

DATE: November 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05564

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant's honesty and candor do not excuse his drug abuse, they help establish his credibility in demonstrating an intent not to abuse drugs in the future. He has thereby mitigated his prior drug abuse, including the use of marijuana on as many as 50 occasions and limited uses of hashish, LSD, MDMD (ecstasy), GHB, Cylert, and mushrooms. The sole evidence of Applicant's drug abuse are his admissions, beginning with a security clearance application. The same is true with respect to Applicant's excessive use of alcohol. He has established positive changes in behavior supportive of sobriety, thereby mitigating that as well. Clearance is granted.

STATEMENT OF THE CASE

On January 2, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline H (Drug Involvement) and Guideline G (Alcohol Consumption). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On January 27, 2003, DOHA received a response to the SOR from Applicant, in which he requested a hearing. The case was assigned to me on March 17, 2003. A notice of hearing was issued on March 27, 2003, and the hearing was held on May 1, 2003. During the hearing, three Government exhibits, three Applicant exhibits, and the testimony of Applicant were received. The transcript (Tr) was received on May 9, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to all the allegations in the SOR, I make the following findings of fact:

Applicant is a 24-year-old software engineer employed by a defense contractor. He is seeking a security clearance. He is a responsible employee who is respected by his supervisor and co-workers.

Applicant used marijuana approximately 50 times between June 1, 1994 and March 3, 2001, with most of the use occurring during the summer of 1994.

He smoked hashish once, while visiting a friend in Italy in September 1995.

In order to stay awake and complete schoolwork, Applicant used a girlfriend's prescription of Cylert on two occasions between September 1, 1999 and January 1, 2000.

Between January 1, 1995 and January 1, 2000, he used LSD on three occasions and purchased it on two of those occasions.

Applicant used mushrooms on two occasions in 1996 and on a third occasion on or about March 1, 2001.

Between December 1, 1998 and March 1, 2001, he purchased and used ecstasy (MDMA) on three occasions.

Applicant used GHB on one occasion in 1995.

He has not engaged in any drug abuse since March 2001.

On March 17, 2001, Applicant was arrested and charged with possessing an open container of beer. After successfully participating in a misdemeanor intervention program for six months, the charge was dismissed. [\(3\)](#)

On July 14, 2001, fifteen of his friends took him out to celebrate. At their urging, Applicant drank shots of liquor they gave him in addition to beer, his usual alcoholic beverage. He subsequently passed out and was taken to a hospital, where his stomach was pumped and he received a saline IV. [\(4\)](#)

On August 9, 2001, Applicant completed a security clearance application (SF 86). He admitted his prior use of illegal drugs and illegal use of a prescribed drug. Applicant also admitted his use of alcohol, including his arrest for having an open container of alcohol and having his stomach pumped. [\(5\)](#)

On November 26, 2001, Applicant provided a sworn statement to the Defense Security Service (DSS), providing further details of his use of alcohol and illegal drugs. [\(6\)](#) At that time, he drank alcohol on most weekends. On one night Applicant would drive and would consume between one and three beers during the evening. On another night, a friend would drive and Applicant would consume between three and seven beers. Occasionally, he would have at least one drink during the week on one or two occasions. If there was a special event during the week, Applicant might consume as many as four beers.

POLICIES

The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline H: Drug Involvement

The concern under Guideline H is that improper or illegal involvement with drugs raises questions 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 disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction (E2.A8.1.1.3). Another condition that could raise a security concern and may be disqualifying is

E2.A8.1.2.2, illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution (Disqualifying Condition 2).

Conditions that could mitigate security concerns include E2.A8.1.3.3, a demonstrated intent not to abuse any drugs in the future (Mitigating Condition 3).

Guideline G: Alcohol Consumption

The concern under Guideline G is that 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.

Conditions that could raise a security concern and may be disqualifying under Guideline G include E2.A7.1.2.1, alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A7.1.3.3, positive changes in behavior supportive of sobriety (Mitigating Condition 3).

CONCLUSIONS

Guideline H: Drug Involvement

Applicant's admitted possession and use of five illegal substances and illegal use of two substances establishes both Disqualifying Condition 1 and Disqualifying Condition 2.

Although Applicant's honesty and candor with the government do not preclude the government from considering the security significance of his admitted conduct, ⁽⁷⁾ such honesty and candor are important in assessing the credibility of Applicant, particularly when he is the sole source of information in the record that raises a disqualifying condition. Applicant's testimony reflected the same honesty and candor. He was not hesitant in answering questions and his answers were responsive. In light of his forthright testimony, as well as the honesty and candor that he had demonstrated on his SF 86 and in his statement to DSS, I found Applicant a most credible witness.

Applicant's use of drugs occurred before he graduated from college. Normally the drugs were offered to him by friends or associates at schools he attended. Applicant attributed his use of drugs to his youth, when he had no real responsibility and had a desire to experiment with things. He admits that his use of drugs was a mistake and contrasts it

with his interest in and desire to experiment with computers, which was a positive endeavor that has resulted in his current career. Applicant's use of drugs never resulted in any involvement with authorities. It is significant that he stopped using drugs on his own, because of his concern that they prevented him from being in control of his body.

Applicant appears to have matured a great deal in a the relatively short period of time since he was about to complete college. To the extent that he still associates with friends from college, they are the ones, like him, who have matured and become responsible employees and citizens. Applicant recognizes that drugs are totally incompatible with the career he has chosen. He enjoys his job and takes his duties and responsibilities seriously. Based on the statements of his supervisor and co-workers, he is well respected for both the job he performs, as well as for his personal integrity.

The record establishes a demonstrated intent on Applicant's part not to abuse any drugs in the future. Therefore, I find in favor of Applicant with regard to all subparagraphs under SOR ¶ 1, pursuant to Mitigating Condition 3.

Guideline G: Alcohol Consumption

Applicant's admitted abuse of alcohol, including one arrest for having an open container of alcohol and another incident in which his stomach had to be pumped, establishes Disqualifying Condition 1.

After Applicant understood that he had broken the law by carrying an open container of beer out of the establishment where he purchased it, he pleaded no contest and willingly paid his fine and performed community service. He was surprised by receiving the citation since the week before he was able to carry an open container of beer from one establishment to another during the event being celebrated in the area.

There also are extenuating circumstances surrounding the occasion on which Applicant had his stomach pumped at the hospital as a result of excessive drinking. On the occasion of his 21st birthday, fifteen of his friends took him out to celebrate. In addition to beer, which he normally drank, they were giving him shots of liquor. It was at the urging of these friends that Applicant excessively consumed liquor that he normally would not drink. As a result, he passed out and his friends took him to the hospital when they could not revive him.

As Applicant explained, he suddenly realized late in his senior year of college that he needed to make changes in his life if he was going to have a future. He became more goal oriented and career focused. After five years of smoking, he gave it up. Applicant also recognized that he needed to change with respect to his consumption of alcohol. Although he still consumes alcohol, Applicant drinks responsibly. He admits that in college the purpose of going out drinking was to get drunk. Applicant no longer engages in excessive drinking and his drinking is confined almost entirely to weekends. He goes out with friends on weekends to socialize. Applicant stressed that he avoids drinking to a point where he's not totally in control. His friends from college with whom he still associates, like him, have become interested in their careers and in acting responsibly.

The record establishes that Applicant has made positive changes in his behavior supportive of sobriety. Therefore, I find in favor of Applicant as to all subparagraphs under SOR ¶ 2, pursuant to Mitigating Condition 3.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 3.
4. SOR ¶ 2.b mistakenly refers to the date of Applicant's statement to DSS as the date of the incident.
5. Govt Ex 1at 9-11.
6. Govt Ex 2.
7. ISCR Case No. 99-0119 (September 13, 1999) at p. 3.