

KEYWORD: Criminal Conduct; Alcohol; Financial

DIGEST: Applicant has a history of alcohol-related arrests and alcohol dependence dating back nearly 25 years. He successfully completed a dependency recovery program in 1985 and remained alcohol-free for 15 years. In 1999, he relapsed and began drinking again when he was undergoing a divorce. He was diagnosed as alcohol dependent and successfully completed a second rehabilitation program in 2001. He has remained alcohol free since 2000. He attends regular meetings of Alcoholics Anonymous and is committed to sobriety. Applicant disputes a collection account attributed to him but has agreed to pay it. His current financial situation is stable. Clearance is granted.

CASENO: 02-08103.h1

DATE: 01/14/2005

DATE: January 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08103

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol-related arrests and alcohol dependence dating back nearly 25 years. He successfully completed a dependency recovery program in 1985 and remained alcohol-free for 15 years. In 1999, he relapsed and began drinking again when he was undergoing a divorce. He was diagnosed as alcohol dependent and successfully completed a second rehabilitation program in 2001. He has remained alcohol free since 2000. He attends regular meetings of Alcoholics Anonymous and is committed to sobriety. Applicant disputes a collection account attributed to him but has agreed to pay it. His current financial situation is stable. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 1, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 18, 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 30, 2003. The FORM contained documents identified as Items 1 through 16. By letter dated January 5, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. On February 17, 2004, Applicant filed two additional documents in response to the FORM. Department Counsel did not object to Applicant's submissions. On February 26, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains 17 allegations of disqualifying conduct. Eight allegations relate to conduct charged under Guideline

J, Criminal Conduct; eight allegations relate to conduct charged under Guideline G, Alcohol Consumption; and one allegation relates to conduct charged under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted the eight allegations charged under the criminal conduct guideline, eight allegations charged under the alcohol consumption guideline, and the one allegation charged under the financial considerations guideline.⁽³⁾ Applicant's admissions are incorporated as findings of fact.

Applicant, who is 48 years old, has been employed as a station mechanic by a government contractor since 1990. He works in a rural environment. He was married in 1994 and divorced in 1999.

Applicant's criminal conduct included an arrest and conviction in November 1975 for non-aggravated assault and criminal trespass; an arrest and charge of disorderly conduct in April 1979; and an arrest and conviction in October 1979 for driving while his license was suspended. In August 1989 Applicant was again arrested and charged with driving while his license was suspended. He pled *nolo contendere*, was sentenced, fined, and placed on probation for five years.

Applicant has a familial history of alcohol abuse. Both parents were alcoholics, and Applicant's three brothers have abused alcohol. Applicant and his siblings were physically abused by their parents when they were children. (Item 10, at 5, 15)

Applicant began drinking beer in high school. (Item. 6) After high school, as a construction worker, he began drinking whiskey and vodka. In November 1978, June 2000, and January 1984, Applicant was arrested and charged with driving under the influence of alcohol. He was found guilty of all three offenses and was fined and sentenced. In 1984, Applicant was transferred from jail, where he was serving a sentence for driving under the influence of alcohol, to an in-patient alcohol abuse treatment program, where he was diagnosed as alcohol dependent by a credentialed medical professional. He completed the treatment and after care program and remained sober for 15 years.

Applicant's marriage ended in 1999 and he was divorced from his wife. The break-up of his marriage caused Applicant to drink alcohol again. In January 1999, Applicant was arrested, charged, and found guilty of driving while intoxicated. He entered an alcohol treatment program and was diagnosed as alcohol dependent by a credentialed medical professional. He successfully completed the treatment program and the aftercare program in 2001. His diagnosis was alcohol dependence in remission. Applicant acknowledges he is an alcoholic. He is committed to sobriety and an alcohol-free life. He attends Alcoholics Anonymous (A.A.) meetings regularly, reads material and guidance produced by A.A., and stays in touch with other recovering alcoholics he has met in the program. (Item 3) He has not had a drink of alcohol since December 2000. (Item 6)

Applicant described his work environment as one in which inspectors and co-workers often drink alcohol at the job site. He stated he was not motivated to join them in drinking and, despite these pressures, has elected to remain alcohol free. (Response to File of Relevant Material, at 1.)

Applicant states he and his former wife agreed to divide their debts when they were divorced. He says his former wife was responsible for a debt listed on a 2003 credit report as in collection status and identified in the SOR as belonging to him. He reports she is paying the debt, but he will pay it if she does not. Since October 2003, Applicant has successfully applied for a home loan and a personal loan. His financial situation appears stable.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline J - Criminal Conduct

In the SOR, DOHA alleged under Guideline J that Applicant had been arrested and found guilty in 1999 of driving while intoxicated and that he had been sentenced and fined (§ 1.a.); that he had been arrested and charged with driving with a suspended license in 1989, that he had pleaded *nolo contendere* to the charge, was fined \$3000, and placed on probation for five years (§ 1.b.); that he had been arrested, charged, and found guilty of driving under the influence of alcohol in January 1984, and was sentenced, fined, and placed on probation for five years (§ 1.c.); that in June 1980 he had been arrested and charged with driving under the influence of alcohol and driving with a suspended license, was found guilty of both crimes, sentenced, fined, and placed on probation for one year for driving with a suspended license (§ 1.d.); that in October 1979 he had been arrested, charged, and found guilty of driving while his license was suspended (§ 1.e.); that in April 1979 he was arrested and charged with disorderly conduct (§ 1.f.); that in November 1978 he was arrested, charged, and found guilty of driving while under the influence of alcohol, and was sentenced and fined (1.g.); and that in November 1975 he was arrested, charged, and found guilty of assault/non-aggravated and criminal trespass, and was sentenced and placed on probation for 180 days (1.h.).

The Government's concern under Guideline J, Criminal Conduct, is that an individual's history or pattern of criminal activity creates doubt about his or her judgment, reliability, and trustworthiness. Conditions that could raise a security concern and may be disqualifying include allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.) and evidence the individual committed a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) The record in this case and Applicant's admissions establish both of these disqualifying conditions.

We turn to a review of conditions that could mitigate the security concerns raised by Applicant's criminal conduct. The record shows that the criminal conduct for which Applicant was arrested, charged and found guilty began in November 1975, almost 30 years ago, when he was approximately nineteen years of age. His most recent criminal activity occurred in January 1999, more than six years ago. Applicant's criminal behavior is therefore not recent, and mitigating condition E2.A10.1.3.1 applies. Additionally, the record shows Applicant has not been involved in criminal behavior for more than six years. He has accepted responsibility for his actions and provides clear evidence of successful rehabilitation, thus making mitigating condition E2.A10.1.3.6 applicable to his case.

Guideline G - Alcohol Consumption

In the SOR, DOHA alleged Applicant's Criminal Conduct as described in ¶¶ 1. a., 1.c., 1.d., and 1.g. was also evidence of excessive alcohol consumption, creating a concern under Guideline G, Alcohol Consumption. Under Guideline G, DOHA alleged Applicant was arrested, charged, and found guilty of driving under the influence of alcohol in 1999 (¶ 2.a.); 1984 (¶ 2.b.); 1980 (¶ 2.c.); and 1978 (2.d.). 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. Directive ¶ E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include 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 (E2.A7.1.2.1.); diagnosis by a credentialed medical professional (*e.g.* physician, clinical psychologist, or psychiatrist) of alcohol dependence (E2.A7.1.2.3); and consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program. (E2.A7.1.2.6.)

