



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



In the matter of:)	
)	
)	ISCR Case No. 11-02859
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

07/13/2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern caused by his recent and recurring alcohol-related criminal violations. Clearance is denied.

On March 15, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline G (alcohol consumption). Applicant submitted a response to the SOR, dated April 8, 2012, in which he admitted all SOR allegations, except subparagraph 1.b, and requested a decision based on the record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on April 27, 2012, which was mailed to Applicant on April 30, 2012. Applicant was notified he had 30 days from receipt of the FORM to submit his objections thereto or any additional information he wanted considered. Applicant acknowledged receipt of the FORM on May 8, 2012. He did

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on July 2, 2012.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 24-year-old single man who is employed as a turbine blade mechanical engineer by a defense contractor. He graduated from high school in May 2006, and he obtained a bachelor's degree in May 2010. Applicant was on the dean's list for every semester of his college career. He was recognized as the college's aeronautical engineering aerospace outstanding graduate, and he was the college's commencement speaker for the class of 2010.

Applicant participated in the Air Force Reserve Officer Training Corps during his first two years of college. He was awarded an Air Force college scholarship, and recognized with two Air Force college awards. He worked as a NASA space grant intern during his last two years of college. He has been accepted into a graduate study program in science in aeronautical and astronautical engineering at a major university. Applicant has obtained a private pilot certification.

Applicant was charged with possession of alcohol by a minor in June 2007. He was sleeping at a friend's house when police arrived in response to a call of mischievous activity in the vicinity of the residence. His blood alcohol concentration (BAC) was .032. He was convicted of the offense and required to pay a fine. He was also required to attend an adolescent counseling, education and therapy program, which consisted of three or four sessions conducted between July 12, 2007, and July 17, 2007.

Applicant was charged with driving under the influence (DUI), DUI .08 or above, underage consumption, and one way street violation on February 10, 2008. His BAC was .094 at the time of his arrest. On May 21, 2008, Applicant was convicted of the offense of driving with alcohol in system while under 21, and the remaining charges were dismissed. He was fined \$295, and sentenced to serve five days in jail, which sentence was suspended upon his completion of an alcohol behavioral counseling program. Additionally, Applicant's driving privileges were restricted and he was required to have an interlock system installed in his vehicle for two years.

Applicant submitted a security clearance application on June 29, 2010. On August 9, 2010, he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) and questioned about his two alcohol-related offenses. On December 9, 2011, Applicant submitted a response to interrogatories inquiring about his use of alcohol.

On December 10, 2011, Applicant was charged with the offense of public intoxication. He pled guilty to that offense on December 16, 2011, and he was ordered to perform eight hours of community service and attend a community impact panel. Applicant completed the community service and attended the impact panel, and his case was dismissed on February 16, 2012.

In his December 2011 response to interrogatories, Applicant averred that he tends to only drink on Friday and Saturday nights, and, that his weekly consumption of alcohol is 10-15 drinks. He admitted his consumption of alcohol has increased since he completed college because he is less preoccupied and he has more money to spend. He estimated he becomes intoxicated once or twice a month depending on the availability of a safe environment with close friends.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines G (alcohol consumption), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline G, 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. (Adjudicative Guideline [AG] ¶ 21)

Applicant was convicted of possession of alcohol by a minor in June 2007, driving with alcohol in system while under 21 in May 2008, and of public intoxication in December 2011. He was required to attend alcohol awareness counseling following each of his convictions. Disqualifying Condition (DC): 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 applies.*

Applicant is obviously a very intelligent young man who has a bright and promising career in front of him in the aeronautical and aerospace engineering fields. However, his alcohol-related misconduct after being questioned about two prior alcohol-related occurrences, and his responses to interrogatories inquiring about those events severely call into question his current maturity, reliability, and good judgment.

Applicant was obviously made aware by the interview and interrogatories that alcohol-related misconduct created a potential security concern. Despite being made so aware, he was arrested a third time, the day after responding to the interrogatories, and charged with and convicted of public intoxication. Equally troubling is Applicant’s responses

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

to the interrogatories in which he admits an increased use of alcohol that consists of about 10 to 15 drinks a week, and drinking to the point of intoxication once or twice a month. Further, Applicant was required to attend alcohol counseling classes on two occasions before his most recent offense. Based on these facts, it cannot be stated with any degree of reliability that Applicant has learned from his past mistakes or that those mistakes will not reoccur.

I have considered the following Mitigating Conditions (MC) and concluded they do not apply: MC 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*; MC 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)*; and MC 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, 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*. The remaining mitigating condition has no applicability to the facts of this case.

I have considered all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Applicant failed to mitigate the security concern caused by his abuse of alcohol. He failed to overcome the case against him or satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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
Subparagraphs 1.a-d:	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 a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge