

KEYWORD: Alcohol; Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a support technician for a potential defense contractor. He admitted drinking alcohol to excess to the point of intoxication from 1975 until February 2006. He admitted using cocaine from 1984 until 1990. He used opiates at least once in 2004. He was diagnosed at a medical treatment facility as alcohol and cocaine dependent. He provided false information on his security clearance application concerning his use of opiates in 2004. The provisions of 10 U.S.C. § 986 denying a security clearance to a person who is a user of or addicted to a controlled substance applies. Clearance is denied.

CASENO: 06-16056.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-16056
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant is a support technician for a potential defense contractor. He admitted drinking alcohol to excess to the point of intoxication from 1975 until February 2006. He admitted using cocaine from 1984 until 1990. He used opiates at least once in 2004. He was diagnosed at a medical treatment facility as alcohol and cocaine dependent. He provided false information on his security clearance application concerning his use of opiates in 2004. The provisions of 10 U.S.C. § 986 denying a security clearance to a person who is a user of or addicted to a controlled substance applies. Clearance is denied.

## STATEMENT OF THE CASE

On August 29, 2006, the Defense Office of Hearing 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 September 6, 2006. The SOR alleges security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on September 25, 2006. He admitted the four allegations under Guideline G. He admitted three and denied three of the allegations under Guideline H, mainly because he believes he was treated for alcohol abuse, not cocaine abuse, at a substance abuse medical treatment facility. He admitted three and denied one of the allegations under Guideline E, mainly concerning the dates of his use of cocaine. He admitted the allegations under Guideline J. He provided an explanation for allegations both admitted and denied. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on May 30, 2007. Applicant received a complete file of relevant material (FORM) on June 19, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due July 19, 2007. As of August 13, 2007, he had not responded. The case was assigned to me on August 15, 2007.

## FINDINGS OF FACT

Applicant is 42 years old and has been a support technician for a potential defense contractor since 1999. He is high school graduate and has never been married.<sup>1</sup>

Applicant admits he consumed alcohol to excess to the point of intoxication at times from 1975 until February 2006. He states that during this time he did not consume alcohol from November 1998 to June 2001, and during June and July 2004. He was experiencing health

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<sup>1</sup>Item 4.

problems, and his doctor thought the problems were related to his liver caused by consumption of alcohol. The doctor referred Applicant to a substance abuse medical treatment facility. He was admitted to an inpatient program and treated for severe alcohol abuse from November 1998 to January 1999. Upon discharge, it was recommended he abstain from the use of alcohol and attend alcoholics anonymous meetings.<sup>2</sup>

Applicant admitted he was arrested for and pled guilty to possession of marijuana in May 1989. He paid a \$48 fine.<sup>3</sup> He admitted he used cocaine from 1984 until March 1989. He also admitted to using cocaine after March 1989 once or twice.<sup>4</sup> He denied receiving treatment for cocaine dependence from November 1998 to January 1999, and June 2004 until July 2004 at the substance abuse medical treatment facility. He stated he enrolled in the substance abuse facility because of alcohol dependence, not cocaine dependence. Since the only program at the treatment facility was for chemical abuse, and not specifically alcohol abuse, he enrolled in the program.<sup>5</sup>

Applicant admitted he tested positive for opiates in March 2004. He and other employees of his company were on a business trip to Tokyo, Japan. After completing the job, some of the team members, including Applicant, drank to excess one night. Applicant awoke from a coma the next day in a Tokyo hospital. He was informed that opiates were found in his blood system. He does not remember consuming opiates but because of his condition he very well may have done so. One of this team members died that evening from an overdose of alcohol and opiates.<sup>6</sup> He was treated upon his return home from June 2004 to July 2004 at the same substance abuse medical facility used in November 1998 until January 1999. The diagnosis was alcohol and cocaine dependency.<sup>7</sup> He admits that from July 2004 to September 2006, he consumed beer once or twice a month with customers. In his September 25, 2006, response to the SOR, Applicant stated he had not consumed alcohol since September 6, 2006, a period of 19 days.<sup>8</sup>

Applicant admitted his answers were false when he responded “NO” to question 24 on his October 29, 2001, and his December 2, 2004, security clearance applications asking if he had ever been charged with or convicted of any offense involving drugs or alcohol. He did not list his May 1989 offense for possession of marijuana. His admission was based on his current knowledge that he was arrested and convicted of the offense of possession of marijuana. He remembered something about a drug charge. He checked the court records where he would have been charged and convicted but there was no record of an arrest under his name. Since there was no record, he did not believe

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<sup>2</sup>Item 8 at 3-5.

<sup>3</sup>Item 2; Item 7.

<sup>4</sup>Item 2 at 2.

<sup>5</sup>*Id.*

<sup>6</sup>Item 2 at 2; Item 6 at 2.

<sup>7</sup>Item 8 at 6-15.

<sup>8</sup>Item 2 at 1.

he was charged and convicted and answered the question “NO”. When questioned again about the incident, he checked with the court again and determined he was convicted of a drug offense, but the case was filed using his wrong middle initial name.<sup>9</sup>

Applicant denied falsifying his “NO” answer to question 27 on his October 29, 2001 security clearance application, asking if in the last seven years or since the age of 16, has he used any controlled substance, was false. He admitted his answer to the same question on the December 2, 2004, security clearance application was false. He admitted using cocaine from 1984 until 1989. He was 16 in 1981 and seven years before the signing of the 2001 security clearance application was 1994. His use of cocaine from 1984 until 1989 was not within the question’s time line. Applicant admitted using a controlled substance in March 2004, based on information from treating physicians. This use was within the seven year period for the December 2, 2004, security clearance application.<sup>10</sup>

## 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.”<sup>11</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>12</sup>

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 information about the person.<sup>13</sup> 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

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<sup>9</sup>Item 2 at 1.

<sup>10</sup>Item 2 at 3.

<sup>11</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>12</sup>Directive ¶ E2.2.1.

<sup>13</sup>*Id.*

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>17</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>18</sup> 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.<sup>19</sup> “[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.”<sup>20</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>21</sup>

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

Guideline G - Alcohol Consumption: Excessive alcohol consumption 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 - Drug Involvement: Improper or illegal involvement with drugs, raises question 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

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<sup>14</sup>Directive ¶¶ E2.2.1.1 through E2.2.1.9.

<sup>15</sup>See Exec. Or. 10865 § 7.

<sup>16</sup>Directive ¶ E3.1.14.

<sup>17</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); see Directive ¶ E3.1.15.

<sup>18</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>19</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>20</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>21</sup>*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

disclosure of classified information.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules or regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a 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 facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government established security concerns for Guideline G (Alcohol Consumption) based on Applicant's admission he drank alcohol to excess to the point of intoxication from approximately 1975 until February 2006, and his treatment for and diagnosis of severe alcohol abuse at a medical treatment facility by licensed clinical social workers. His alcohol consumption raises Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.5 (Habitual or binge consumption of alcohol to the point of impaired judgment). His treatment and diagnosis for alcohol abuse raises AC DC E2.A7.1.2.4 (Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program).

Applicant's response to the SOR does not specifically raise any Alcohol Consumption Mitigating Conditions (AC MC). However, I considered AC MC E2.A7.1.3.1 (The alcohol related incidents do not indicate a pattern); AC MC E2.A7.1.3.2 (The problem occurred a number of years ago and there is no indication of a recent problem); and AC MC E2.A7.1.3.3 (Positive changes in behavior supportive of sobriety). Applicant admits he has an alcohol problem. He admits drinking alcohol heavily for over 30 years, and was still drinking alcohol as late as September 25, 2006, when he submitted his answer to the SOR. Even after being treated for alcohol related health problems and illness, he continued to drink alcohol. On an overseas trip, he drank to excess, almost causing his death. There is a definite pattern of excessive alcohol consumption. Applicant presented no evidence of a positive change in behavior supportive of sobriety. Applicant presents no information confirming that he has not drunk alcohol in the immediate past. The last correspondence from him was that he had consumed alcohol just before submitting his answer to the SOR. Without any information to confirm his abstinence from alcohol and attendance at any type of alcohol prevention meetings, there is no credible evidence of record to establish positive changes in his behavior supportive of sobriety. Since Applicant has not established sufficient positive changes supportive of sobriety, he has not met his burden to mitigate the security concerns for alcohol consumption. In fact, he continues to consume alcohol, which indicates recent alcohol consumption and thus problems. Applicant has failed to mitigate security concerns for his alcohol consumption.

Applicant's admitted use of cocaine from 1984 to 1990, and admitted use of opiates in March 2004 raises Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (Any drug abuse), and DI DC E.A8.1.2.2 (Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution). Applicant admitted using cocaine for over 6 years. He admits he used opiates in 2004 because medical personnel found opiates in his system when treating him when he became comatose. Applicant denies being treated for cocaine abuse in both 1999 and 2004 stating he was treated only for alcohol abuse and not cocaine abuse. However, there was a diagnosis for cocaine abuse so he was treated for that condition. The government has established the disqualifying conditions.

I have considered all of the Drug Involvement Mitigating Conditions (MC) and determine none apply. He admits last using opiates in March 2004 while on a business trip in a foreign country. His use a little over three years ago after using cocaine for six years shows his use was not aberrational behavior or an isolated event. MC E2.A8.1.3.1 (The drug involvement was not recent), and MC E2.A8.1.3.2 (The drug abuse was an isolated or aberrational event) do not apply. Applicant presents no information to demonstrate any actions to show he will not use drugs in the future. A statement not to use in the future is not sufficient to establish a demonstrated intent. He has not presented information to mitigate the security concern for his use of drugs.

