

KEYWORD: Alcohol; Drugs; Personal Conduct

DIGEST: Applicant has been a user and sometime abuser of alcohol since age 15 and used marijuana twice a year over a five year period ending in December 2000. He was arrested in June 2000 and charged with driving while intoxicated and possession of marijuana. He plead not guilty and was sentenced on the driving charge to one year of probation. The drug charge was dropped. His probationary period was extended for six months until December 2002 for a probation violation. During that period he regularly attended AA by court direction and another program on his own. He has shown a profound change in his conduct and attitude as reflected in the evidence at the hearing and supporting documentation. Clearance is granted.

CASENO: 02-28646.h1

DATE: 07/15/2004

DATE: July 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28646

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

James Bradley Norman, Esq., Department Counsel

## **FOR APPLICANT**

Cassandra Beverly, Esq.

### **SYNOPSIS**

Applicant has been a user and sometime abuser of alcohol since age 15 and used marijuana twice a year over a five year period ending in December 2000. He was arrested in June 2000 and charged with driving while intoxicated and possession of marijuana. He plead not guilty and was sentenced on the driving charge to one year of probation. The drug charge was dropped. His probationary period was extended for six months until December 2002 for a probation violation. During that period he regularly attended AA by court direction and another program on his own. He has shown a profound change in his conduct and attitude as reflected in the evidence at the hearing and supporting documentation. Clearance is granted.

### **STATEMENT OF CASE**

On November 5, 2003, 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 December 3, 2003, 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 April 1, 2004. A notice of hearing was issued on April 19, 2004, and amended on April 28, 2004. A hearing was held on May 12, 2004. The Government introduced six exhibits and the Applicant introduced eleven. All exhibits were admitted into evidence. The Applicant and two other persons testified. The transcript was received on May 25, 2004.

## FINDINGS OF FACT

Applicant is a 30-year-old employee of a defense contractor who admitted all of the allegations in the SOR but disagreed with the conclusions reached. 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 has been a user and sometime abuser of alcohol since age 15. He experimented with cocaine and ecstasy prior to 1995 while in college. He used marijuana twice a year over a five year period ending in December 2000.

Applicant was arrested in June, 2000 and charged with Driving While Intoxicated and possession of marijuana. He plead not guilty and was sentenced on the driving charge to one year of probation and fined \$1,000.00 with another \$1,000.00 suspended. The drug charge was not pressed. During the probationary period in early 2002 he consumed alcohol in violation of a probation condition and the probationary period was extended for an additional six months until December 2002.

Applicant was ordered by the court into Alcoholics Anonymous which he attended twice a week during a one year period after the probation violation even though he was required by the court to attend only once a week. During this period he voluntarily enrolled in and attended at his personal expense another program that dealt with the effects of alcoholism. He was diagnosed as Episodic Abuser of Alcohol with a guarded prognosis.

Applicant had a "wake-up-call" that particularly hit him hard on the occasion of his probation violation. He has changed his lifestyle and now drinks only an occasional beer at social occasions. He has developed new friendships, attends church regularly where he is involved with the youth ministry. He is highly regarded by his employers for his newly developed skills and dedication to his job. (Exhs. B-K)

When completing his SF 86 on April 17, 2002, Applicant answered "No" to Question 27 regarding the use of or involvement with illegal drugs during the past seven years even though he used marijuana as late as December 2000.

## 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 that 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

The first allegation concerns Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) raises the issue of alcohol related incidents away from

work such as driving while under the influence or other criminal incidents related to alcohol use and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.). The record of Applicant's

two offenses, convictions, and sentences clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G. Mitigating conditions are applicable in that Applicant has shown that the problems with abuse of alcohol ended four years ago and that there is no indication of a recent problem. (E2.A7.1.3.2.) Evidence was submitted of positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug . . . ." (E2.A8.1.1.3) Applicant has not used drugs for four years and is a stable member of society. Mitigating Conditions are applicable since there is a demonstrated intent not to abuse any drugs in the future (E2.A8.1.3.3.), and the drug involvement was not recent. (E2.A8.1.3.1.)

Also alleged is Applicant's failure to report certain of the offenses under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant offered as an explanation for his failure to acknowledge the use of drugs on the SF 86 that he interpreted the question as relating the criminal charge of marijuana possession and, since the charge had been nol prossed, it was not required to be listed. Based on his demeanor and the reason advanced for the omission, I conclude that the omission was not deliberate as required in the guideline.

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 that 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. Applicant has shown by his testimony and appearance at the hearing as well as his supporting statements from supervisors and colleagues, that he has changed his conduct in the last four years and is a reliable, trustworthy, and credible person.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has changed his habits sufficiently that the allegations in the SOR have been mitigated. Although he did not exhibit the care required for preparing the application for a security clearance he advanced a credible explanation to justify the granting of a clearance.

## **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

Paragraph 2. Guideline H FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3. Guideline E 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 renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge