



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



In the matter of:)
)
) ISCR Case No. 09-01114
)
)
Applicant for Security Clearance)

Appearances

For Government: William O'Neil, Esq., Department Counsel
For Applicant: *Pro se*

October 13, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant's pattern of alcohol-related incidents, binge drinking, diagnosis of alcohol dependence, and relapse after a diagnosis of alcohol dependence, has not been mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified a Questionnaire for Sensitive Positions-Standard Form 86 (SCA) on August 5, 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) on October 8, 2010. In his interrogatory answers submitted to the Government on August 7, 2009, Applicant agreed with the investigator's summary of his October 2010 interview, and acknowledged the interview summary could be used in a security clearance hearing to determine his security suitability. On January 21, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under alcohol consumption (Guideline G). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense

Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented by the Department of Defense on September 1, 2006.

Applicant furnished his answer to the SOR on February 24, 2011. DOHA issued a notice of hearing on July 1, 2011, for a hearing on July 19, 2011. The hearing was held as scheduled. At the hearing, eight exhibits (GE 1 through 8) were admitted in evidence without objection to support the government's case. Applicant and a witness testified. Applicant's five exhibits were admitted into evidence without objection. DOHA received the transcript on August 3, 2011. The record closed on August 3, 2011.

Findings of Fact

The SOR, dated January 21, 2011, consists of 13 factual allegations under the alcohol consumption guideline (Guideline G). Applicant admitted all allegations.

Applicant is 36 years old and single. He attended three semesters of college. He served in the United States Air Force from December 1994 to December 1998, and United States Coast Guard from March 2001 to August 2004. He has been employed by his current employer since January 2007.

History of Alcohol Consumption

Applicant began drinking alcohol when he was 11 years old. He drank to intoxication for the first time when he was 16 years old. He continued to regularly consume alcohol between the age of 16 and 21. When he joined the Air Force in 1994, his drinking increased to 12 cans of beer and five shots of whiskey about three times a week.

While in the Air Force, Applicant admitted public intoxication charges in 1995 and 1999. In July 1996, he received non-judicial punishment (NJC) under Article 111 of the Uniform Code of Military Justice (UCMJ) for physically controlling a vehicle with a blood alcohol content of .15 grams per 210 liters.¹ His punishment was a reduction in grade, 21 days extra duty, and forfeiture of \$490 pay for two months. After his discharge from the Air Force, Applicant was charged with public intoxication in 1999.²

In March 2001, Applicant joined the United States Coast Guard because he missed the military. In 2002, he was screened by a medical clinic for an alcohol-related incident at work. In August 2003, Applicant was charged with public intoxication.

¹ GE 5.

² SOR 1.d alleges the charge occurred while Applicant was in the Air Force. Applicant indicated he was discharged from the Air Force in December 1998. (SCA at 7)

In March 2004, Applicant was charged with public intoxication. He and a friend had gotten “drunk” at a bar. Applicant consumed approximately six cans of beer and three single shots of whiskey. He and his friend decided to walk back to the installation. On the way, a group of individuals began bothering them. Before the altercation escalated, local police arrived on the scene and resolved the situation. When Applicant indicated he was in the Coast Guard, the police waited for Applicant’s command to take him back to the Coast Guard installation. The police did not charge him.

Applicant received non-judicial punishment for public intoxication under the UCMJ for the March 2004 incident. The punishment consisted of forfeiture of one-half month’s pay, a \$500 fine, and an order to complete an alcohol screening and counseling program. Applicant was willing to attend treatment, but did not want to abstain from alcohol.³

From March to May 2004, Applicant received treatment at the Substance Abuse Rehabilitation Program (SARP). Medical health professionals reviewed Applicant’s reasons for treatment, his chemical history, and his emotional and behavioral history. Based on his screening questionnaire, his medical and service record, his command information package, and the clinical interview, it was decided by qualified medical professionals (psychologist, certified substance abuse counselor of recognized alcohol treatment program) that Applicant met the Diagnostic and Statistical Manual for Mental disorders (DSM IV) criteria for alcohol dependence.⁴

Applicant was advised to attend a 30-day outpatient program that consisted of group and individual counseling eight hours a day and Alcoholics Anonymous (AA) meetings at night.⁵ Applicant did not believe that he should have to participate in this program because he was never charged with a crime in civilian court system. After approximately two weeks into the program, Applicant missed a group meeting in the morning. He lied to the counselor by stating he was at the group meeting, but could not identify the topic that was discussed that day. The counselor reviewed Applicant’s file and stated his attitude was “disruptive towards his successful completion of the program.”⁶ Applicant’s command informed him that his removal from the rehabilitation program would probably limit Applicant’s chances for promotion. Rather than remaining in the Coast Guard, Applicant chose his command’s second option to accept an honorable discharge.⁷ Applicant’s Department of Defense (DD) Form 214 indicates that in August 2004, he received an honorable discharge based on alcohol rehabilitation failure.

³ GE 4 at 5. (page numbers are handwritten and located in the lower right corner of the page)

⁴ *Id.* at 7.

⁵ *Id.* at 4-5.

⁶ GE 3. at 5.

⁷ Tr. 38-42.

In December 2004, Applicant was employed as a bartender. He became intoxicated at a holiday party located on one of the floors of a hotel. He took off part of his tuxedo and went to the hotel lobby. A police officer told Applicant to return to his hotel room, but Applicant did not comply and continued talking to hotel guests. When asked his name by the arresting officer, Applicant responded "Elvis," the name used by his friends. Applicant surmised the officer considered Applicant's reply disrespectful, and arrested him for appearing in public while intoxicated. He was found guilty in absentia. (GE 6)⁸ He was fined \$380.

In January 2005, Applicant attended a party at a bar. During the evening of the party, Applicant decided to walk home. A police officer arrested him for being drunk in public. Applicant was found guilty and fined \$250 and court costs.

In August 2008, Applicant was arrested for disorderly conduct on the premises of a business (bar). Applicant and his girlfriend had been drinking at several bars all day. At some time during the evening, he and his girlfriend separated and he continued to go from bar to bar. He encountered some friends, and began horse playing with one of them. The bar security thought they were really fighting each other. Applicant recalled being very intoxicated at the time.⁹ The arrest report reflects that he was "extremely intoxicated and staggered to walk."¹⁰ Applicant pled no contest to disorderly conduct. He was fined \$301, and placed on six months probation. He was ordered to attend an alcohol awareness class.¹¹

When Applicant was interviewed by OPM in October 2008, he stated he was not drinking during the week anymore. On the weekends, he was drinking up to 12 beers and three shots of whiskey about four times a month. He did not believe his drinking caused financial problems. He admitted a pattern of alcohol abuse, particularly between 2004 and 2006 where worked in the bar environment.

Applicant also told the OPM investigator that since he began working for his current employer in 2006, Applicant has been taking his job more seriously. He did not believe he had a problem with alcohol and had taken no steps to reduce his alcohol intake. Even though he considered he was a victim of circumstance in the cited alcohol-related incidents, he planned to avoid future incidents that could potentially involve law enforcement. Applicant did not intend to seek counseling.¹²

⁸ No additional information was provided regarding the finding of guilt in absentia.

⁹ *Id.* at 6

¹⁰ GE 8 at 2. The page number appear in the upper right hand corner of the page.

¹¹ On October 8, 2008 (day of interview with OPM), Applicant was still on probation. (GE 3 at 7)

¹² GE 3 at 7.

At the personal appearance, Applicant testified that he agreed with the alcohol dependence diagnosis that he received in April 2004, but does not believe the diagnosis is valid today.¹³

Applicant still continues to consume alcohol, but in 2009, he became a social drinker and drinks only with his colleagues.¹⁴ He testified that he drinks only wine and a beer on occasion. He indicated that he stopped drinking liquor because it always got him into trouble.¹⁵

At Applicant's request, his licensed clinical health counselor (LCHC) provided a statement about treatment furnished to Applicant in 2009. The LMHC explained that Applicant provided him with the historical events surrounding Applicant's alcohol use. The absence of more recent alcohol-related incidents after the termination of his treatment in 2009, in the LMHC's opinion, confirmed Applicant's "commitment in examining and effectively addressing the issues surrounding his alcohol use"¹⁶ The LMHC also believed the lack of incidents reinforced his opinion that Applicant posed no risk by having a security clearance.¹⁷

In his statement, Applicant's LMHC concluded his treatment of Applicant in 2009, and not in June 2010 as Applicant testified.¹⁸ The LMHC supplied no reasons, except the clinical interview, for his opinions, specifically given Applicant's resumption of alcohol consumption following his diagnosis as alcohol dependent and treatment.

Character Evidence

Applicant supplied several certificates of training. On June 17, 2011, he received a Security Reaction Force Certificate. (AE A) On February 23, 2007, Applicant received a certificate signifying that he had completed a firearm instruction school. (AE B) Applicant's supervisor on site commended Applicant for being a real professional as an instructor in antiterrorism. (AE C) The courses Applicant has either taught or is going to teach in July 2011, are listed in AE D.

Mr. A testified that Applicant supervised him for about a year on a project they both were assigned overseas. They shared an apartment during the year-long assignment. In Mr. A's view, Applicant is a very productive worker and worthy of a

¹³ Tr. 33.

¹⁴ Tr. 27.

¹⁵ Tr. 29.

¹⁶ AE 14.

¹⁷ Id.

¹⁸ T. 31.

position of trust with the Government. Mr. A recalled Applicant drinking alcohol primarily at dinner. Since returning from their overseas assignment, Mr. A has observed Applicant drink wine and scotch.¹⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a significant period of a person's life that should be weighed and balanced with a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.1.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Alcohol Consumption

AG ¶ 21 sets forth the security concern under 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.

AG ¶ 22 has five conditions that may be disqualifying:

AG ¶ 22(a) alcohol-related incidents away from work regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

¹⁹ Tr. 54-55.

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 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.

The Government has established a case of excessive alcohol consumption within the scope of Guideline G. Applicant has committed at least eight alcohol-related offenses between 1995 and August 2008. Before most of the incidents, he was binge drinking. He was diagnosed as alcohol dependent in April 2004 and was terminated from treatment in May 2004. He has continued to consume alcohol. AG ¶¶ 22(a), 22(c), 22(d), 22(e), and 22(f) apply.

There are three conditions that potentially mitigate Appellant's alcohol consumption:

AG ¶ 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; and

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

AG ¶ 23(d) the individual has successfully completed an inpatient or outpatient treatment counseling or rehabilitation along with any required after care, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of AA or a similar organization and has received a favorable diagnosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized treatment program.

AG ¶ 23(a) does not apply. The passage of approximately three years since Applicant's last alcohol-related incident is not mitigating because of the pattern of alcohol-related conduct since 1996, Applicant's diagnosis of alcohol dependence in April

2004, and his continuing consumption of alcohol. In view of Applicant's alcohol history, doubts remain about Applicant's reliability, trustworthiness, and judgment.

AG ¶ 23(b) does not apply. Although Applicant agreed with the alcohol dependence diagnosis he received in April 2004, his subsequent rejection of that diagnosis is not persuasive. He has taken no positive steps to adjust his lifestyle to create an environment that facilitates sobriety.

The diagnosis of alcohol dependence rendered against Applicant in April 2004, his failure to complete the outpatient treatment program in May 2004, and produce a clear and established pattern of abstinence since that time, removes AG ¶ 23(d) from consideration. The opinion by Applicant's LMHC has little probative value because the treatment was for a relationship problem and not for alcohol dependency. Also, the opinion is based on nothing more than clinical interviews. Applicant's claim of reduced drinking does not satisfactorily alleviate the potential for adverse alcohol-related conduct in the future. Applicant has the burden of demonstrating that the alcohol dependence diagnosis is no longer valid, and he has not satisfied his burden. The alcohol consumption guideline is resolved against Applicant.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the alcohol consumption guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

AG ¶ 2(a) (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 the participation was 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.

There is mitigating evidence that weighs in Applicant's favor. He is 36 years old and has served in the U.S. Air Force for four years and U.S. Coast Guard for more than three years, receiving an honorable discharge August 2004. He has compiled a favorable performance record since he began working for his current employer in January 2007. He was straightforward in discussing his alcohol consumption and the alcohol-related incidents.

Applicant's security clearance application is denied because he failed to demonstrate that the diagnosis of alcohol dependence is no longer correct and that his current alcohol consumption poses no security concerns. In addition, he does not

understand the full nature and scope of his excessive alcohol consumption. He was involved in at least eight alcohol-related incidents between 1996 and August 2008. In April 2004, he was diagnosed alcohol dependent. Even though Applicant was ordered to complete treatment, he was terminated after about two weeks into treatment because he missed a meeting and initially lied about his absence so he would not be removed. There is no evidence in the record that suggests voluntary abstinence by Applicant at any time during his drinking history.

After evaluating the evidence with the disqualifying and mitigating conditions under the alcohol consumption guideline, and in the context of the whole-person model, Applicant has not mitigated Guideline G. See AG ¶¶ 2(a)(1) through 2(a)(9).

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
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Subparagraph 1.a through 1.m:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge