



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



In the matter of:)	
)	
XXXXXX, XXXXXXXX XXXXXX)	ISCR Case No. 08-06118
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 6 November 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G.¹ Applicant answered the SOR 29 November 2008, and requested a decision without hearing. DOHA assigned the case to me 24 March 2009. The record in this case closed 12 February 2009, the day Applicant's response to the government's File of Relevant Material (FORM) was due. Applicant did not respond to the FORM.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Revised Adjudicative Guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 27-year-old software engineer employed by a defense contractor since October 2005. He has not previously held a clearance.

Applicant has a recent history of excessive alcohol consumption, punctuated by two alcohol-related incidents.² He began drinking alcohol in 2000, while he was in college and not yet legal drinking age. He described his drinking pattern as 10 beers one weekend night from 2000 until his second DUI in July 2007. He acknowledges drinking and driving 3-4 times annually during this period. Indeed, he was arrested for DUI in February 2002, when he blew a .09 B.A.C. after a traffic stop in a state that prohibited a minor driver from driving with a B.A.C. over .02 (at the time the state DUI threshold was .10 B.A.C. for adult drivers). He had been to a party where he drank 4-5 beers over a 4-5 hour period. He thought he was competent to drive, but was stopped by officers for weaving in his lane.

In July 2007, Applicant was arrested for a second DUI. He drank 9-10 beers over fewer than five hours, and was stopped by officers who observed him swerving over the center line with his high-beam lights on. He failed a field sobriety test (FST), blew a .13 B.A.C. at the scene, and registered .154 on a blood screen taken at the police station. The blood alcohol levels were nearly twice the state limit of .08, and fell into the state's high alcohol rate punishment category (.16 B.A.C. being designated highest rate). At his November 2007 trial, his license was suspended to November 2008, he received six-months supervised probation, and ordered to undergo an alcohol evaluation. Applicant claims, without corroboration, that he was not recommended for further counseling or treatment. He also claims, without corroboration to have consumed no alcohol since December 2007, and to have not consumed to excess since his July 2007 DUI. The government documented that Applicant completed his probation requirements and was released from supervision in May 2008. The record contains no employment or character references.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The

²The July 2004 conviction for furnishing alcohol to a minor has no security significance within the meaning of Guideline G as it did not involve Applicant's consumption of alcohol. The known facts are that Applicant took a six-pack of beer to a friend's party and contributed it to the beverage supply at the party. The next day, he was arrested for furnishing alcohol to a minor. There is no evidence that Applicant knew there were minors at the party, but his lack of knowledge would not be a defense to the charge. If he had known there would be minors at the party, there might be some issue of poor judgment, but would rise to a security concern, if at all, under Guideline E.

presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

The government established a case for disqualification under Guideline G, demonstrating Applicant's seven-year history of alcohol abuse punctuated by alcohol-related arrests in February 2002 and July 2007.⁴ Applicant's alcohol pattern from 2000 to at least July 2007 is fairly described as binge consumption. He also consumed alcohol and drove on multiple occasions in those seven years, and is fortunate to have been stopped only twice. In addition, his alcohol abuse continued after college into his working career.

Applicant failed to mitigate the security concerns. Although he has not had any recurrence of alcohol-related arrests since July 2007, he had the incentives of supervised probation until May 2008 and potential restoration of his drivers license in November 2008. It is too soon to tell if he will resume drinking or drinking to excess. Further, Applicant meets none of the mitigating conditions under Guideline G. His

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶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; . . . (c) 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;

alcohol abuse was recent, frequent, and not under unusual circumstances.⁵ The record contains no evidence of changed circumstances or insights that would augur well for Applicant to maintain his sobriety. On this record, Applicant is unable to establish either a pattern of abstinence or responsible use given his recent release from probationary status, and more recent restoration of driving privileges.⁶ While he has not been diagnosed as alcohol dependent or an alcohol abuser, neither does he have any corroboration that he was not found to require a counseling program after the evaluation ordered as a result of his July 2007 DUI.⁷ Finally, Applicant lacks the kind of program, track record, and prognosis that would demonstrate that his alcohol problems are behind him.⁸ I cannot conclude Applicant is unlikely to abuse alcohol in the future. In essence, the government established its security concerns and Applicant failed his burden of producing positive information, distinct from the absence of negative information to establish rehabilitation. Accordingly, I resolve Guideline G against Applicant.

Formal Findings

Paragraph 1. Guideline G:	AGAINST APPLICANT
Subparagraph a-c:	Against Applicant
Subparagraph d:	For Applicant
Subparagraph e:	Against Applicant

⁵¶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;

⁶¶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);

⁷¶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;

⁸¶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, . . . 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.

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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge