I was actually wondering if I had a serious problem back then" (Tr. p. 53).

Applicant admits consuming small amounts of alcohol following his 2006 arrest, but claims he last consumed alcohol on August 24, 2007, which was about the date he received interrogatories from DOHA inquiring about his use of alcohol. He admits his motivation for quitting drinking alcohol was at least in part motivated by concern over his security clearance, which provided a “wake up call” for him. However, he also asserts it was motivated by his personal desire to abstain.

Applicant submitted a log indicating he attended 17 AA meetings between November 27, 2007 and January 31, 2008 (AE 1). He also submitted a letter indicating he began attendance at an outpatient alcohol and drug abuse program on February 4, 2008 (AE 2). He testified he attended his first meeting in that program the night before the hearing held in this case. Applicant testified he had unsuccessfully attempted to earlier enroll in a Veteran’s Administration sponsored alcohol awareness program.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person’s eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

## Analysis

### Guideline G, Alcohol Consumption

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. (Adjudicative Guideline [AG] ¶ 21)

Applicant was arrested for alcohol-related offenses in 2004 and again in 2006. In 2004, he was almost involved in an accident with a stopped police car and was convicted of Reckless Driving of following his plea of nolo contendere. He admits to having consumed about six beers prior to the 2004 arrest. His 0.20 BAC following the 2006 arrest substantiates that he was grossly intoxicated at the time. He was convicted of DUI, placed on probation, required to attend lengthy counseling sessions, and had an ignition interlock placed on his car. Disqualifying Condition (DC): 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 applies.*

Applicant admits being a heavy drinker while in the Air Force but claims the excessive drinking was confined to a relatively few years during the early part of his military career. However, he also admits attending AA meeting for a year or so toward the end of his military career because he was concerned he might have a serious alcohol problem. Although he was told during counseling in 2006 he had a potential alcohol problem, he continued to consume alcohol, at least in small amounts, until he became aware it created a security concern. He only recently again began regular attendance at AA meetings, and only the day before the hearing enrolled in another alcohol counseling program. Together with his two alcohol-related convictions, these facts strongly indicate Applicant has and is seriously minimizing his alcohol use and abuse and that his recent attendance at AA

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<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

meetings and entering into an outpatient program is solely motivated by concern over the possible loss of his security clearance.

The relatively short length of time that has passed since Applicant's last alcohol-related offense, his admitted excessive alcohol consumption in the 1970s and 1980s, his attendance at AA meetings during the mid-1990s, his 2004 alcohol-related arrest, and his consumption of alcohol after being told he might have a serious alcohol problem during a counseling program prohibit application of any mitigating conditions under AG ¶ 23.<sup>12</sup> Accordingly, I find Applicant has failed to mitigate the alcohol consumption concern that exists as a result of his alcohol-related arrests, history of excessive alcohol consumption, and continued use of alcohol after being informed he potentially had a serious alcohol problem.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the security concerns caused by his alcohol consumption. He has failed to overcome the case against him in this regard or satisfy his ultimate burden of persuasion. Guideline G is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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<sup>12</sup> MC 23(a): *so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;*

MC 23(b): *the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);*

MC 23(c): *the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;*

MC 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 meeting 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.*

## **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

Subparagraphs 1.a-d:           Against Applicant

## **Conclusion**

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.

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Henry Lazzaro  
Administrative Judge