Federal statute prohibits a person who is an unlawful user of or addicted to a controlled substance from being granted a security clearance. An addict is a person who habitually uses a narcotic so as to endanger the public morals, health, safety or welfare or who is so far addicted to the narcotic he is unable to control his addiction.<sup>22</sup> The diagnosis from the substance abuse medical treatment facility shows Applicant is cocaine dependent. He is therefore addicted to the drug and cannot be granted a security clearance.

The government raises security concerns under Guideline E (Personal Conduct) based on Applicant's answers to drug and alcohol use questions on security clearance applications submitted on October 29, 2001, and December 2, 2004. Applicant answered "NO" to questions 24 and 27 on the applications asking if he had ever been charged with or convicted of any offense related to drugs or alcohol and if in the last seven years he illegally used any controlled substance. Applicant's response to the question concerning arrest or conviction for any offense related to drug or alcohol use was false because of Applicant's 1989 arrest and conviction for possession of marijuana. Applicant admitted using cocaine only until 1990. His negative answer to the question on the October 2001 security clearance application that he had not used a controlled substance in the last seven years was correct because it was not within the time line established by the disqualifying condition. However, he admitted using opiates in March 2004, so his negative response to drug use in the last seven years on the December 2004 application was not correct.

Applicant's false or incomplete information on security clearance application raises Personal Conduct Disqualifying Condition (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). The security concern under personal conduct is a deliberate action in providing false

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<sup>22</sup>Title 10, United States Code, Section 986.

information to the government with the intent to deceive. Prior to completing the security clearance application, Applicant remembered something about a drug charge but was not sure of the details or the exact charge. He checked the court records and found no offense listed for him. He answered "NO" to the questions on the security clearance application pertaining to an offense related to alcohol or drugs. Subsequent checks of court records to respond to the SOR shows his 1989 arrest and conviction for possession of marijuana but listed with a different middle initial. His false answers to the questions concerning his arrest for possession of marijuana on both security clearance applications was not a deliberate attempt to conceal the facts. His failure to list his use of opiates in 2004 on the December 2004 application was a deliberate concealment of his use of a controlled substance.

I considered the Personal Conduct Mitigating Conditions (PC MC) in relation to the one deliberate false answer and find none apply. He admitted he provided a false answer to the question. PC MC E2.A5.1.3.1 (The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability), and PC MC E2.A5.1.3.3 (The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) do not apply. I find that he failed to mitigate the security concern raised by his personal conduct.

Applicant admits he was arrested and convicted for possession of marijuana in 1989. He admits he deliberately provided false information on his security clearance application in violation of a federal criminal statute. Applicant's arrests and his deliberate false answer raises Criminal Conduct Disqualifying Condition (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).

I considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.3 (the criminal behavior was not recent); and CC MC E2.A10.1.6 (there is clear evidence of successful rehabilitation). The possession of marijuana happened over 26 years ago, but the false statement was provided only three years ago. His last use of opiates was three years ago which is a continuation of his illegal drug use. The criminal activities are recent. Applicant presented no clear evidence of successful rehabilitation. Applicant has not mitigated security concerns for criminal conduct.

The determination of Applicant's security worthiness requires a very careful and full analysis of his conduct under the "whole person" concept. The adjudication of security worthiness is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. I considered Applicant's admission to a long history of excessive use of alcohol and his medical treatment and diagnosis of alcohol abuse. I considered his use of alcohol and opiates in 2004 in a foreign country to such an extent that he almost lost his life. I also considered his deliberate failure to provide correct information on his use of opiates in 2004 on his security clearance application. The allegations in the SOR, taken together with a consideration of the "whole person," indicate a individual who is not trustworthy or reliable and does not exercise good judgment. Applicant has not mitigated the alcohol consumption, drug involvement, personal conduct, or criminal conduct security concerns. His past history of exercising poor judgment after drinking alcohol and providing false information about his drug use establishes a concern that he may engage in conduct that does not safeguard classified information. Applicant's conduct indicates he is a security risk. I conclude he is not eligible for access to classified information.



## FORMAL FINDINGS

Formal findings for or against Applicant on the allegations et 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.: Against Applicant  
Subparagraphs 1.b.: Against Applicant  
Subparagraphs 1.c.: Against Applicant  
Subparagraphs 1.d.: Against Applicant

Paragraph 2, Guideline H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant  
Subparagraph 2.b.: Against Applicant  
Subparagraph 2.c.: Against Applicant  
Subparagraph 2.d.: Against Applicant  
Subparagraph 2.e.: Against Applicant  
Subparagraph 2.f.: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant  
Subparagraph 3.b.: For Applicant  
Subparagraph 3.c.: For Applicant  
Subparagraph 3.d.: Against Applicant

Paragraph 4, Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant  
Subparagraph 4.b.: Against Applicant

## DECISION

In light of all of the circumstances in 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.

Thomas M. Crean  
Administrative Judge