

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant's intentional falsification of material facts on a Security Clearance Application (SCA) requires a denial of his clearance request. Clearance is denied.

CASENO: 06-10950.h1

DATE: 01/24/2007

DATE: January 24, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-10950
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Applicant's intentional falsification of material facts on a Security Clearance Application (SCA) requires a denial of his clearance request. Clearance is denied.

## STATEMENT OF THE CASE

On June 23, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 25, 2006. The case was assigned to the undersigned on September 5, 2006. A Notice of Hearing was issued on October 16, 2006, and the hearing was held on November 7, 2006. The transcript was received on November 28, 2006.

## RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend three allegations in the SOR. Applicant did not object, and the motion was granted. As amended, SOR Allegations 1b and 1c now refer to 2001 instead of 2000. SOR Allegation 1d was amended by deleting “Newport News Police Department physician.”

## FINDINGS OF FACT

Applicant is a 61 year old employee of a defense contractor.

Applicant began drinking alcohol at age 17 or 18. He remained a moderate drinker until 2001. During a one week period early in January/February 2001, he consumed beer and/or vodka daily to intoxication. This alcohol binge was caused by stress that had been building up for quite a while. The stress was caused by three things: his job as a police officer, marital problems, and financial difficulties. At the end of the week he realized he was destroying his life and spoke to a friend about it. The friend advised him to get help, and applicant listened to the advice. He first went to his medical doctor, and after he told the doctor what was happening, the doctor prescribed him medication for depression and to help him sleep. Applicant then decided on his own to go to an alcohol rehabilitation program. The director of the program suggested he attend group therapy. He attended a couple of group therapy sessions, but decided it wasn't working for him and stopped going. He then attended a few AA meetings. After attending these meetings for about a month, he stopped going because he wasn't getting anything out of them. About the same time he met with the police department's psychologist. Applicant told the psychologist that he thought he was an alcoholic and informed him he had gone to his medical doctor and was placed on medication for depression and insomnia. He also told the psychologist what had been going on in his life. According to applicant, the psychologist then told him that his problem was depression and not alcohol. From the time his week-long binge ended until May or June 2001, applicant abstained from the use of alcohol. He currently consumes one to four beers a day. Applicant testified that he “would venture to say, and [he] could be wrong, that [he last consumed alcohol to intoxication] when [he] got the [SOR]” (TR at 17).

In March 2004, applicant was arrested and charged with (1) Driving Under the Influence-Alcohol (DUI), (2) Failure to Maintain Proper Travel Lane, (3) Open Container, and (4) Failure to Change Address on Driver's License. He pleaded guilty to the second charge, and was fined \$263.00.

The other charges were dismissed. Although applicant consumed about four beer throughout the day, he denies he was under the influence of alcohol when he was arrested.

Applicant completed and executed a Security Clearance Application (SCA) in September 2004 (Exhibit 1). In response to Question 24, which asked, "Have you ever been charged with or convicted of any offenses(s) related to alcohol or drugs?" applicant stated "no." This response was false because, as noted above, he had been arrested for, and charged with, DUI less than a year earlier. Applicant testified that he answered "no" because he must have "keyed on the word convicted" (TR at 46).

In response to Question 26, which asked if in the previous seven years he had been arrested for, charged with, or convicted of any offenses he did not previously disclose on the SCA, applicant stated "no." When asked why, in light of his DUI arrest, he didn't respond "yes" to this question, applicant testified that "again [he] was thinking conviction" (TR at 47).

In response to Question 30 which asked, "In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" applicant stated "no." This response was also false because, as noted above, applicant had attended group therapy sessions at an alcohol rehabilitation program in 2001. Applicant first testified that he has no explanation for his false response (TR at 40). He then offered a few possible explanations. He testified (1) in essence, that his counseling was psychological, and not alcohol-related, (2) he was embarrassed about the alcohol counseling and was afraid somebody at his office might see his response, and (3) he did not read the question thoroughly (TR 39, 40-41).

Applicant's explanations for his false responses to all three questions were not credible. I find that he intentionally provided the false information in an attempt to conceal his alcohol-related problems from the Government.

Two of applicant's coworkers, including his supervisor, appeared at the hearing and testified that applicant is reliable and trustworthy.

### CONCLUSIONS

With respect to Guideline G, the evidence establishes that during a one week period in early 2001, applicant consumed alcohol to the point of intoxication daily. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Condition E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*).

There is no hard, credible evidence that applicant has consumed alcohol to intoxication since

the 2001 week-long binge.<sup>1</sup> Accordingly, he qualifies for Mitigating Condition E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*). The fact he continues to consume alcohol is not a disqualifying condition because he has never been diagnosed with alcoholism.<sup>2</sup> Based on the passage of time since applicant last abused alcohol (over five years), Guideline G is found for him.

With respect to Guideline E, the evidence establishes that applicant intentionally provided false information to the Government when he completed the SCA in 2004. This conduct is extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsifications require application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*). No Mitigating Conditions are applicable. Based on the foregoing, Guideline E is found against applicant.

Applicant's falsifications are also cognizable under Guideline J as they constitute felonies under 18 U.S.C. 1001.

### **FORMAL FINDINGS**

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: AGAINST THE APPLICANT

### **DECISION**

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.

Joseph Testan  
Administrative Judge

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<sup>1</sup>Applicant's equivocal statement concerning his alcohol consumption when he received the SOR is insufficient to establish he drank to intoxication.

<sup>2</sup> See, Guideline G, E2.A7.1.2.6.