

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant was arrest and convicted of Driving Under the Influence of Alcohol and/or Drug (DUIA) in 1992, 1995, and 2001. He was also arrested or cited for knowingly driving in violation of suspended or revoked privilege in twice in 1994 and in 2001. When he completed a Security Clearance Questionnaire, Standard Form (SF) 86, he failed to list outstanding warrants and failed to list all of his arrests. He also falsified information in a signed, sworn statement. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's alcohol consumption and falsifications. Clearance is denied.

CASENO: 02-28835.h1

DATE: 05/04/2005

DATE: May 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28835

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrest and convicted of Driving Under the Influence of Alcohol and/or Drug (DUIA) in 1992, 1995, and 2001. He was also arrested or cited for knowingly driving in violation of suspended or revoked privilege in twice in 1994 and in 2001. When he completed a Security Clearance Questionnaire, Standard Form (SF) 86, he failed to list outstanding warrants and failed to list all of his arrests. He also falsified information in a signed, sworn statement. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's alcohol consumption and falsifications. Clearance is denied.

STATEMENT OF THE CASE

On August 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 22, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On January 26, 2005, the Applicant received a complete copy of the government's file of relevant material (FORM) dated December 17, 2004. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On February 27, 2005, Applicant's response to the FORM was due. No response has been received. On March 17, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant Alcohol Consumption, Personal Conduct, and Criminal Conduct. The Applicant admits to the following: to consuming the alcohol to excess and the point of intoxication from 1989 to at least March 2004 and admits being arrested in 1992 for Driving Under the Influence of Alcohol and/or Drug (DUIA), DUIA with at least .08% or more of alcohol content in system, obstructing or resisting a public officer. He admits being cited in April 1994 for Driving While License was Suspended or Revoked and being cited in September 1994 for chemical test refusal, knowingly driving in violation of suspended or revoked privilege, speeding, and failure to pay fine. He admits being arrested in 1995 for DUIA, DUIA with at least .08% or more of alcohol content in system, chemical test refusal, knowingly driving in violation of suspended or revoked privilege, failure to pay fine; and being arrested in March 2001 for DUIA, DUIA with at least .08% or more of alcohol content in system, driving when privileges suspended, chemical test refusal. He admits being cited in November 2001 for speeding, seatbelt violation, chemical test refusal, knowingly driving in violation of suspended or revoked privilege, and failure to appear as promised. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 31 years old, has worked as a welder for a defense contractor since May 2001, and is seeking to obtain security clearance.

On January 1, 1992, Applicant was arrested for DUIA after consuming approximately 12 beers. His driver's license was suspended and was fined \$1,100. In April 1994, Applicant was arrested for driving on a suspended license. After pleading guilty, he was fined \$250. In September 1994, he was arrested for speeding. His license was still suspended and he paid a \$385 fine and spent 10 days doing hard labor for the sheriff's office. A warrant had been issued when Applicant failed to appear at a court hearing. In May 1995, Applicant was arrested for DUIA, driving on a suspended license, and failure to pay his September 1994 fine. He was fined \$1,890. He was ordered to abstain from drinking alcohol for three years. A bench warrant was issued against him when he failed to pay the fine. The warrant is still active.

In March 2001, Applicant was charged with DUIA and driving with a suspended license. He was fined \$2,135, which he failed to pay. He was also required to attend an alcohol awareness course, which he has failed to do, and ordered to totally abstain from drinking alcoholic beverages. In June 2001, a warrant was issued for his failure to attend the alcohol course. In November 2001, he was cited for speeding and driving with a suspended driver's license. When he failed to attend the court hearing, because he was overseas, a warrant was issued, which remains outstanding.

In August 2001, Applicant completed his SF 86. He answered "No" to question 23, which asked him if there were any charges pending against him for any criminal offense. There was an outstanding warrant issued in June 2001. In response to question 24, which asked him if he had been charged with or convicted of any offenses related to alcohol. He listed a 1995 DUIA, but failed to list his March 2001 DUIA arrest.

