

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is 44 years old, separated from his wife and seeking a divorce. They have a 12-year-old son. Applicant is a structural mechanic for a defense contractor. He voluntarily entered an alcohol rehabilitation program in 2004, but did not complete the out-patient program because he had alcohol odor on his breath one day at a session. Subsequently, he drove while drunk with a blood alcohol content of .24%. He failed to disclose a mental detention warrant and transport to a state hospital for psychiatric evaluation. Applicant did not mitigate the alcohol consumption and personal conduct security concerns. Clearance is denied.

CASENO: 06-18809.h1

DATE: 05/24/2007

DATE: May 24, 2007

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| In re: |) | |
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| ----- |) | ISCR Case No. 06-18809 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

R. Burl McCoy, Esq.

SYNOPSIS

Applicant is 44 years old, separated from his wife and seeking a divorce. They have a 12-year-old son. Applicant is a structural mechanic for a defense contractor. He voluntarily entered an alcohol rehabilitation program in 2004, but did not complete the out-patient program because he had alcohol odor on his breath one day at a session. Subsequently, he drove while drunk with a blood alcohol content of .24%. He failed to disclose a mental detention warrant and transport to a state hospital for psychiatric evaluation. Applicant did not mitigate the alcohol consumption and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 26, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive’s Revised Guidelines implemented September 1, 2006. Applicant answered the SOR in writing on November 16, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 27, 2007. On April 4, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 16, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old, married though separated from his wife, and has a 12-year-old son. Applicant works for a defense contractor as an structural aircraft mechanic. Formerly, he worked for a pharmaceutical company as a sales representative. He resigned that position in March 2005 to become an aircraft mechanic and to reduce his stress. He is an Army veteran. (Tr. 17, 23, 24, 34-36; Exhibit 1)

Applicant consumed alcohol to excess and to intoxication from time to time from 1978 until at least October 25, 2005. In 1978 Applicant was 15 years old. From that point until April 2006, he consumed it less frequently. He admitted in his November 2006, Answer that he had one or two drinks per year. He now claims he does not drink alcohol. (Tr. 20, 35-37, 46-48; Answer)

Applicant was arrested in March 1982, at the age of 19, for being drunk in public and resisting arrest. He was found guilty and sentenced to 100 hours of community service. His next arrest involving alcohol was in February 1987, when the charge was disorderly intoxication. He was found guilty and fined \$100. In November 2004, while on a family trip with relatives, his 14 year old niece accused him of inappropriately touching her breast. Applicant claims he was asleep in the second row of the minivan seating on the right side. His niece was asleep leaning against his left side. Another person was asleep on the niece’s left side. Applicant’s left arm was around his niece’s shoulder and his hand touched her breast. He denies touching her on her breast because he had been drinking with the other family members at a family party, and was asleep on the way home in the car. The family members did not inform the police authorities and no criminal action was taken against Applicant. Next, on December 12, 2004, Applicant was arrested for driving while intoxicated (DUI) with a blood alcohol content of .24%. He pled guilty and was sentenced to four days in jail, and

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

ordered to pay \$660.50 in fines and court costs. He had his driving privileges suspended for 45 days and was ordered to attend an alcohol and drug education course. He completed the course and regained his driving privileges. (Tr. 15-17, 27, 38, 39, 51-53, 59; Exhibits 1, 2, B)

Applicant attended voluntarily an in-patient detoxification program from June 17, 2004, to June 22, 2004. He then transferred to an out-patient program and went to Alcoholics Anonymous (AA). He was removed from that program by the counselors because he came to a session on August 5, 2004, with the odor of alcohol on his breath. He had been drinking, but denies being intoxicated. The program discharged him on August 12, 2004, when he refused to sign a relapse agreement, which would have required him to participate in a 30-day in-patient program because of his alcohol use during the out-patient program. Applicant did not complete the out-patient program because he found his church group and AA sessions more effective for him. They were focused on alcohol problems, whereas Applicant thought the drug users in the out-patient program decreased his sense of value in that program. Applicant did not produce any documentation related to his prognosis regarding his alcohol problem, or his participation in the in-patient program. (Tr. 18-21, 26, 29-33, 40-51, 59; Answer)

On September 2, 2004, the county sheriff served on Applicant a mental detention warrant and took him to a state mental hospital for a psychiatric evaluation. Applicant did not understand that he was arrested by the sheriff when served with the warrant. The sheriff's deputy transported him to and from the state hospital for the consultation the same day. He did not disclose that incident on his July 12, 2005, electronic security questionnaire (SCA), Question 21 (Mental Record; mental health consultations in the past seven years). Applicant disclosed his January 2005, to March 2005, evaluations, and also disclosed his June 2004, alcohol rehabilitation in the "additional comments" section of the SCA. He claims it "slipped his mind" to list the September 2004 visit. Applicant told the physician who interviewed him that his wife complained to the police that he would hurt himself after having a dispute with her. He denied to the physician that he would take such action. The physician recommended an increase in his medication and made an initial prognosis of an adjustment disorder with a follow up for mental therapy. Applicant also consulted with a clinical psychologist from December 2004, to February 2005, who diagnosed Applicant as having alcohol dependence. Applicant considers himself an alcoholic, recognizes alcoholism is a disease, and knows he should not consume alcohol if he wants to participate in his son's upbringing. (Tr. 18-21, 26, 29-33, 35, 36, 44, 54-58; Exhibit 1)

Applicant claimed that in AA he had a sponsor, "went through the 12 step program, about eight months." Then Applicant testified he did not complete all 12 steps, and he does not think a person in the AA program has to complete all 12 steps in order. He could not recite the AA 12 steps. If Applicant feels he has the urge to drink alcohol, he claims he goes to AA for support. He does not do anything else to maintain his sobriety. When he continued to drink alcohol after his arrests and participation in the rehabilitation programs, he would drink "off and on", which he described as not drinking for two weeks and then drinking five or six beers on a weekend. The 2004 court-imposed post-DUI alcohol education program required Applicant to maintain sobriety during in the aftercare program as part of his effort to regain his driving privileges. Applicant signed the after-care program sheet in May 2005. Applicant did not comply with those recommendations. (Tr. 18, 46-50, 59; Exhibit B)

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment,

reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See Exec. Or. 12968 § 3.1(b).

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

Guideline G: Alcohol Consumption: *The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Para. 21*

Guideline E: Personal Conduct: *The Concern: 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. Para. 15*

CONCLUSIONS

The Government established by substantial evidence and Applicant’s admissions each of the allegations in the SOR. Applicant has the burden of proof and persuasion that the Mitigating Conditions in each guideline should apply. His credibility is also an issue in his explanations of why he failed to disclose his September 2004, mandatory consultation with a state physician, and his claimed abstinence and treatment program participation. Any doubt must be resolved against Applicant and in favor of the national security.

Alcohol Consumption: Disqualifying Conditions (DC) are those that raise a security concern. Applicant has a history of alcohol consumption, with three incidents between 1982 and 2004, plus the inappropriate touching incident with his niece. The December 2004, DUI occurred after he voluntarily admitted himself to in-patient and out-patient treatment programs, demonstrating he did not change his behavior after those programs. DC 22 (a) (alcohol-related incidents away from work, such as driving while under the influence), DC 22 (c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of any diagnosis of alcohol abuser or alcohol dependence), DC 22 (e) (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program), and DC 22 (f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program) apply. Applying these DC to the facts, I conclude Applicant has several alcohol-related incidents away from work. He admitted he drank to excess and to the point of intoxication from 1978 to October 2005, constituting habitual consumption of alcohol. Applicant admitted his diagnosis of alcohol dependence as alleged in the SOR, and then admitted at the hearing he

considered himself an alcoholic. Yet he continued to drink alcohol after his DUI arrest and his participation in the 2004 and 2005 alcohol rehabilitation programs. Therefore, all the DC criteria are met.

His purported abstinence, if true, has not been of sufficient duration to support his claim of abstinence. Furthermore, his credibility is diminished substantially by his conflicting statements about his completion of the AA 12-step program. His credibility about his commitment to abstinence is also diminished by his removal from the outpatient program in 2004 when he came to a session with alcohol on his breath, along with his lack of clarity as to when he became abstinent. He has made too many conflicting statements, thereby raising substantial doubts. Those doubts are resolved in favor of national security and against Applicant. He demonstrated repeatedly that he does not have control over alcohol. I do not believe his explanations about his abstinence maintenance attempts,

Based on the totality of the evidence, I conclude no Mitigating Conditions (MC) apply. Applicant has not persuaded me that he recognizes his alcohol problem significantly enough to become and remain abstinent, or that he meets any of the MC criteria. The burden of proof is on him, and he did not meet it.

Personal Conduct: The next issue is whether he deliberately falsified his answer to Question 21 on his SCA by failing to disclose the September 2, 2004, mental detention warrant and his consultation with the state physician. He did not disclose the consultation with the physician at the state hospital, and had no persuasive explanation why he did not disclose it when it occurred in the midst of his other rehabilitation programs and later DUI arrest. DC 16 (a) (deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire used to conduct investigations or determine security clearance eligibility or trustworthiness) applies

None of the MC in Paragraph 17 under this guideline apply. Considering the first three MC, Applicant did not correct the admission before being confronted with the facts, he did not get bad advice from legal counsel not to disclose it, nor was the offense minor and unlikely to recur based on Applicant's problems with alcohol. None of the remaining four MC apply on their facts. I am not persuaded by Applicant's explanation that he did not deliberately fail to disclose this incident.

"Whole Person Concept": Applicant's alcohol incidents are serious events and show a pattern of alcohol abuse. His DUI occurred at age 41, so he was mature enough to know what he was doing, particularly after he had attended an alcohol rehabilitation program voluntarily. There is little or no evidence of rehabilitation except his self-serving statement that he does not drink anymore. He did not submit any objective or professional information to support his assertions. Given his purported recognition of his alcohol problem, and the absence of participation in an ongoing program for maintaining sobriety, there is a strong likelihood that he will resume the consumption of alcohol. He has not presented any persuasive evidence that he has taken preventative or therapeutic measures to protect himself from his past problems.

Furthermore, the areas of concern about Applicant are whether he actually completed any part of the AA 12-step program, and when he became abstinent, if at all. He continued to drink alcohol after his rehabilitation programs ended with recommendations he not drink alcohol, and what is his prognosis and how he addresses the recommendations. His DUI blood alcohol content of .24% is

about three times greater than the minimum intoxication level allowed by law, so Applicant had a higher tolerance for alcohol than he me to believe he now had at the hearing.

Therefore, I do not find Applicant is credible, persuasive, or has met his burden of proof. I conclude the alcohol consumption security concern against him. I conclude the personal conduct security concern against him. Lastly, I conclude the “whole person concept” analysis against him.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: AGAINST APPLICANT

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| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraph 1.h: | For Applicant |

Paragraph 2. Guideline E: AGAINST APPLICANT

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| Subparagraph 2.a: | Against Applicant |
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DECISION

In light of all of 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.

Philip S. Howe
Administrative Judge