

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is 47 years old and is employed as a sheet metal worker for a defense contractor. Applicant did not intentionally falsify his 2005 security clearance. He misunderstood the question, and therefore, he mitigated the Personal Conduct concerns. Although he has a history of alcohol-related arrests and has attended court-ordered classes, he has continued to consume alcohol, at times to intoxication, from approximately 1983 to at least 2002. Applicant's failure to mitigate his excessive alcohol consumption raises security concerns. Clearance is denied.

CASENO: 06-12477.h1

DATE: 04/17/2007

DATE: April 17, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-12477
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 47 years old and is employed as a sheet metal worker for a defense contractor. Applicant did not intentionally falsify his 2005 security clearance. He misunderstood the question, and therefore, he mitigated the Personal Conduct concerns. Although he has a history of alcohol-related arrests and has attended court-ordered classes, he has continued to consume alcohol, at times to intoxication, from approximately 1983 to at least 2002. Applicant's failure to mitigate his excessive alcohol consumption raises security concerns. Clearance is denied.

STATEMENT OF THE CASE

On November 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct), of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In a sworn statement, dated December 11, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on February 14, 2007, and provided a complete copy of the file of relevant material (FORM)² to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on March 6, 2007. Applicant submitted additional information. The case was assigned to me on March 28, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to alcohol consumption under Guideline G (subparagraphs 1.a through 1.e). He denied the factual allegations pertaining to personal conduct under Guideline E (subparagraph 2.a). Those admissions are incorporated as findings of fact. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 47 years old and is a sheet metal worker for a defense contractor. He has been with his current employer since 1979. Applicant is single and has no children. He submitted a security clearance application on August 31, 2005.³

Applicant admits consuming alcohol, at times to excess and to the point of intoxication, from 1983 to at least November 2006. Between 1983 and 1989, he was arrested three times and charged with driving while intoxicated (DWI). After each of those arrests, he attended a court ordered Alcohol Safety Action Program (ASAP).⁴ His driver's license was revoked.⁵

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The government submitted five items in support of its contention.

³Item 4 (Applicant's Security Clearance Application (SF 86), dated August 31, 2005) at 1-20.

⁴Item 5 (Department of Motor Vehicles (DMV) records, dated November 17, 2006) at 1-2.

⁵*Id.*

In November 2002, Applicant was again arrested and charged with being drunk in public. He was convicted and required to pay a fine and fee. Applicant continues to drink approximately 18 beers per week. ⁶

Applicant completed and signed a security clearance application (SF 86) on August 31, 2005. Section 23 (d) on the SF 86 asks: Your Police Record. In the last 7 years, have you been arrested for charged with, or convicted of any offenses related to alcohol or drugs. (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related). Applicant answered "yes" to that question, but did not disclose his three DWI convictions.⁷

In his answer to the SOR, he denied intentionally providing false information. He explained that he believed if you had convictions older than ten years, you did not need to list them. He did list his 2002 drunk in public charge on the application form and checked alcohol and drugs. He explained that he answered the section 23 questions a through f to the best of his knowledge. He also explained that he was not convicted of a felony, and thus, did not answer "yes" to that question. He acknowledged that he did not deliberately leave out the alcohol convictions in the 1980s.⁸

Applicant has not presented any information concerning counseling for alcohol or any treatment. There is no record in the evidence of any diagnosis. He continues to drink, as noted above, but not to the same excess as the past.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive are intended to assist the administrative judge in reaching fair and impartial commonsense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

⁶Item 3 (Applicant's notarized answer, dated December 11, 2006 and January 8, 2007) at 1-4.

⁷Item 4, *supra* note 3, at 19.

⁸Item 3, *supra* note 6, at 3.

participation; (3) the frequency and recency of the conduct; (4) the individual'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 or recurrence.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."⁹ For the purposes herein, despite the different wording in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.¹⁰ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.¹¹

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.¹²

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover

⁹The Directive, as amended by Change 4, dated April 20, 1999, uses 'clearly consistent with the national interest' (Sec. 2.3; Sec.2.5.3; Sec 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.2.5.; Sec. E3.1.2.6.; and Sec. E3.1.2.7.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

¹⁰ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹¹ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.

¹²Directive, Enclosure 2, Para. E2.2.2

many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR. For clarity, I will discuss each guideline separately.

Alcohol Consumption

The government established its case under Guideline G. Applicant's admitted consumption of alcohol to excess and at times to intoxication spans a period of twenty years. Excessive alcohol consumption raises security concerns because it often leads to the exercise of questionable judgment or the failure to control impulses, thus raising questions about an individual's reliability and trustworthiness. Disqualifying Condition (FI DC) AG ¶ 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 in this case.

The record evidence and Applicant's admissions show he was arrested three times between 1983 and 1989, and charged with driving under the influence of alcohol. After each arrest, he was directed to enroll in an alcohol safety awareness program. His driver's license was revoked. In 2002, he was arrested and convicted of being drunk in public. He was fined and found guilty. Applicant admits he continues to drink a large amount of alcohol on a weekly basis.

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. Here Applicant offered no such information to rebut or mitigate the allegations of the disqualifying conduct under Guideline G in the SOR. After a review of the Guideline G mitigating conditions, I find that none apply to the facts of this case.

Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal Conduct Disqualifying Condition (PC DC) AG ¶16 (a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefit status, determine security clearance eligibility or trustworthiness, or*

award fiduciary responsibilities) is raised. Applicant did not disclose the three DWI's on the form, despite the fact that he answered yes to the question concerning alcohol related offenses. He did list the 2002 charge for public drunkenness. He denied that he did this with intent to deceive.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02- 23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant's explanation was credible that he did not disclose the earlier DWIs because he misunderstood the question. He had already responded yes to the question. The last part of the question (f) referred to the last 7 years for anything that was not already mentioned. I find his explanation that he misunderstood the question reasonable. I do not find that he intentionally falsified his security clearance application.

The issue before me is whether he has presented sufficient evidence of extenuation, or mitigation to warrant a favorable conclusion. I find that the Applicant has presented such information and mitigated the government's concerns under Guideline E.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. As noted above, the adjudicative process is a careful weighing of a number of variables in considering the whole person concept. It recognizes a person be viewed by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered both the record evidence and Applicant in light of the whole-person concept. Applicant began consuming alcohol to excess many years ago. As a result, he has had three arrests and convictions. In 2002, he had a public drunkenness conviction. He admits still drinking. I must decide whether favorable evidence outweighs the unfavorable or *vice versa*. I have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude that Applicant has neither rebutted nor mitigated the security concerns raised by the alcohol consumption allegations in the SOR, and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance. Clearance is denied.

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
Subparagraph 1.a:	AgainstApplicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E.	FOR APPLICANT
Subparagraph 2.a:	For 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. Clearance is denied.

Noreen A. Lynch
Administrative Judge