

KEYWORD: Criminal Conduct; Alcohol; Drugs

DIGEST: Applicant is 48 years old and a lead programmer and manager for a defense contractor. He had three alcohol-related driving offenses from 1986 to 1996. He used and was arrested for marijuana possession in college in 1981. He used cocaine between 1999 and 2000. He successfully completed a substance abuse resident and aftercare program and has been substance abuse free since 2001. Applicant mitigated security concerns for alcohol consumption, drug involvement, and criminal conduct. Clearance is granted.

CASENO: 05-17791.h1

DATE: 05/22/2007

DATE: May 22, 2007

In Re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-17791
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
THOMS M. CREAN**

APPEARANCES

FOR GOVERNMENT
James F. Duffy, Esq., Department Counsel

FOR APPLICANT
Ronald C. Sykstus, Esq.

SYNOPSIS

Applicant is 48 years old and a lead programmer and manager for a defense contractor. He had three alcohol-related driving offenses from 1986 to 1996. He used and was arrested for marijuana possession in college in 1981. He used cocaine between 1999 and 2000. He successfully completed a substance abuse resident and aftercare program and has been substance abuse free since 2001. Applicant mitigated security concerns for alcohol consumption, drug involvement, and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On June 8, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on July 3, 2006. The SOR alleges security concerns under Guideline J Criminal Conduct, Guideline G Alcohol Consumption, and Guideline H Drug Involvement of the Directive.¹

Applicant answered the SOR in writing in an undated letter. He admitted all but one of the allegations under Guideline J, and stated the allegations under Guidelines G and H were mitigated. He requested a hearing before an administrative judge, and the request was received by DOHA on July 11, 2006. Department Counsel was prepared to proceed with the case on January 23, 2007, and the case was assigned to me on January 29, 2007. A notice of hearing was issued on February 9, 2007, for a hearing on February 27, 2007. On February 20, 2007, Applicant's counsel requested a delay of the hearing. An amended Notice of Hearing was issued on February 23, 2007, and the hearing convened on March 14, 2007. Four government exhibits, four Applicant exhibits, and the testimony of five Applicant witnesses and the Applicant were received during the hearing. The transcript (Tr.) was received on March 30, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR of criminal activity under Guideline J, except for one allegation. He did not admit or deny the allegations under Guidelines G and H, but stated that the allegations had been mitigated.² After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 48-year-old engineer working as a lead programmer and manager for a defense contractor since 1997. He has been married for over 25 years and has 2 children. He graduated from college with a degree in physics in 1986, and commenced working for a defense contractor in 1987.

¹Allegation 3.d., a violation of 10 U.S.C. 986, was withdrawn by the government prior to the hearing. *See*, Tr. 6.

²*See*, Response to SOR, undated.

He worked for various defense contractors until working with his present employer. He received his first security clearance in 1987, and has held a clearance since that time.³

Applicant was arrested in 1980-1981 while a college student for possession of marijuana. Applicant and a number of friends were riding in a vehicle containing marijuana when they were stopped by police. All of the occupants of the vehicle were charged with possession of the drug. Applicant was fined and placed on probation.⁴

Applicant denied that he was arrested for driving while intoxicated in 1986. At the time, Applicant was not in the area where the alleged arrested for driving while intoxicated took place.⁵

Applicant admitted he was arrested for driving while intoxicated in 1987. Applicant and some fellow employees drank alcohol after work. Applicant was stopped by police while driving home. He received a fine and probation for the offense.⁶

Applicant admitted he was arrested for driving while intoxicated in 1990. He pled guilty to reckless driving, fined \$1,150, and placed on probation for 12 months. He admitted the incident was alcohol-related.⁷

Applicant admitted he was arrested for driving while intoxicated in 1996. Applicant was notified that his work with a defense contractor would not continued since the contractor had completed the project and had not received a new contract. He and other employees drank alcohol after receiving notice the project would not continue. Applicant pled guilty to driving while intoxicated, fined \$500, and placed on probation for 60 days.⁸

Applicant admits he was arrested for possession of cocaine in 2000. Applicant drove another person to a residence for that person to purchase cocaine. The residence was under surveillance by police for drug activity. Applicant and the other person were stopped by police after leaving the residence and arrested for possession of cocaine. The charge was dropped after Applicant completed a drug diversion program. Applicant admitted he used cocaine a minimum of five times between 1999 and 2000. He used the cocaine to enhance his ability to drink and the effect of alcohol.⁹

Applicant was directed to enter a drug treatment program as a condition of his drug diversion program. He successfully participated in a two week inpatient program. He participated in all

³Tr. 14-19; Government Exhibit 1 (Security Clearance Application, dated February 17, 2004).

⁴Tr. 20.

⁵Tr. 20-21, 38.

⁶Tr. 21-22, 37-38.

⁷Tr. 22, 35-37; Government Exhibit 3 (Criminal Justice Information, undated).

⁸Tr. 22-23, 34-35; Government Exhibit 3 (Criminal Justice Information, undated).