In June 2002, Applicant was interviewed by the Defense Security Service (DSS) and made a signed, sworn statement. (Gov Ex 6) He stated his driver's license had been suspended in 1991 and he never went back to get it reinstated. During the interview, he indicated he had been arrested in April 1994 for DUIA and fined \$1,200. He stated, "I have not had any other contact with law enforcement officials . . ." He failed to list his arrests in 1992, 1994, 1995, and 2001. He also failed to indicate he had warrants outstanding related to his 1992, 1994, 1995, March 2001, November 2001.

In February 2004, the state began garnishing his wages to pay his fines. Initially, \$388 was taken from his monthly check. Through negotiations, the amount was reduced to \$70 per paycheck.

As of March 2004, Applicant had reduced his beer consumption to a 12 pack on weekends. As of March 2004, Applicant's driver's license was still suspended. In May 2004, Applicant was fined \$250 after having pleaded guilty to driving a vehicle while his license was suspended.

In Applicant's September 2004 answer to the SOR he states he no longer consumes alcohol and is paying off his fines at a rate of \$270 per paycheck.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption, Guideline G. A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. The concern 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. The available record evidence raises a security concern under this guideline.

Applicant has been convicted three times of alcohol-related offenses. He consumed alcohol to the point of intoxication

until March 2004. Disqualifying conditions (DC) 1 (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*) and DC 5 (E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

Applicant has been convicted three times for alcohol-related conduct in 1992, 1995, and 2001. He was told to abstain from all use of alcohol, but he failed to do so. His convictions resulted in fines, which he failed to pay. Warrants were issued when he failed to appear at court hearings or when he failed to comply with court orders or pay required fines. Applicant's conduct was serious, recent, frequent, and establishes a pattern. He has not introduced persuasive evidence in rebuttal, explanation or mitigation sufficient to overcome the Government's case against him. There is no showing of positive changes in behavior supportive of sobriety, nor efforts to reform his behavior, change his friends, or lifestyle. Applicant has a long and extensive alcohol history. He says he stopped drinking, but without more, his statement of abstinence is insufficient for a favorable determination. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, the alcohol consumption is resolved against the Applicant.

In addition to his DUIA arrests, Applicant repeatedly drove after his license was suspended. In April 1994 he was arrested and in September 1994 and November 2001 he was cited for driving while his license was suspended. He was told not to drive, but he chose to violate the law and drive anyway, which shows a flagrant disregard for the law.

The Government has satisfied its initial burden of proof under guideline E, Personal Conduct. Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his August 2001 SF 86 and in his 2002 sworn statement poses a serious potential risk to the nation's security precautions.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern.

In August 2001, when Applicant completed an SF 86 he answered "no" to question 23, which asked if there were any current charges pending against him. He answered "no" even though he had numerous warrants outstanding. In response to question 24, which asked him about his alcohol-related offenses, he listed his 1995 DUI, but failed to list his March 2001 DUIA arrest which occurred five months before he completed his SF 86. In June 2002, Applicant made a signed, sworn statement which referenced a 1991 driver's license suspension and his 1994 DUI. He said he had no other contact with law enforcement officials, which was a lie. He failed to list his arrests in 1992, 1994, 1995, and 2001, the citations received in 1994 and 2001, and also failed to indicate during the interview that he had numerous warrants outstanding.

None of the mitigating conditions apply to his false answers. His alcohol-related and other arrests were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because he gave false answers to three different questions. There is no showing the Applicant make a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication his omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct, SOR subparagraph 3.

Applicant gave false answers on his SF 86 and in a signed, sworn statement. By certifying falsely that his responses were true, complete and correct to the best of his knowledge and belief, and made in good faith, the Applicant violated Title 18, Section 1001 [\(2\)](#) of the United States Code. His false answers are felonious conduct under the laws of the United States. Because of this serious misconduct, there should be compelling reasons before a clearance is granted or continued. Candor is important, and the Applicant was unable or unwilling to be candid about his background. The most recent falsifications occurred in June 2002. Accordingly, subparagraph 3.b. is resolved against the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Alcohol Consumption: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3 Criminal Conduct: AGAINST THE APPLICANT

Subparagraph 3.a.: 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. Title 18, Section 1001 of the United States Code provides: (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false; fictitious or fraudulent statement or entry; shall be fined under this title or imprisoned or both.