

KEYWORD: Personal Conduct; Financial; Criminal Conduct; Alcohol

DIGEST: This 45-year-old warehouse specialist for a defense contractor falsified his answer to a drug use question on his security clearance application, is again significantly delinquent on several debts shortly after a Chapter 7 bankruptcy was completed, has an unresolved bench warrant outstanding in a DUI case, and has a history of alcohol-related arrests and convictions, from 1984 to 2001. No mitigation has been established. Clearance denied.

CASENO: 02-04328.h1

DATE: 10/16/2002

DATE: October 16, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-04328

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

This 45-year-old warehouse specialist for a defense contractor falsified his answer to a drug use question on his security clearance application, is again significantly delinquent on several debts shortly after a Chapter 7 bankruptcy was completed, has an unresolved bench warrant outstanding in a DUI case, and has a history of alcohol-related arrests and convictions, from 1984 to 2001. No mitigation has been established. Clearance denied.

STATEMENT OF THE CASE

On April 16, 2002, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On June 3, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to me for resolution on July 26, 2002. A Notice of Hearing was issued on August 1, 2002, setting the matter for August 23, 2002. At the hearing, Applicant testified on his own behalf, called one additional witness, but did not offer any exhibits. He Government did not call any

witnesses but offered five exhibits, which were marked as Government Exhibits (GX) 1 - 5, to which Applicant did not object. All five exhibits were admitted as marked. Also during the hearing, Department Counsel moved to amend the SOR to add allegations under two Guidelines not previously cited in the SOR, J (Criminal Conduct) and G (Alcohol). I found that the allegations were supported by evidence developed during the hearing (from Applicant's testimony). Applicant did not object to the amendment and I added the allegations to the SOR by interlineation.

FINDINGS OF FACT

Applicant is a 45-year-old warehouse specialist for a defense contractor that is seeking a security clearance for Applicant in connection with his employment. In his response to the original SOR, which contains two allegations of falsification under Guideline E and one allegation of financial problems under Guideline F, Applicant admitted all three allegations without explanation.

After considering the totality of the evidence derived from Applicant's response to the SOR, the testimony of Applicant and his witness at the hearing, and the Government's exhibits, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline E (Personal Conduct)

1.a. - Applicant knowingly falsified his security clearance application (SCA), dated July 28, 1998, in his response to Question **27. YOUR USE OF ILLEGAL DRUGS AND DRUG ACTIVITY - ILLEGAL USE OF DRUGS**, when he answered "No," denying any use of any controlled substances within the last seven years, when he knew he had used marijuana since 1974, approximately twice monthly from 1988 to 1991, and with a last use in about 1996/1997 (Tr at 23); and that he began using cocaine approximately twice weekly beginning in 1985, with a last use in 1991/1992 (Tr at 27). At all relevant times, he knew such use was illegal (Tr at 25).

1.b. - Applicant knowingly falsified his security clearance application (SCA), dated July 28, 1998, in his response to Question **28. YOUR USE OF ILLEGAL DRUGS AND DRUG ACTIVITY - USE IN SENSITIVE POSITIONS**, when he answered "No," denying that he had ever illegally used a controlled substance while possessing a security clearance, or while in a position directly and immediately affecting public safety, when he knew he had used marijuana approximately 3 or 4 times while in the United States Army from 1979 to 1983.

Guideline F (Financial Considerations)

2.a. - Applicant petitioned for Chapter 7 bankruptcy on March 2, 2000. His non-secured debts of approximately \$11,255.65 were discharged on June 29, 2000. The delinquent debts occurred primarily as a result of his wife's illness and surgeries. He currently is delinquent on the costs related to his attempts to resolve the bench warrant (about \$1,400.00) and court costs (about \$1,500.00) (Tr at 69). He wants to keep working so that he can pay off these debts (Tr at 71).

The following allegations were added on motion of Department Counsel during the hearing, to conform to the evidence. Applicant did not object and admitted all three allegations (Tr at 61).

Guideline J (Criminal Conduct)

3.a. - On August 28, 1998, Applicant was found guilty of Driving Under the Influence of Alcohol (DUI). You failed to meet the requirements of the sentence and, in 1998, a bench warrant was issued for your arrest. You have never resolved this matter and the bench warrant is still outstanding at this time.

Guideline G (Alcohol Consumption)

4.a. - Your excessive alcohol consumption has led to a history of arrests and findings of guilt

for DUI in 1984, 1990, 1991, and 1998. You have also had four alcohol-related arrests and findings of guilt for domestic disputes/spousal abuse; two with your previous spouse and two with your current spouse.

4.b. - You were arrested for spousal abuse in which alcohol played a contributing factor in 2001, with your current spouse. You pled *nolo contendere*, were sentenced to three years probation

and ordered to attend 52 weeks of counseling for spousal abuse.

Applicant attended counseling for alcohol after each DUI, attended meetings of Alcohol Anonymous (AA), and still does so occasionally because he has made friends there (Tr at 64). Notwithstanding the above, Applicant continues to

consume alcohol (beer) once or twice a week, at two or three beers each time (Tr at 62). He last consumed alcohol the weekend before the hearing (Tr at 67). He concedes that his marriages "have been a mess also due to alcohol" (Tr at 71). He agrees that he is an alcoholic and doesn't "have an answer as to why [he] still drinks" (Tr at 65).

Applicant's witness is his work supervisor. The witness is not aware that Applicant has any alcohol-related problems and finds him to be "dependable" (Tr at 75, 76).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE E (Personal Conduct)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person might not properly safeguard classified information.

Condition that could raise a security concern and maybe disqualifying include:

2. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE F (Financial Considerations)

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds

Conditions that could raise a security concern and maybe disqualifying include:

1. A history of not meeting financial obligations;

3. Inability or unwillingness to satisfy debts.

Condition that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., unexpected medical emergency)

GUIDELINE J (Criminal Conduct)

The Concern: A history or pattern of criminal activity creates doubt about a person's judgement, reliability, and trustworthiness.

Conditions that could raise a security concern and maybe disqualifying include:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE G (Alcohol)

Condition that could raise a security concern and maybe disqualifying include:

1. Alcohol-related incidents away from work, such as driving under the influence, child or spousal abuse, or other criminal incidents related to alcohol use.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

This case presents a troubling picture of an individual who has not been able to recognize and implement good judgment in a variety of aspects of his life.

Personal Conduct - Falsifications

SOR 1.a. - Applicant falsified his answer to Questions 27 on his SCA because he believed that telling the truth "would hurt my chances of getting a clearance, hurt my chances of getting a job" (Tr at 32). Since falsifications on security clearance applications go most directly to the heart of adjudication process, falsifications of relevant and material facts with the intent to deceive cannot be tolerated, regardless of the explanation or excuse. The reason is simply that an individual who cannot be trusted to tell the truth on the questionnaire cannot be relied upon to tell the truth when it comes to protecting classified information and material. Applicant's explanation that, in essence, he was concerned he might lose the clearance and his job does not excuse his behavior or demonstrate the good judgment and trustworthiness required of anyone seeking access to the nation's secrets. SOR 1.a. is found against Applicant.

SOR 1.b. - As to Question 28, Applicant stated he was not aware that he had held a security clearance when his was in the Army from 1979 to 1983 (*Id.*). Question 28 also refers to a "position affecting public safety." The language of the allegation refers only to Applicant's being *in* the Army. The evidence does not support a conclusion that Applicant knew or should have known that he should have answered "Yes, " on the sole basis of his having been in the Army 15 years earlier. SOR 1.b. is found for Applicant.

Guideline F (Financial Considerations)

SOR 2.a. - The sole allegation under Guideline F pertains to Applicant's 2000 bankruptcy petition (March 2000) and discharge of covered debts (June 2000). Since bankruptcy is both legal and authorized under federal law, it is generally not a negative factor unless other facts are present, such as evidence of the abuse of the bankruptcy laws; e.g., incurring debts with the intent of filing for bankruptcy to avoid paying those debts. That factor is not present in this case, but Applicant has admitted he is again delinquent on at least two debts, cited above, totaling close to \$3,000.00, which he is currently unable to pay. Under these circumstances, Applicant has not demonstrated financial rehabilitation. No mitigation has been established. Consequently, this allegation is found against Applicant.

Guideline J (Criminal Conduct)

SOR 3.a. - The sole evidence of criminal conduct established by the record is Applicant's August 28, 1999 arrest and conviction for DUI, for which a bench warrant remains outstanding. I agreed to keep the record in this matter for 10 days, to allow Applicant to document the resolution of the outstanding warrant. I have not received any indication that he has done so. [\(1\)](#) No mitigation has been established. Consequently, this allegation is found against Applicant.

Guideline G (Alcohol Consumption)

SOR 4.a. - Applicant's long history of alcohol use and abuse, resulting in alcohol-related arrest on eight separate occasions shows that such abuse is part of Applicant's character and is not an aberration. No mitigation was established. Consequently, this allegation is found against Applicant.

SOR 4.b. - The most recent alcohol-related arrests

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the Guidelines relate to four separate concerns, none of which have been mitigated. The underlying concern of all four concerns is the persistent and varied acts of misconduct that show questionable judgment, unreliability, and/or untrustworthiness.

I have considered all of the available evidence in light of the appropriate legal standards and factors. I conclude that the totality of the evidence establishes a case as to all SOR allegations, which in turn establishes a nexus or connection with Applicant's security clearance eligibility.

The remaining issue is whether Applicant has provided explanation, mitigation and/or extenuation adequate to overcome the negative impact of the Government's case. As discussed above, I conclude Applicant has not yet carried this burden.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 2.a. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 3.a. Against the Applicant

Guideline G (Alcohol) Against the Applicant

Subparagraph 4.a. Against the Applicant

Subparagraph 4.b. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Although not alleged under Guideline J, the intentional falsification of his SCA, as cited in SOR 1.a., above, is found to be a violation of 18 U.S.C. 1001. The other arrests cited in SOR 4.a. and 4.b., are likewise found to be criminal violations.