With respect to the Guideline G conduct alleged in the SOR, the Government has established its case. Applicant admits four convictions for driving under the influence of alcohol, disqualifying conduct under E2.A7.1.2.1. He admits to being diagnosed and treated for alcohol dependence and cocaine abuse in 1984 and graduating from a chemical dependency aftercare program in 1985. He admits to relapsing into alcohol use in 1999 when his marriage was ending. He admits to being diagnosed again as alcohol dependent and receiving treatment from September 2000 to October 2001. Applicant's admissions thus raise concerns under disqualifying conditions E2.A7.1.2.3. and E2.A7.1.2.6.

Applicant admits to being alcohol dependent. He points out that he has been sober since 2000 and has no intention to use alcohol in the future. He attends A. A. meetings regularly, reads counseling literature prepared by A.A., and consults with recovering alcoholics he has met through the A.A. program. The medical professional who diagnosed Applicant's alcohol dependency provided a positive but guarded prognosis. She attested to his commitment to sobriety and his successful completion of the alcohol dependence program in 2001. She assessed him as an open and honest individual. The doctor stated she was unable, because she was not his primary clinician, to evaluate whether the Applicant's condition might cause a defect in his judgment or reliability and his ability to withstand social and employment pressures. She speculated that if Applicant were to experience personal emotional stress in the future that was as debilitating as he experienced at the break-up of his marriage, he might be vulnerable to relapse. (Item 9, at 2.)

Applicant's circumstances suggest three mitigating factors apply to his case. First, mitigating condition E2.A7.1.3.2. is applicable because Applicant's alcohol dependence occurred a number of years ago, and there is no indication of a problem since 2000. Second, Applicant demonstrates a strong desire to overcome his alcohol dependence. His conduct demonstrates positive changes in behavior supportive of sobriety, making mitigating condition E2.A7.1.3.3. applicable. Third, following a diagnosis of alcohol abuse or dependence, Applicant has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous, has abstained from alcohol for a period of at least 12 months, and has received a favorable prognosis by a credentialed medical professional. I conclude that mitigating condition E2.A7.1.3.4 also applies to Applicant's case.

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had one unpaid delinquent debt in the amount of \$4,200 that had not been paid as of June 2003. (¶ 3.a.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Applicant's delinquent debt raises security concerns under ¶¶ E2.A6.1.2.1 and E2.A6.1.2.3 of Guideline F..

In his response to the SOR, Applicant admitted the delinquent debt and indicated it arose during his marriage. He stated he and his wife agreed he would pay her debt on her repossessed automobile and she would pay the debt specified in the SOR. Applicant stated his former wife told him in June 2003 that she was paying down the debt as they had agreed. Applicant expressed his intent to make arrangements to pay the debt if his former wife did not. He stated he has established good credit, settled or paid debts he was responsible for, and has no current financial problems. (Item 6)

The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant owes a delinquent debt of approximately \$4,200.

We turn to a review of conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquency involves a long-standing debt which continues to be unsatisfied to this day. Thus, mitigating condition E2.A.6.1.3.1. does not apply to this case. However, the debt is singular and a carry-over from Applicant's former marriage. Applicant's former wife agreed to retire the debt and then apparently did not do so, giving rise to the delinquency alleged in the SOR. In his signed, sworn statement and in his answer to the SOR, Applicant offers evidence that he initiated good-faith efforts to see that the debts he was responsible for were repaid or otherwise resolved. (Ex. 3; Ex. 6) He has indicated he will pay the debt alleged in the SOR if his former wife is unwilling or unable to do so. Thus, mitigating condition E.2.A6.1.3.6 applies to Applicant's case. Additionally, the delinquency is an isolated incident and the result of circumstances beyond Applicant's control, thus making mitigating conditions E2.A6.1.3.2 and E2.A6.1.3.3 also applicable.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has successfully demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: 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

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Paragraph 3. Guideline F: FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. The SOR misidentified the eighth allegation under Guideline G, and Applicant did not address it in his answer to the SOR. Applicant admitted the allegation in his Security Clearance Application (SF-86), which he signed October 26, 2001 (Item 5, at 8, 10)