



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



In the matter of:

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ISCR Case No. 09-02909

Applicant for Security Clearance

Appearances

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: David P. Price, Esquire

December 8, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for alcohol consumption. Accordingly, his request for a security clearance is denied.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 18, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

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

On May 8, 2010, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines (AG).² Applicant signed his notarized Answer to the SOR on May 27, 2010. Department Counsel was prepared to proceed on June 25, 2010, and the case was assigned to me on July 2, 2010. DOHA issued a Notice of Hearing on July 16, 2010, and I convened the hearing as scheduled on August 5, 2010. During the hearing, I admitted 12 Government Exhibits (GE 1-12). Applicant testified and presented the testimony of one witness. I admitted six Applicant Exhibits (AE A-F). DOHA received the transcript (Tr.)³ on August 12, 2010.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 56 years of age. In 1980, he accepted employment with a defense contractor in the information technology field and has worked for the same company for 30 years. Applicant earned a master's degree in computer science in 1985. He currently holds a secret security clearance, which he received in 1980. He married in 2001 and divorced in 2003.⁴ He is now single, but has been in a long-term relationship since 2003. His girlfriend has three sons who, at the time of the hearing, were 17, 21, and 23 years of age. The younger son lives with Applicant and his girlfriend. (GE 1; PT 35;⁵ Tr. 4, 28, 31, 55, 81-82)

Applicant first drank alcohol in 1970, at the age of 16. His history includes a few black-outs and some instances of reporting to work with a hangover. (PT 92-94) He usually drank alcohol after participating in sports games, or at bars with friends. In August 1984, he was charged with Driving While Intoxicated (DWI). At his arrest, his blood alcohol content (BAC) was 0.13. He pled guilty, spent 48 hours in jail, and received probation before judgment. He attended an educational program (Program A) for one hour per week, for four weeks. At his 2010 hearing, he estimated he stopped drinking for six months after the 1984 DUI. (GE 2; Tr. 56-63, 91)

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after that date. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive.

³ Applicant's counsel forwarded notice of minor errors in the transcript at Tr. 57, 78, 82, and 84. Department Counsel did not object to counsel's corrections, and they are accepted as accurate.

⁴ Applicant testified that he divorced in 2003, but listed his divorce date as 2005 in his security clearance application. (GE 1; Tr. 64)

⁵ Applicant was the subject of a DOHA security clearance adjudication in 1993. The transcript of that hearing is cited as "previous transcript" (PT). The current (2010) hearing transcript is cited as "Tr. "

In August 1988, Applicant was arrested for DWI. His BAC was 0.16. Before his court appearance, his attorney advised him to attend an alcohol program. Applicant entered Program B on September 22, 1988. He attended the program for two to three months. He was evaluated as being in "denial as to the extent of his substance abuse." He was diagnosed with Alcohol Abuse-Episodic by a certified addiction counselor (CAC). Subsequently, at his court hearing, Applicant pled guilty and was sentenced to six months in jail, with all but 21 days suspended. He spent the 21 days in a work release program, which allowed him to attend work during the day, but required him to be incarcerated on nights and weekends. The court did not order him to attend alcohol treatment, and he stopped attending Program B after his court appearance. (GE 6, 9; PT 37-38, 83-85; Tr. 92-93)

Applicant also appeared before the state Motor Vehicle Administration (MVA) in regard to the 1988 DWI. As a result of having a second DWI conviction, the MVA revoked his driver's license. It offered to shorten the revocation period if he attended an alcohol program. Applicant attended Program C, an educational program, for 16 weeks in 1989. (PT 37-38, 79)

On November 14, 1992, Applicant visited a series of bars, where he drank beer and whiskey. (PT 95-96) He was arrested and charged with Driving While Intoxicated (DWI). His BAC was 0.20. Six days after his arrest, on the advice of his attorney, Applicant entered Program D, at an inpatient alcohol rehabilitation center. (GE 2) He attended for four weeks, from November to December 1992. (PT 96-97) Applicant attended classes and group therapy, while maintaining his schedule at work. At his 1993 security clearance hearing, he testified that when he entered Program D, he considered himself an alcohol abuser, but "not an alcoholic." (PT 97) He believed he simply had to avoid driving after drinking alcohol. (Tr. 65) At the 2010 security clearance hearing, he testified that he did not admit in 1992 that he was an "alcoholic" because he did an excellent job at work; he never felt that he "needed" a drink; and because "that's the bad thing and you don't really want to be an alcoholic." (GE 10; Tr. 63-66) However, during the treatment, the program director and treatment director stated that he "accurately self-assessed as having early stage alcoholism." (GE 10; Tr. 96-97) The Program D counselor recommended Applicant attend Alcoholics Anonymous (AA), but noted Applicant's "strong resistance to AA." Applicant asked for an alternative (PT 97-98) and the counselor recommended that he attend a relapse prevention program for one year. He also recommended Applicant submit to random breathalyzer tests, and abstain from alcohol. (GE 10; Tr. 97) Applicant successfully completed the treatment, and his prognosis at release was "Good for the next six months, based on [Applicant's] incentive to change and to follow [the] plan outlined." (GE 10)

