



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-07827
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)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a security clearance is denied.

On July 2, 2006, Applicant submitted a Questionnaire for National Security Positions (SF 86) to renew a security clearance required for his job with a defense contractor. After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to continue Applicant's access to classified information. On February 3, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

security concerns addressed in the revised Adjudicative Guidelines² under Guideline G (alcohol consumption).

Applicant timely responded to the SOR and requested a decision without a hearing. On March 26, 2009, Department Counsel prepared a File of Relevant Material (FORM)³ in support of the government's preliminary decision. Applicant received the FORM on April 8, 2009. According to Section VI, at page 5 of the FORM, Applicant was advised he had 30 days to file a response to the FORM. On May 5, 2009, Applicant submitted a response consisting of a one page letter, which DOHA received on May 11, 2009. The case was assigned to me on May 18, 2009.

Findings of Fact

The government alleged through the SOR that between 1973 and at least October 2008, the Applicant drank alcohol, "at times to excess and to the point of intoxication, at times daily" (SOR ¶ 1.a); that in 1993, he was arrested, charged , and convicted of driving while intoxicated (SOR ¶ 1.b); that on February 7, 2006, Applicant reported to his workplace under the influence of alcohol and was suspended without pay for 30 days (SOR ¶ 1.c); that on February 7, 2006, Applicant was also charged with public intoxication, which was later dismissed, for the conduct alleged in SOR ¶ 1.c (SOR ¶ 1.d); that between February 14, 2006, and February 26, 2006, Applicant was diagnosed with and treated for alcohol dependence (SOR ¶ 1.e); that between March 1, 2006 and April 12, 2006, he was again diagnosed with and treated for alcohol dependence (SOR ¶ 1.f); and that, as of October 2008, despite his prior diagnoses of and treatments for alcohol dependence, Applicant continued to consume alcohol (SOR ¶ 1.g).

Applicant admitted without explanation all of the SOR allegations. In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is 52 years old and works as a quality engineer for a defense contractor. He has worked for the same company since August 1982 and has held a security clearance since June 1985. He and his wife have been married since July 1976 and have raised two children, both now in their 20's. (Gx. 1)

In January of either 1991 or 1992, Applicant was arrested and charged with driving while intoxicated (DWI). He had been drinking at home, but decided to drive to get something to eat. On the way, he fell asleep at the wheel and drove off the road. When the police responded, he was administered a breathalyser test, which registered his blood alcohol content (BAC) at .242%. He subsequently pleaded guilty, was

² The revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, these guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

assessed a fine and court costs, was placed on probation for six months, and his driver's license was suspended for six months. (FORM, Items 3 - 5)

After work on February 6, 2006, Applicant drank between 10 and 12 beers until about midnight. When he reported for work the next day at 5:30 in the morning, he still had the smell of alcohol on his breath. At about 8:30 that morning, he was told to drive a company vehicle to a nearby Army depot. On the way, he bought and drank two beers. When he arrived at the depot, gate guards smelled alcohol on his breath and detained him. Applicant failed a field sobriety test. Base police issued him a citation for public intoxication. After initially denying to his supervisor that he had been drinking, Applicant admitted his misconduct and was suspended without pay for 30 days. (FORM, Items 4, 5 and 8)

From February 14 until February 26, 2006, Applicant received in-patient alcohol detoxification and treatment. He received a discharge diagnosis of alcohol dependence. It was recommended he participate in a 12-step recovery program and that he "abstain from all mood and mind altering chemicals." (FORM, Item 7) On March 7, 2006, Applicant began an outpatient alcohol assessment and treatment program. When he was discharged on April 12, 2006, he was again diagnosed as being alcohol dependent with recommendations that he seek recovery assistance through a 12-step program and that he abstain from alcohol. The diagnoses in both February and in April 2006 were made by either qualified medical professionals or by licensed clinical social workers on the staff a recognized alcohol treatment program. When he appeared to answer the public intoxication charge, he advised the court that he was still participating in alcohol counseling; whereupon, the charge was dismissed. (FORM, Items 5 and 7)

Applicant began drinking alcohol, predominantly beer, when he was 16 years old. His drinking progressed to the point of daily intoxication after consuming between 6 and 12 beers in a single setting. At one point during alcohol treatment, Applicant stated that he could not control his drinking. After he was arrested and convicted of DWI in the early 1990s, he continued to drive after drinking until he reported to work under the influence of alcohol in February 2006. (FORM, Items 5, 7 and 8)

Applicant avers he now can control his drinking, and that he limits his alcohol consumption to three beers in a sitting. He claims he no longer drinks and drives, and that he may go several days without drinking anything at all. Records from his March 2006 treatment show that he was participating in Alcoholics Anonymous meetings, but there is no information as whether he has continued his involvement in AA. (Response to FORM; FORM, Item 7)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the revised

Adjudicative Guidelines (AG).⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factor are:

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 21 (Guideline G - Alcohol Consumption).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁷

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Analysis

Alcohol Consumption.

Available information in this record is sufficient to support the SOR allegations about Applicant's use of alcohol. There are no controverted issues of fact as Applicant admitted all of the SOR allegations. Further, the FORM and its attachments contain sufficient independent information to support these allegations. The facts established raise reasonable doubts about Applicant's suitability to hold a security clearance. Specifically, as stated in AG ¶ 21, "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."

Applicant's alcohol consumption for the past 35 years has, at times, been abusive. He admits consuming as many as 12 beers in a single sitting. When he was arrested for DWI in the early 1990s, his BAC was more than twice the legal limit in most states. He continued to drink and drive until 2006, when he was suspended without pay for 30 days after he reported to work still intoxicated from the night before, when he had consumed up to 12 beers. At 8:30 a.m. the day of his suspension, he drank two beers while driving a company car during working hours. In addition to his employer's disciplinary actions, base police charged him with public intoxication after he failed a field sobriety test. Subsequent alcohol treatment in 2006 resulted in two separate diagnoses of alcohol dependence. Both programs recommended that he abstain from alcohol and continue a structured 12-step recovery program. However, he still drinks, albeit at reduced amounts and frequency, and he does not appear to be involved in AA or other recovery programs.

The foregoing requires application of the disqualifying conditions at 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*), AG ¶ 22(b) (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*), AG ¶ 22(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*), AG ¶ 22(d) (*diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), AG ¶ 22(e) (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), and AG ¶ 22(f) (*relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*). By contrast, Applicant has not provided any information that shows he is following the recommendations of the treatment programs he completed and is pursuing rehabilitation and a sober lifestyle, nothing in this record supports application of any of the mitigating conditions listed under AG ¶ 23. On balance, Applicant has not mitigated the security concerns about his drinking.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines G. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 52 years old and presumed to be a mature adult. According to his SF 86, he has been steadily employed with the same company since 1982 and has held a security clearance since 1985. Apart from that, there is no information that might support application of any of the whole person factors. As long as Applicant continues to ignore the recommendations attendant to his diagnoses of alcohol dependence, he is at risk of future adverse alcohol-related conduct. A fair and commonsense assessment⁸ of all available information bearing on Applicant's alcohol consumption shows he has failed to address satisfactorily the government's doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁹

Formal Findings

Formal findings 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
Subparagraph 1.a - 1.g:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 4, *supra*.

⁹ See footnote 7, *supra*.