⁹Tr. 23-28, 44-50; Government Exhibit 3 (Criminal justice Information, undated).

treatment functions, and made excellent progress towards his treatment objectives. He accepted his addiction as a disease and developed a constructive recovery plan for ongoing sobriety. He admitted he had a substance abuse problem. He was stable at discharge with a good prognosis, if he continued

to follow his recovery plan. He was to attend outpatient services and 12-step meetings. The treating physician diagnosis at the completion of the program was cocaine dependent.¹⁰

Applicant admits he is an alcoholic who used cocaine occasionally to enhance his consumption of alcohol. He started drinking alcohol at age 19 when it was legal in his state. His alcohol of choice is beer. He knows that as an alcoholic he cannot drink alcohol. He stopped drinking upon entering his inpatient treatment. He then completed an intensive outpatient treatment program in January 2002.¹¹ His last drink of alcohol was in 2003 when he was on a trip and had two drinks. He realized what he was doing and called his wife for support to not drink any further. He last used cocaine in 1999 to 2000. He last used marijuana in the early 1980s while in college. He was surprised that he was diagnosed as cocaine dependent after the inpatient treatment. During his treatment, he talked extensively about his alcohol use but there was little discussion of cocaine use. He does admit to alcohol addiction, but not addiction to other substances. Applicant attends church regularly. He no longer attends organized 12 step programs because he found support from his church's religious programs.¹²

Applicant has a good reputation at work. He received annual promotions and pay raises during his ten years with his present employer.¹³ He received certificates and letters of appreciation from the government commands and offices he supported.¹⁴ The president of his company stated he has known Applicant for over ten years and knows about his problems with substance abuse. The president is the founder and owner of the company which provides technical support to government agencies. He stated that Applicant is a very good worker and his performance is continuously praised by government representatives. He has talked to Applicant about his substance abuse issues. He and the Applicant agree that the Applicant's past substance abuse was a problem. He has seen a change in Applicant's behavior and knows that Applicant has straightened his life for the good.¹⁵

Applicant's immediate supervisor stated he has known Applicant for the last two years. Applicant has an excellent reputation, his work is excellent, and he receives good reviews from government customers. He has never seen Applicant consume alcohol and believes Applicant

¹⁰Government Exhibit 4 (Clinical report, dated December 17, 2001).

¹¹Applicant Exhibit D (Certificate of completion, dated January 14, 2002).

¹²Tr. 39-44, 52-59.

¹³Applicant Exhibit A (Employee information, various dates).

¹⁴Applicant Exhibit B (Appreciation certificates, various dates).

¹⁵Tr. 63-68.

permanently changed his behavior for the better.¹⁶ A fellow employee stated he worked with and has known Applicant for over 10 years as a co-developer of software products. Applicant is a good

worker who does a good job. He has never seen Applicant drink alcohol. Applicant is a better person now than he was when he first met him in 1997.¹⁷

Applicant's pastor testified he has known Applicant since he joined his church four years ago. He knows of Applicant's problems with substance abuse but has not counseled him directly for it. Applicant attends his church programs regularly. He believes Applicant is a transformed man who has no addiction problems.¹⁸

Applicant's wife stated that they have a better marriage now than when Applicant entered rehabilitation. She has not seen him consume alcohol or drugs since he left rehabilitation. He did call her when he was on a trip to tell her he had two drinks of alcohol. He did not drink alcohol after the call. She does not worry about him relapsing back into substance abuse.¹⁹

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."²⁰ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.²¹

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable

¹⁶*Id.*

¹⁷Tr. 76-79.

¹⁸Tr. 80-85.

¹⁹Tr. 86-91.

²⁰*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

²¹Directive ¶ E2.2.1.

information about the person.²² An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.²³

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.²⁴ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.²⁵ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.²⁶ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."²⁷ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.²⁸ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."²⁹ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."³⁰

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

²²*Id.*

²³Directive ¶¶ E2.2.1.1 through E2.2.1.9.

²⁴*See* Exec. Or. 10865 § 7.

²⁵Directive ¶ E3.1.14.

²⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

²⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁸ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

²⁹ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

³⁰*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

Guideline J - A history or pattern of criminal activity raises a security concern because it creates doubt about a person's judgment, reliability, and trustworthiness.

Guideline G - Excessive alcohol consumption raises a security concern because it often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Guideline H - The improper or illegal involvement with drugs creates a security concern because it raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

The central theme of the three security concerns is a question concerning the person's judgment, reliability, and trustworthiness. Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's history of alcohol consumption and abuse of alcohol based on Applicant's admissions to driving while intoxicated or alcohol-related arrests and/or convictions raises Alcohol Consumption Disqualifying Condition (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*). Driving while intoxicated is one of the examples used for an alcohol-related incident away from work. He was arrested and/or convicted twice for driving under the influence of alcohol and once for reckless driving involving alcohol from 1986 to 1996. These incidents establish the alcohol related incidents away from work. While the medical information from Applicant's inpatient treatment indicates a cocaine dependence, it also mentions substance abuse. Applicant admits he is an alcoholic and thought his addiction was to alcohol. I find there is a medical diagnosis of alcohol dependence because the inpatient report indicates substance abuse not merely cocaine dependence and Applicant knows he is an alcoholic. The medical diagnosis from the treating medical professional raises Alcohol Consumption DC E2.A7.1.2.3 (*diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*). Applicant admits heavy consumption of alcohol over a period of time raising Alcohol Consumption DC E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant admitted drinking two drinks after release from his inpatient and aftercare programs raising Alcohol Consumption DC E2.A7.1.2.6 (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*). It is clearly established there is a security concern for Applicant's consumption of alcohol.

I considered all of the mitigating conditions under alcohol consumption and find all apply. There was a pattern of alcohol abuse, but there has not been a pattern since 2000. The problem occurred over six years ago, and there is no other indication of any recent substance abuse problems. Applicant's actions since his last offense in 2000, his completion of rehabilitation in 2000, his excellent work performance, and family life with church attendance are positive changes supportive of sobriety. His consumption of two drinks of alcohol in 2003 is not considered to be consumption of alcohol after diagnosis by a medical professional and completion of an aftercare program because he realized his mistake and immediately stopped drinking. He did not drink to excess or to the point of intoxication. It has been four years since that misstep. Alcohol Consumption Mitigating Conditions (MC) E2.A7.1.3.2 (*The problem occurred a number of years ago and there is not indication of a recent problem*), and MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*) apply. Applicant has mitigated security concerns for his consumption of alcohol.

Applicant's admitted use of marijuana and cocaine and the medical diagnosis of cocaine dependence raises Drug Involvement DC E2.A8.1.2.1 (*Any drug abuse*); DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), and DC E2.A8.1.2.3 (*Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*). Drugs are defined as mood and behavior-altering substances, and include drugs, materials, and chemical compounds identified and listed in the Controlled Substances Act of 1970. Drug abuse is the use of an illegal drug or use of a legal drug in a manner that deviates from approved medical directives. Marijuana and cocaine are listed as drugs in the Controlled Substance Act of 1970. Applicant admitted using marijuana in college in 1980/1981 and cocaine from 1999 to 2000.³¹ He was admitted to inpatient treatment after cocaine possession and the diagnosis was cocaine dependence. The security concern for Applicant's drug involvement is established.

I considered Drug Involvement MC E2.A8.1.3.3 (*The drug involvement was not recent*); MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*); MC E2.A8.1.3.3 (*Demonstrated intent not to abuse any drug in the future*), and MC E2.A8.1.3.4 (*Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*). Applicant's last use of marijuana was in 1981 while a college student. He used cocaine a minimum of five times from 1999 to 2000. His last use of cocaine was in 2000. There has been no use since he was arrested for possession of cocaine in January 2000. Since his last use was over seven years ago, it is not recent. However since he used cocaine at least five times, the use was not isolated or aberrational. Applicant successfully completed an inpatient substance abuse program and was determined by medical professionals to have a good prognosis. He completed the aftercare program and has not used cocaine since his arrest. He has not abused any substance for over six years, is an excellent worker, and involved in church and family activities. He knows he is an alcoholic, and knows he cannot use an illegal substance or alcohol in the future. Applicant mitigated security

³¹Department Counsel questioned Applicant concerning cultivation of marijuana. Applicant admitted knowing of the marijuana plants and being at the location where the plants were growing but denied he was involved in the growing of marijuana. See, Tr. 50-52. There is no allegation in the SOR concerning cultivation of marijuana. Department Counsel argued that Applicant's denial is not credible. See, Tr. 93. Since there is no allegation of marijuana cultivation, I do not make a factual finding concerning marijuana cultivation and have not considered it as a security concern.

concerns for drug involvement.

Applicant admits he was arrested and convicted three times for either driving while intoxicated or reckless driving related to alcohol use. He admits he was arrested for marijuana and cocaine possession. Applicant's arrests for the above alcohol-related offenses and drug possession raises Criminal Conduct DC E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*).

I considered Criminal Conduct MC E2.A10.1.3.3 (*the criminal behavior was not recent*); and MC E2.A10.1.6 (*there is clear evidence of successful rehabilitation*). The possession of marijuana happened over 26 years ago, and the possession of cocaine over seven years ago. The last driving while intoxicated offense happened in 1996, over 11 years ago. These criminal activities are not recent. Applicant completed an inpatient and aftercare rehabilitation program with a good prognosis. He has been drug and alcohol free for over six years. His wife and co-workers attest to his substance abuse abstinence and his commitment to sobriety. These is clear evidence of successful rehabilitation. Applicant has mitigated security concerns for criminal conduct.

These mitigating conditions were also considered together with the "whole person concept". I considered Applicant's candor and honesty concerning his drug and alcohol abuse, his successful completion of substance abuse treatment, and his over six years of sobriety and being substance abuse free. Applicant demonstrated he exercises good judgment, and is reliable, and trustworthy. Applicant has mitigated security concerns regarding alcohol consumption, drug abuse, and criminal conduct. Clearance is granted.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraphs 1.a. - 1.f.:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a. - 3.c.:	For Applicant
Subparagraph 3.d.:	Withdrawn

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean
Administrative Judge