On March 26, 1993, Applicant was sentenced to one year incarceration for the 1992 DUI, with all but 30 days suspended. He was also sentenced to 18 months supervised probation. As part of the terms of his probation, he was required to abstain from alcohol during the period of probation. (PT 51) He was also required to

attend a relapse prevention program. In April 1993, Applicant entered a one-year alcohol program (Program E). Between April and August 1993, Applicant completed the 16-week relapse prevention portion of Program E. (GE 6; Tr. 64, 98) He worked with Counselor F, a certified chemical dependency counselor (CCDC). She administered the Michigan Alcohol Screening Test (MAST) to Applicant. It tests the severity of alcohol problems, and ranges from 0 to 24, with higher scores indicating the more severe problems. Applicant's score was 16, which indicated that he had some control, but did have a significant problem dealing with alcohol. (PT 156-158) Although Counselor F recommended AA, she noted that Applicant considered AA "too religious" and that he "absolutely will not go." Based on meeting five of the ten criteria for a psychoactive substance-use disorder, he was diagnosed with Alcohol Dependence-Continuous. After completing the relapse prevention portion of the program, Applicant participated in individual therapy with Counselor F. He was to be discharged from Program E in April 1994. (GE 6, 11; Tr. 64, 97)

In November 1993, a security clearance hearing was held in relation to Applicant's history of alcohol-related arrests. During the hearing, Applicant admitted he was an alcoholic. He had been abstinent for one year, and was on supervised probation that began in March 1993. He testified that he did not intend to drink alcohol in the future. His security clearance case was favorably adjudicated in January 1994. After being granted his security clearance, he continued Program E for about eight weeks. He did not complete the one-year program because he thought he could control his situation as long as he did not drive after drinking. He started drinking alcohol in about 1995, after his probation had ended, and two years after his security clearance hearing. (GE 6, 8; Tr. 68, 97, 100-101)

In May 1998, Applicant was socializing at a bar, drinking beer. He might also have had whiskey. He believed he was not drunk and could drive safely. While driving home, he misjudged the distance while turning left and was hit by an oncoming car. He did not stop.⁶ He noted in his statement of August 2009, that he did not stop, and did not report the accident to his insurance company, because he had been drinking and driving. He parked a distance away from home and walked to his house in order to avoid being caught by the police. However, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI); DWI; Violating License Restriction; Failure to Yield Right of Way, and Failure to Stop after Accident Involving Damage to Attended Vehicle. On October 13, 1998, he agreed to a plea bargain in which he pled guilty to the lesser charge of DWI and the remaining charges were not prosecuted. He was fined and sentenced to 60 days incarceration, with 53 suspended. He was not ordered to attend treatment. His license was suspended for two years by the MVA. (GE 2, 3, Tr. 101-103)

Several years later, in 2003, Applicant began a close relationship with his current girlfriend. She testified that she has worked for the federal government for 33 years, has held a security clearance since 1978, and has been a security specialist since 1990. She began living with Applicant since 2005. They separated from June

⁶ No injuries resulted to either party from the accident. (GE 2)

2007 to July 2008, but have been reunited since then. At times, she saw him consume alcohol to the point of being intoxicated. She believes that his alcohol issues stemmed from his failure to acknowledge that he had a problem. They both thought his weekend drinking was controllable. She believes he has now accepted his disease and knows he cannot drink alcohol at all. To her knowledge, he has not had alcohol since his 2007 DUI arrest. To support his sobriety, she has not consumed alcohol since August 2007. She confirmed that he attends AA about twice per week. She noted that he is honest and dependable, has an exemplary financial record, and is trustworthy and reliable. (AE A, D; Tr. 43-60)

Applicant testified that he did not drink for about two years after the 1998 accident and did not drive after drinking for five or six years. In his statement of August 2009, Applicant noted that he lost his focus and believed he could drive after drinking. In June 2007, his girlfriend had moved out of his home, and he was "down in the dumps." On August 11, 2007, he had two beers at home, drove to a bar, had two more beers and one or two shots of whiskey. On the way home, he drove off the road and into a ditch. The car flipped upside down and landed on its roof. He was not injured. After his arrest on a DUI charge, he spent the night incarcerated, and was released on \$5,000 bail. (GE 2; Tr. 36-37, 79-80, 102-103)

On his attorney's advice, Applicant enrolled in alcohol treatment Program F. He attended the 28-day in-patient rehabilitation program from August to September 2007. He worked during the day, and attended group sessions, AA meetings, classes, and lectures at night. He was diagnosed with Alcohol Dependence-Binge Type. (GE 2; Tr. 72-73, 106)

After successfully completing Program F, Applicant appeared in court on October 9, 2007. He pled guilty to Driving/Attempting to Drive While Impaired by Alcohol (DWI) (GE 3; Tr. 101-103) Applicant was sentenced to five months incarceration, with all but 70 days suspended, which he served in a work release program. He testified that his sentence of three years supervised probation started in December 2007 and ends December 2010.⁷ If he violates his probation requirements, his sentence of five months incarceration will be reinstated. At his MVA hearing, Applicant's license was suspended for five years, but he is allowed to drive with an ignition interlock device, which will remain on his car for five years. The device prevents him from operating the car if it detects alcohol in his system. (GE 3; AE C; Tr. 85-87, 106)

Applicant has been abstinent since his August 2007 DUI. He started attending AA in about early 2008, after completing his incarceration. At first, he attended three to four times per week, "But right now--right now, that I've been sober for three years, twice a week is good. I go to my home group every Tuesday, and then I'll go to--I'll pick up another meeting somewhere." He acknowledges he is an alcoholic. He

⁷ The court record indicates that his probation ends February 7, 2011. Applicant believes this is an error. (GE 3; Tr. 104-105)

no longer participates in sports, or goes to bars. He has had an AA sponsor for the past two years, and has completed AA's 12-step program. His relationship with his girlfriend has improved, and he testified that he would not return to alcohol use if the relationship ended. (Tr. 74-80, 84, 107)

From January to June 2008, Applicant attended Program G, a five-month weekly outpatient treatment program. After successfully completing the program, his addiction counselor discharged him with a prognosis of "Good." Before his current security clearance hearing, he met with the same counselor, a licensed clinical alcohol and drug counselor (LCADC). During the three visits between June and July 2010, Applicant submitted negative breathalyzer and urinalysis screenings. The counselor submitted a letter for the current hearing. She stated that in 2008, Applicant participated freely in discussions and attended AA twice per week. His MAST score at the time was eight. His score indicated an improvement over the MAST score of 16 in 1993. She noted that after his fifth DUI in 2007, he "recognized that his alcohol abuse over the years had progressed to first-stage alcoholism." She opined that he has taken positive steps toward maintaining abstinence, and that his prognosis is good, provided he remains active in AA. (GE 5; AE E)

The record contains conflicting information about Applicant's efforts to abstain. After the 1988 DWI, Applicant informed the special agent at his security interview that he had no intention to drink alcohol in the future. (PT 87) At his 1993 hearing, he said he abstained for about one month after the DWI. At the 2010 hearing, however, he said he abstained about six months and that, "I always stopped drinking." In contrast to this statement, he reported during Program D in 1992 that he made "no attempt to ever stop using alcohol, and has no periods of abstinence." (GE 10; PT 87, 94; Tr. 93) In his 2009 written statement, he said that after the 1988 DWI, "Eventually I fell into bad habits and, feeling I could handle the alcohol, started to drive again after drinking." (GE 2; Tr. 93)

Applicant's performance evaluations for the periods of June 2003 through June 2010⁸ indicate that he is a subject-matter expert who is highly valued for his contributions. There is no record evidence of security violations. In 2004, he received his company's Excellence Award. Applicant provided numerous character reference letters from friends and co-workers. All of them were familiar with the SOR allegations. He was consistently described as honest, dependable, and trustworthy. A co-worker notes that, at work, he has never seen Applicant show indications of alcohol use, and that his loss would be detrimental to the program on which he works. Another co-worker commented that he was surprised to learn of Applicant's past, and believes Applicant's poor drinking-and-driving decisions are in stark contrast to his sound decision-making at work. During their business trips, he has not seen Applicant use alcohol. Applicant's first-level supervisor stated in his letter that Applicant informed him of his alcohol-related issues. Applicant has shown

⁸ The document dated June 2002 – May 2003 is a self-assessment rather than a management evaluation. (AE B (3)).

reliability, integrity and responsibility in his work performance, including during business trips. (AE A, B)

Applicant's AA sponsor also submitted a letter. They were coworkers from 2004 to 2007, and the sponsor was unaware that Applicant had problems with alcohol use. After the DUI in 2007, he became Applicant's sponsor. The sponsor describes Applicant as a highly conscientious and reliable person who has been sober since his 2007 DUI. He believes Applicant's ability to admit his failures will help him to maintain sobriety. (AE A)

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 Adjudicative Guidelines (AG).⁹ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the Guidelines.

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 are 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 the Alcohol Consumption guideline.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest¹⁰ 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.¹¹

A person with access to classified information enters into a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly

⁹ Directive. 6.3.

¹⁰ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹¹ See *Egan*, 484 U.S. at 528, 531.

consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.¹²

Analysis

Guideline G, Alcohol Consumption

The security concern about alcohol consumption is that “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 ¶ 21).

AG ¶ 22 includes the following relevant conditions that can raise security concerns and may be disqualifying:

- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant began drinking when he was a teenager, and has a decades-long history of using alcohol to intoxication. He was found guilty of driving while impaired or under the influence of alcohol five times between 1984 and 2007. These facts support application of AG ¶¶ 22(a) and 22(c). In 1988, a certified addiction counselor diagnosed Applicant with Alcohol Abuse-Episodic when he attended Program B. He did not complete the program. However, in 1993, he was diagnosed with Alcohol Dependence-Continuous by a certified chemical dependency counselor when he attended the relapse prevention program (Program E). He completed the relapse prevention segment of Program E. Applicant returned to drinking alcohol after each of these diagnoses. AG ¶¶ 22(d) and (f) apply.

AG ¶ 23 provides conditions that can mitigate security concerns:

¹² See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(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;

(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); and

(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 meetings 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.

Applicant had five drunk-driving convictions over a 23-year period. His alcohol-related behavior was frequent: he consumed alcohol for years, and drank to the point that he displayed poor judgment by driving while intoxicated. His last DUI was three years ago, and he has abstained from alcohol consumption since that time. However, the fact that he repeatedly returned to alcohol use in the past, despite the serious and repeated negative effects it has caused, raises concerns that alcohol-related events may recur. AG ¶ 23(a) does not apply.

At his 2010 hearing, Applicant admitted that he is an alcoholic, and does not intend to drink alcohol in the future. He made both of these statements in his 1993 hearing as well. He has refrained from using alcohol for the past three years, but his abstinence coincides with his period of probation for the 2007 conviction. He no longer frequents places where he used to drink, such as while playing sports and going to bars. Applicant receives partial mitigation under AG ¶ 23(b). Applicant successfully completed alcohol programs. However, the fact that he needed such programs repeatedly demonstrates the strength of his denial. During several of his treatments, he was also highly resistant to participating in AA. More recently, he appears to accept it as a necessary part of his program of abstinence. He participates in AA, has a sponsor, and has completed the 12-step program. He also received a favorable prognosis from an LCADC in 2008 and 2010, conditioned on his continued attendance at AA.¹³ The positive prognoses are tempered by the fact that he received a good prognosis in the past, only to return to using alcohol. Applicant receives partial mitigation under AG ¶ 23(d).

¹³ Following the Appeal Board's jurisprudence, I find that the counselors who provided diagnoses in 1993 and 2010 are qualified professionals working for recognized alcohol treatment programs. See ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is 56 years old, and has been consuming alcohol since he was a teenager. Between 1984 and 2008, he was convicted five times for driving under the influence of alcohol. He attended seven alcohol programs, some educational, some therapeutic. He always did well during his alcohol treatment programs, and has received good prognoses. Since 2007, Applicant has made commendable strides toward leading an alcohol-free life. His partner does not drink, and Applicant no longer participates in the activities where he often drank alcohol. He admits he is an alcoholic, attends AA, has a sponsor, and has completed the 12-step portion of the program. He has been abstinent for three years.

However, Applicant has experienced numerous negative life events resulting from excessive alcohol use: fines and attorney fees, jail time, driving restrictions, and the threat to his livelihood. Despite these negative effects, Applicant repeatedly returned to using alcohol. His history between 1984 and 2007 demonstrates a repetitive pattern: excessive drinking, DUI arrest, immediate entrance into an alcohol program before trial, conviction, abstinence during probation, a period of increased drinking, returning to driving after drinking, followed by a DUI arrest. This general pattern has occurred five times. His drunk-driving arrests have been four to six years apart, other than the 2007 arrest, which occurred nine years later. It is also troubling that Applicant's periods of abstinence generally coincide with the periods when he must abstain from alcohol in order to ensure he does not violate his probation. His

abstinence for the past three years coincides with his current probation for the 2007 conviction, which will end in December 2010.

After Applicant's first three drunk-driving convictions and subsequent treatment, he testified at his security clearance hearing that he realized he was an alcoholic, and that he had been successfully treated and had no intention to use alcohol again. His security clearance was granted. He did not adhere to his stated intention to avoid alcohol, and since then, he has had two drunk-driving convictions, and two more series of alcohol treatments. His drunk-driving incidents have become more serious, with both the 1998 and 2007 events involving accidents that could have resulted in serious injury. Based on Applicant's long history of alcohol problems, and his pattern of relapses, I cannot confidently conclude that he will not lapse in the future as he has in the past.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline G	AGAINST APPLICANT
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Subparagraphs 1.a. - 1.g.	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 the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge