

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant is 42 years old, and since June 2003, he has been a field engineer for a defense contractor. Between 1986 and 2005, he had four infractions for either driving while intoxicated or driving recklessly. In 2005, he moderated his drinking behavior and has periods when he no longer consumes alcohol. Although he has taken credible and responsible steps to avoid further alcohol-related driving issues, he will, more likely than not, consume alcohol to excess in the future since he has not abstained from drinking alcohol. Applicant has not mitigated the criminal conduct, alcohol consumption, and personal conduct security concerns. Clearance is denied.

CASENO: 05-03114.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case: 05-03114
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**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old, and since June 2003, he has been a field engineer for a defense contractor. Between 1986 and 2005, he had four infractions for either driving while intoxicated or driving recklessly. In 2005, he moderated his drinking behavior and has periods when he no longer consumes alcohol. Although he has taken credible and responsible steps to avoid further alcohol-related driving issues, he will, more likely than not, consume alcohol to excess in the future since he has not abstained from drinking alcohol. Applicant has not mitigated the criminal conduct, alcohol consumption, and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On November 22, 2003, Applicant executed a Security Clearance Application (SF 86).¹ On August 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a document, dated September 21, 2006, Applicant responded to the SOR allegations and requested an in-person hearing. The case was assigned to me on February 12, 2007. A Notice of Hearing was issued on February 21, 2007, scheduling the hearing for March 7, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered eight exhibits, Exs. 1-8. Applicant did not offer any exhibits. The exhibits were admitted into the record without objection. The transcript (Tr.) was received on March 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline J, criminal behavior, subparagraphs 1.a-1.d, Guideline G, alcohol consumption, subparagraph 2.a, and Guideline E, personal conduct, subparagraph 3.a. Applicant's admissions to the allegations in the SOR are incorporated herein. He denied the allegation in subparagraph 3.b. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 42 years old, and since June 2003, has been a field engineer for a defense contractor.² He is a high school graduate and served in the U.S. Navy from 1982 to 1986. A random drug test was positive for marijuana, which led to an other than honorable discharge from the Navy.³ He has been married since 1996. At the time of the hearing, he was legally separated. He does not have children.⁴

On or about December 6, 1986, after work, Applicant went to some friends' house for dinner. He drank no more than six, seven ounce beers. He fell asleep on their couch and woke up about 1:00 a.m. While driving home, he fell asleep at the wheel, and struck a telephone pole. Applicant was

¹Ex. 2 (Security Clearance Application, dated November 22, 2003).

²Tr. 31-32.

³Tr. 20.

⁴Tr. 31.

arrested and charged with driving while intoxicated (DWI). He was found guilty and sentenced. He attended and completed court-ordered alcohol counseling sessions for about two to three months.⁵

On or about June 12, 1989, Applicant was observed driving at a high rate of speed. He failed to negotiate a curve and struck a sign, skidded across a ditch, and struck a tree. He was arrested and charged with DWI and reckless driving.⁶ He was found guilty and sentenced. He attended and completed court-ordered alcohol counseling sessions for about two to three months.

On or about July 13, 2002, Applicant was arrested and charged with DWI. He was driving on the highway exceeding the speed limit. He was found guilty and sentenced. He attended and completed a court-ordered alcohol counseling program for approximately two to three months.⁷

On or about July 1, 2005, Applicant was arrested and charged with reckless driving and DWI. He was found guilty of the reckless driving charge and sentenced. As an outpatient, he voluntarily attended and completed an alcohol counseling program that met twice a week for six months.⁸ He found this program to be extremely helpful in understanding the underlying premises of why people drink alcohol and how it impacts on each person.

On or about May 17, 2006, during an interview with an authorized investigator for the Department of Defense, Applicant failed to disclose that he had been charged with reckless driving and driving under the influence of alcohol on or about July 1, 2005. He pled guilty to the reckless driving charge on November 14, 2005. Applicant denied this allegation. He contends that the conversation with the agent was not focused on his alcohol and driving charges, but rather focused on the use of marijuana, which is not an issue raised in the SOR.⁹

_____ A character witness testified that he met Applicant at work in 1987.¹⁰ For the past 20 years their paths have crossed, and they have kept in touch. They have worked together, along with the witness's son, in restoring a car. Applicant was instrumental with knowledge about building engines. The three of them assembled the car, including the engine.¹¹ The witness has never seen Applicant under the influence of alcohol.¹²

⁵Tr. 29.

⁶Ex. 4 (Citation Nos. G6455688 and G6455689 and related documents, dated June 12, 1989).

⁷Tr. 24-26.

⁸Tr. 26-29.

⁹Tr. 34-37. *See also* Applicant's Answer, dated September 21, 2006.

¹⁰Tr. 40.

¹¹Tr. 41-43.

¹²Tr. 47-48.

_____Applicant testified that prior to the hearing, he did not have alcohol for a couple of months. If he does drink, he might have a couple of beers on the weekend, and not every weekend. He testified he no longer drives if he drinks alcohol.¹³

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁴ The Government has the burden of proving controverted facts.¹⁵ The burden of proof is something less than a preponderance of evidence.¹⁶ 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 him.¹⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

No one has a right to a security clearance¹⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved

¹³Tr. 21, 23, 24.

¹⁴ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹⁵ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

¹⁶*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁷ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

¹⁹*Egan*, 484 U.S. at 531.

²⁰*Id.*

in favor of protecting such sensitive information.²¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²² It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Criminal Conduct

Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. The Government has established a *prima facie* case for disqualification under Guideline J, criminal conduct.

On at least four different occasions between 1986 and 2005, Applicant was arrested, found guilty, and sentenced on either DWI or reckless driving charges. Thus, Criminal Conduct Disqualifying Conditions (CC DC) E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) apply.

Various factors can mitigate criminal conduct security concerns. Two of his driving infractions occurred in 1986 and 1989. Those incidents occurred more than 20 and 17 years ago, respectively, and have been mitigated by time. Thus, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*) applies to the alcohol-related offenses in the 1980s. In 2002, he was speeding while under the influence of alcohol. In 2005, he was charged with reckless driving. At the hearing, Applicant was contrite and remorseful for his unruly alcohol-related behavior. While not totally abstaining from alcohol, he testified that he has moderated his drinking and will not drink and drive again. However, the two years that he has modified his drinking behavior is not enough time to conclude that he has changed his behavior when it comes to drinking and driving. He has taken credible and responsible steps to avoid further alcohol-related driving incidents, he will, more likely than not, consume alcohol to excess in the future since he has not abstained from drinking alcohol. Looking at the 2002 and 2005 alcohol-related drinking incidents, Applicant does not qualify for CC MC E2.A10.1.3. 2 (*the criminal behavior was not recent*) and CC MC E2.A10.1.3.2 (*the crime was an isolated incident*). Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.d of the SOR are concluded against Applicant.

Alcohol Consumption

Alcohol consumption is a security concern because excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the

²¹*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²²Executive Order 10865 § 7.

risk of unauthorized disclosure of classified information due to carelessness. The Government has established a *prima facie* case for disqualification under Guideline G, alcohol consumption.

From 1986 to 2005, Applicant had four arrests with charges for either DWI or reckless driving. Thus, Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) and AC DC E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

Various factors can mitigate alcohol consumption security concerns. While not totally abstaining from alcohol, Applicant testified that he has moderated his drinking and will not drink and drive again. The two years that he has modified his drinking behavior, when balanced against four incidents of DWI in 20 years, is not enough time to conclude that he has changed his behavior when it comes to drinking and driving. Thus, Alcohol Consumption Mitigating Conditions (AC MC) E2.A10.1.3.61 (*the alcohol-related incidents do not indicate a pattern*) and AC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*) do not apply. Applicant has not mitigated the Government's case. Accordingly, allegation 2.a of the SOR is concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. The Government has established a *prima facie* case for disqualification under Guideline E, personal conduct.

Honesty is critical to a position of trust in safeguarding classified information. On at least four different occasions between 1986 and 2005, Applicant was arrested, found guilty, and sentenced on either DWI or reckless driving charges. Applicant intentionally misled the investigator when he failed to disclose he had been charged with reckless driving in 2005. He indicates he misunderstood the questions asked of him by the agent. Moreover, he contends that the conversation with the agent was not focused on his alcohol and driving charges, but rather focused on a question regarding the use of marijuana, which is not an issue raised in the SOR. Even if all of that is true, he also knew that admitting to a 2005 drinking and driving charge could stand in the way of his employment. Thus, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), PC DC E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply.

Various factors can mitigate personal conduct security concerns. However, none of the available Personal Conduct Mitigating Conditions apply. Applicant has not mitigated the Government's case. Accordingly, allegations 3.a and 3.b of the SOR are concluded against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant

at 42, appeared composed, contrite, and remorseful for his driving infractions involving an excess consumption of alcohol and then driving while inebriated. He has moderated his drinking during the last two years. Although he has taken credible and responsible steps to avoid further alcohol-related driving incidents, he will, more likely than not, consume alcohol to excess in the future. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

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 J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Paragraph 2. Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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Paragraph 3. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge