

KEYWORD: Alcohol

DIGEST: Applicant is a 37-year-old electronics technician who has worked for a defense contractor for five years. He was on active duty in the Army for 14 years. He has used alcohol since age 18 and had arrests in 1994 and 1998. While in the military in 1997, he self admitted himself to a military hospital for alcohol dependence and has severely restricted his use of alcohol since that time. At DOHA's direction, he received a substance abuse assessment on February 18, 2004, at a private counseling center for a condition diagnosed as alcohol dependent in sustained partial remission. The center recommended he fully abstain for drinking alcohol and be evaluated again in one year. He has abstained since then and the report concluded he was capable of continuing to do so. Clearance is granted.

CASENO: 02-27426.h1

DATE: 01/14/2005

DATE: January 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27426

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esq., Department Counsel

FOR APPLICANT

Larry J. McGlothlin, Esq.

SYNOPSIS

Applicant is a 37-year-old electronics technician who has worked for a defense contractor for five years. He was on active duty in the Army for 14 years. He has used alcohol since age 18 and had arrests in 1994 and 1998. While in the military in 1997, he self admitted himself to a military hospital for alcohol dependence and has severely restricted his use of alcohol since that time. At DOHA's direction, he received a substance abuse assessment on February 18, 2004, at a private counseling center for a condition diagnosed as alcohol dependent in sustained partial remission. The center recommended he fully abstain for drinking alcohol and be evaluated again in one year. He has abstained since then and the report concluded he was capable of continuing to do so. Clearance is granted.

STATEMENT OF CASE

On April 24, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 15, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on August 18, 2004. A notice of hearing was issued on October 14, 2004, and a hearing was held on November 4, 2004. The Government introduced nine exhibits and the Applicant introduced three exhibits with multiple pages. All were admitted into evidence. The Applicant and his supervisor testified. The transcript was received on November 22, 2004.

FINDINGS OF FACT

Applicant admitted all of the specific allegations in the SOR relating to alcohol except that which alleged continuing use of alcohol and disagreed with all of the conclusions reached by those facts. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 37-year-old electronics technician who has worked for a defense contractor since February 1999. For fourteen years before, he was on active duty in the Army. He has used alcohol since age 18, and has had two arrests. In 1994 he was arrested and charged with driving while impaired (DWI), pled guilty to reckless driving, and was sentenced to six months confinement, suspended, with one year probation.

For a twenty-day period in 1997, Applicant received treatment at a military hospital for a condition diagnosed as alcohol dependence (Exh. 7). He voluntarily admitted himself to the hospital because he was concerned about his alcohol use. When discharged, Applicant was still concerned but he continued to drink in moderation. He attended one Alcoholics Anonymous meeting but did not find it to be helpful.

He was arrested in May 1998, for second degree assault on his wife, found guilty, granted probation before judgment, fined, and ordered to attend six weeks of spousal abuse counseling (Exh. 5) which he successfully completed (Exh. 6). The arrest record indicated the incident was alcohol- related but Applicant denied this at the hearing and attributed it to work related tensions. His wife supported this position and took the blame for having started the dispute by throwing a TV remote at her husband (Exh. A 1).

At the direction of DOHA (Exh. 9) Applicant received a substance abuse assessment on February 18, 2004, at a private counseling center for a condition diagnosed as alcohol dependent in sustained partial remission (Exh. 8). The center recommended he fully abstain from drinking alcohol and be evaluated again in one year. He has agreed to abstain and has done so. The report concluded that he was capable of continuing to do so.

He is a married homeowner with two children ages 4 and 5. Applicant's wife is totally supportive of him and the incident in 1998 is behind them (Exh. A 1). Their children occupy a great part of their life. He has extensive support from the family of his wife who lives next door to them (Exh. A 6 and 7).

Applicant has an excellent employment record and his supervisor testified on his behalf at the hearing (Exh. B). He travels abroad frequently to teach the operation and use of equipment manufactured by his employer. He has received numerous awards from the Department of Defense, the Army, Navy, and foreign governments for his work (Exhs. C-1-40).

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The Government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol under Guideline G. This relates to excessive alcohol consumption. (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Possible mitigating factors include the fact that the problem occurred a number of years ago and there is no current problem. (E2.A7.1.3.2.) Also that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The record of Applicant's offenses, convictions, and sentences establish the DC has been met. Mitigating Conditions are applicable in that the problems occurred a number of years ago and there is no indication of any problems since 1998. Since then there have been positive changes in behavior supportive of sobriety.

Applicant was diagnosed almost a year ago and has since refrained from alcohol use on the advice of the clinic. He has produced numerous statements from friends and relatives regarding his conduct, practices, and lifestyle (Exhibits A-1-7). His supervisor testified and submitted a strong letter of recommendation and expression of confidence in his conduct and abilities. (Exhibit B).

Applicant has clearly recognized his problem as evidenced by his self admission for hospitalization in 1997. He modified his drinking habits thereafter and the contacts he has made after his employment in 1999 in the private sector confirm that his behavior has been outstanding both professionally and personally.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant is a trustworthy and reliable person whose record of conduct and employment justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G: 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

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 renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge

