



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-10106
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 26, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on February 21, 2008 and requested a hearing. The case was assigned to me on April 2, 2008, and was scheduled for hearing on April 30, 2008. A hearing was held on April 30, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on one witness (himself) and three exhibits. The transcript (R.T.) was received on May 14, 2008. Based upon a review of the case

file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline G, Applicant is alleged (a) to have consumed alcohol to excess and to the point of intoxication from at least 1977 to 2006 and (b) been involved in four alcohol-related arrests between 1977 and April 2006.

For his answer to the SOR, Applicant admitted his 1998 driving under the influence (DUI) arrest and disposition, his 1984 citation for operating a vehicle while intoxicated and award of non-judicial punishment (NJP) and his 1977 charge of illegal possession of alcohol, for which he was fined. But he denied any arrest in April 2006 for DUI; he claimed the arrest was for driving under the influence of alcohol, for which he pleaded *nolo contendere* and was sentenced as alleged. And he denied consuming alcohol, at times to excess and to the point of intoxication, from at least 1977 to 2006.

Findings of Fact

Applicant is a 50-year-old production manager for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant's has two children and two step children from his first marriage. All of his children and step children are emancipated and living on their own (R.T., at 76). He divorced his first wife in 1996 and married his current wife in 1999 (see ex. 1).

Applicant was introduced to alcohol in high school. After graduating from high school in 1975, he enlisted in the Air Force (AF). He was granted a security clearance in 1977 and has held one ever since (R.T., at 77-78).

Applicant was discharged from the AF in January 1985 and went to work in a civilian capacity for the AF the same month (see ex. 1). He worked as an AF civilian for over 12 years before moving on to the private sector.

Applicant continued to consume alcohol following his AF enlistment. He had consumed a can of beer on the base in 1977 and was still holding the beer can in the driver's seat when he was stopped by local college police (R.T., at 68-70). Police charged him with illegal possession of alcohol and fined him (R.T., at 68).

In 1984, Applicant had participated in a major AF golf competition and had consumed eight or nine beers at an ensuing party before heading home. While headed back to base housing, he inadvertently pulled onto the base facility (see ex. A), where he was pulled over by base police (R.T., at 60-62, 92). The base police asked him to step out of his vehicle and arrested him for violating a command order not to drive on

the base facility (R.T., at 62). Once out of the vehicle, the base police asked him to submit to a breath test. When their Breathalyzer would not work, they escorted him, to the base dispensary for administering a blood test (R.T., at 92). While not completely certain of his test results, he believes he registered over the limits to show alcohol intoxication.

Subsequently, Applicant accepted non-judicial punishment and was fined and restricted to no driving on base for a year. Applicant says he had inadvertently disobeyed an order not to drive on the base (R.T., at 68). Applicant insists he had misconstrued the boundaries of the AF base when he approached the guard house on the base (R.T., at 66-67). He had assumed incorrectly that the base commenced at the highway. His claims while sincere were not convincing to the convening authority who presided over his NJP appearance and do not alter judgment lapses associated with his driving while under the influence of alcohol.

Applicant realized after the incident that he should not have been driving home in the evening of 1984. After playing in the AF golf tournament 36 holes of golf and drinking at a squadron celebration that followed (R.T., at 56-57), he was in no position to drive safely. But at the time he felt he could drive safely and did. Applicant submitted to a Breathalyzer at the dispensary; he is not sure of the test results but believes he was probably over the limit (R.T., at 92).

As a result of this 1984 alcohol-related incident, his command vacated an earlier suspension of an order issued to Applicant not to drive on the base (see ex. 6). Based on the initiated Article 15 proceedings, Applicant was notified in May 1984 of his ineligibility to reenlist in the AF (see ex. 5). The incident also prompted his vacation of his acceptance into a previously approved OCS program (R.T., at 57-58). As a result, Applicant asked his command for early release from his AF enlistment to pursue his education goals (R.T., at 71-72). His request was granted, and Applicant received an honorable discharge in January 1985 (R.T., at 73).

Between 1987 and 1997, Applicant was enrolled in a college engineering program at a respectable institution of higher learning. He is credited with earning a bachelors of science degree in electrical engineering from a reputable university after 17 years of study (see ex. 1). His alcohol consumption was fairly moderate during this period: maybe two beers one weekend a month during outside barbeques (R.T., at 95-96).

Following expiration of his probationary period, Applicant continued to consume alcohol on a moderate basis. He estimates that he typically consumed no more than two to three beers with friends during weekend dinners or barbeques. He practiced this moderate level of drinking for over eight years between 1998 and 2006, and never attended bars or drank to intoxication during this eight-year span. What little free time he had he spent with his daughters as their soccer coach, swimming instructor, and all around supporter of their school activities.

While attending an NCAA final four basketball game with his wife in 1998, Applicant consumed eight or nine beers. When returning home after the game, he was pulled over by police for a suspected improper lane change (see ex. 2; R.T., at 54-55, 90). The officer who stopped him asked him if he had been drinking. When Applicant responded affirmatively, the officer asked him to submit to a field sobriety test and Breathalyzer (ex. 2). Applicant failed both tests and was arrested for Dul and incarcerated overnight. He pled no contest in court and was sentenced to six months probation, fined \$450.00, ordered to work 80 hours of community service, enroll in a driver education course, and surrender his driver's license (see ex. 2; R.T., at 90-91). He subsequently petitioned the court for an occupational driver's license, which the court approved (R.T., at 91).

In April 2006, Applicant was involved in his fourth alcohol-related incident. Applicant and his wife had been out dancing and consumed too much alcohol before departing for home. When stopped by the arresting officer, the officer asked Applicant to step out of his vehicle (see ex. 3). In disembarking from his vehicle, the officer noted that Applicant was unsteady on his feet (ex. 3). Upon observing his behavior and finding an open container in his vehicle, she asked him to submit to a Breathalyzer test (R.T., at 80-81). Applicant declined the officer's request and was arrested.

At hearing, Applicant questioned the officer's character (see ex. C) and her characterization of his clumsy reactions on his feet after exiting his vehicle (R.T., at 41). He attributes his apparent clumsy movements to banging his knee on the hitch of his truck. This is a plausible explanation of his apparent clumsy footwork. However, neither this explanation nor his claimed request to talk to a lawyer adequately explain the likely effects of his prior alcohol consumption during and after his golf tournament (*i.e.*, four to six beers while playing 36 holes of golf and three beers and a margarita at the reception afterwards) or his failure to submit to a requested field sobriety test at the scene or a Breathalyzer back at the station (*compare* ex. 3 with R.T., at 42-53, 88-89).

At his June 2006 court appearance, Applicant pled no contest and was sentenced to 18 months probation, fined \$700.00, ordered to enroll in both a victim impact panel and a 16-week alcohol intervention course, (which included weekly meetings with Alcoholics Anonymous (AA) and attendance reports) and directed to perform 24 hours of community service (see ex. 2; R.T., at 80). Because his driver's license was automatically suspended for two years as the result of his Dul conviction, he sought and obtained court approval of an occupational driver's license for the duration of his two-year driver's license suspension period (ex. 2). One of the conditions the court set for Applicant's occupational driver's license was the installation of an ignition interlocking breathalyzer device in his vehicle that Applicant must use every time he uses his vehicle (ex. 2).

Since his June 2006 incident, Applicant does not party or attend bars and assures he has not consumed alcohol of any kind (R.T., at 97-98). Instead of alcohol, he assures that he and his wife only consume O'Doul's non-alcoholic beverages (R.T., at 99). He has never had the impression he was dependent on alcohol. Nonetheless,

he has continued to attend open AA meetings, which are a condition of his court-conditioned probation (R.T., at 96-97). He provides signed monthly attendance reports to his probation officer (R.T., at 96-97), and expects to continue his AA meetings for the duration of his probation (R.T., at 97). He does find the friendships and support he receives from his AA participation to be very helpful; even though he does not admit to being an alcoholic (R.T., at 97).

Because a core tenet of AA is acknowledging one's alcoholic status, it is difficult to gauge Applicant's commitments to AA. He acknowledges AA's alcoholic admission tenet, but avoids closed meetings where testimonials and acknowledged alcoholism are expected. Furnished attendance reports, chips commemorating his sustained abstinence, and endorsements from a sponsor and friends familiar with his AA attendance would have provided helpful corroboration. Professional evaluations of his alcohol status could have been useful, too, in determining his vulnerabilities (if any) to alcohol. Applicant indicated, though, that he has never sought a professional evaluation from a credentialed physician or therapist for any alcohol problems (R.T., at 84).

Without any professional evaluation of Applicant or corroboration of his AA attendance and benefits derived from his participation, the most that can be inferred from Applicant's accounts is that he has attended AA meetings since being placed on probation in June 2006. It is less than clear whether Applicant (once his probation is officially concluded and his driving privileges are restored) will continue with his AA meetings, maintain his self-imposed abstinence, and avert any recurrent alcohol-related arrests, lapses or slips. Based on his testimony, his probation has been extended several months (from December 2007 to May 2008 (*compare* ex. 2 with R.T., at 81), and he still has a restricted driver's license (R.T., at 81). Reasons for his probation extension are not specifically cited, but seem likely to be associated with his license suspension.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the conditions that could raise a security concern and may be disqualifying (Disqualifying Conditions), if any, and all of the Mitigating Conditions, if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

The Concern. “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.” See AG ¶ 21.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an accomplished production manager for a defense contractor with a history of recurrent alcohol-related arrests (four in all over a 30-year period) and sometimes abusive alcohol consumption over a 30-year period. His alcohol history includes four alcohol-related incidents between 1977 and 2006. Applicant’s exhibited alcohol abuse raises security concerns covered by Guideline G of the Adjudicative Guidelines.

Applicant’s four alcohol-related arrests covered in the SOR raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption (AG ¶ 21) may be applied: 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,” 22©), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” and 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.”

Despite the recurrent pattern of his alcohol-related arrests (four over a 30-year period), Applicant does not believe he is alcoholic and attends AA open meetings, where admitted alcoholism and personal testimonials are not expected. Further, he has never sought an evaluation from a credentialed physician or licensed substance abuse counselor and provides no corroborative support of his AA attendance. Applicant’s failure to provide any corroborative support of his AA and abstinence commitments are important considerations in determining what weight to assign to Applicant’s rehabilitation claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004).

Still troubling and of ongoing security concern is Applicant’s history of recurrent relapses following periods of light to moderate alcohol consumption, and his lack of any extended period of sustained abstinence. While Applicant provides assurances of his sincere commitment this time to maintain his current track of sobriety with the help of AA, his sustained abstinence efforts are still relatively new (about two years), and several months short of his estimated completion of his probation. Moreover, Applicant’s driving privileges are still partially suspended, and will remain so for at least a couple of additional months. This is not to suggest his renewed commitments to sobriety do not reflect positive changes in behavior supportive of sobriety.

With his long history of alcohol-related incidents, and drinking abuses associated with these incidents, relapses following probation and, and still relatively short time in sustained abstinence following his commitment to abstinence with AA support in July 2006, it is still too soon to make safe predictions that he is at no foreseeable risk to a recurrent alcohol-related incident. Faced with similar recurrent alcohol-related arrests over a considerable period of time, our Appeal Board has expressed reluctance to make safe predictive judgments about an applicant’s ability to avoid abusive incidents in the future without strong probative evidence of sustained recovery, aided by positive professional reinforcements. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007).

Taking into account both Applicant’s history of alcohol abuse, his strong work record, the applicable guidelines and a whole person assessment of his most recent sobriety efforts (which have been roundly praised by his treatment counselors), conclusions warrant that his overall efforts, while encouraging, do not reflect sufficient evidence of sustained commitment to AA and its tenets of sobriety to convince he is no longer at risk to recurrence. In the past, he has enjoyed considerable periods of sobriety only to return to episodic drinking that involved alcohol-related incidents away

from work. Because of this recurrent abuse problem, his earlier incidents cannot be considered isolated and unrelated to a pattern of abuse, despite their comparative age when considered separately.

Considering the record as a whole, Applicant fails to make a convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol. Without a more seasoned record of sobriety to rely on, Applicant's mitigation efforts are simply not enough at this time to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the allegations covered by the alcohol guideline of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSIDERATIONS): AGAINST APPLICANT

Sub-paras. 1a through 1.e 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge