

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 46-year-old employee of a federal contractor. Over a fourteen year period Applicant was arrested, charged and found guilty of driving while intoxicated four times. After Applicant's last arrest, on April 8, 2001, Applicant stopped drinking alcohol and has not consumed any since that date. Applicant has made positive life style and behavioral changes, including admitting his alcoholism and abstention. Clearance is granted.

CASENO: 02-29202.h1

DATE: 02/09/2005

DATE: February 9, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29202

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Darla Glessner, Personal Representative

SYNOPSIS

Applicant is a 46-year-old employee of a federal contractor. Over a fourteen year period Applicant was arrested, charged and found guilty of driving while intoxicated four times. After Applicant's last arrest, on April 8, 2001, Applicant stopped drinking alcohol and has not consumed any since that date. Applicant has made positive life style and behavioral changes, including admitting his alcoholism and abstention. Clearance is granted.

STATEMENT OF THE CASE

On March 12, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption and Guideline E, personal conduct. Applicant submitted a response to the SOR, dated April 10, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on November 22, 2004. A notice of hearing was issued on December 6, 2004, scheduling the hearing for January 19, 2005. The hearing date was coordinated with Applicant and due to conflicts the date was agreed upon. The hearing was conducted as scheduled. The government submitted nine exhibits that were marked as Government Exhibits (GE) 1-9 and admitted into the record. The Applicant testified on his own behalf, and submitted six exhibits that were marked as Applicant's Exhibits (AE) A-F and were admitted into the record. The transcript was received on January 26, 2005.

FINDINGS OF FACT

Applicant is 46 years old and has worked as a security officer since 1983 for a defense contractor. He has held a security clearance continuously since 1983 without incident. Applicant is divorced with no children.

Applicant started drinking alcohol when he was 21. He was arrested and charged with Driving while Intoxicated (DUI) on May 17, 1987. He was arrested again on September 21, 1987, and charged with Driving while Intoxicated and speeding. The charges were addressed at the same court hearing, and Applicant was found guilty and sentenced to 36 months of supervised probation, a \$400.00 fine, \$200.00 of which was suspended, plus court costs, and his drivers license was revoked from December 30, 1987 until September 13, 1990. Applicant also had a alcohol restriction imposed on his drivers license until October 1, 1990. Applicant was also ordered by the court to attend a 26-week out-patient alcohol rehabilitation program. He attended the program from October 1987 to July 1988. Applicant was diagnosed with severe alcohol abuse.

Applicant notified his employer of both arrests. An investigation was conducted and Applicant retained his security clearance.

Applicant did not stop drinking after his May 1987, arrest for DUI. Applicant stopped drinking for a short period of time after his September arrest for DUI, but later resumed drinking. Applicant was not committed to stopping drinking alcohol during this period and was in denial regarding his alcohol abuse. Applicant drank alcohol only on the weekends with friends and did not drink during the week. Applicant considered his drinking recreational.

Applicant was arrested on November 22, 1997, and charged with DUI. He was found guilty and sentenced to 36 ½ hours of incarceration, a \$125.00 fine, plus courts, and his drivers license was suspended for 90 days. Applicant reported his arrest and conviction to his employer. Applicant limited his drinking, after this incident, but did not stop drinking.

Applicant was arrested on April 8, 2001, and charged with DUI, speeding, and failure to display a registration card on demand. He was found guilty of DUI, and sentenced to six month incarceration that was suspended, 18 months of supervised probation, 90 days suspended license, a \$500.00 fine, plus court costs, and 60 days home confinement. In addition, Applicant was ordered to attend Alcoholics Anonymous (AA), and complete a 26 week alcohol education program. The remaining charges were nolle prossed. Applicant attended the alcohol education program starting on March 21, 2002, and was diagnosed with alcohol abuse. Applicant completed the program. Applicant reported this arrest to his company.

Applicant consumed his last drink of alcohol on April 8, 2001. Applicant looked at his life and realized all that he had to lose due to his drinking and decided to stop drinking. He no longer was willing to jeopardize all that he had attained. Applicant recognized the negative effects his drinking had on his family and friends. Applicant admitted and accepted

that he is an alcoholic and can no longer drink any alcohol. Applicant takes full responsibility for his alcohol problems. In the past, Applicant was forced to complete treatment programs, was in denial and unwilling to accept his problem. Applicant has since decided to never drink alcohol again.

Applicant attended AA as part of his treatment program in the past. Applicant occasionally attends AA now. He has a sponsor that he sees more as a friend, but is aware of the support network available to him, if he needs it. Applicant is in an 8-year relationship with his girlfriend. Applicant's girlfriend does not drink alcohol, is totally against drinking alcohol, and provides a strong support system for his abstinence. Applicant no longer associates with the friends he used to drink alcohol with and has developed other hobbies.

Applicant completed his Security Questionnaire Application (SF 86) on April 16, 2002. In accordance with company policy, his handwritten information was provided to the company secretary who typed the information into the computer system. Applicant attached an additional sheet of paper listing the remainder of his DUI arrests that did not fit into the block on the form provided. The additional sheet was separated from the complete document and the information was not properly submitted. Applicant had previously notified his employer of all of his arrests.

Applicant is a dedicated and loyal employee. He is considered trustworthy and responsible in his job. Applicant provided character letters to support that he was always on time for work, never worked under the influence of alcohol and they never had a reason to doubt his integrity.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol considerations, and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy

guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence.⁽⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information

Based on all the evidence, under Guideline G, I find DC 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 (*Habitual or binge consumption of alcohol to the point of impaired judgment*) apply in this case. Applicant has four DUI arrests and convictions. Although Applicant did not drink on a daily basis, he regularly and consistently consumed alcohol during the weekends and then chose to drive. Applicant was twice diagnosed with alcohol abuse. I have also considered DC 3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), and DC 4 (*Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), and conclude, although Applicant was diagnosed with alcohol abuse, his diagnosis does not fall within the specific parameters of either DC 3 or DC 4.

I have considered all the mitigating conditions under Guideline G, and specifically considered MC 2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and MC 3 (*Positive changes in behavior supportive of sobriety*), and conclude they apply in this case. Applicant's four DUI incidents spanned a period of fourteen years, with an interval of ten years between his second and third arrests, and an interval of approximately three and a half years between his third and fourth arrests. The time lag suggests that time alone is not a good enough indicator of Applicant's success. However, when considered with his life style changes, total commitment to abstinence, acceptance of his alcoholism, new friends, new hobbies, and a strong support system, Applicant has the necessary tools for successful sobriety.

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. Personal conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Based on all the evidence, under Guideline E, I find DC 2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), applies in this case. Applicant consistently reported the incidents of his arrests to his employer. When filing out his SF 86 an addendum was provided due to lack of space. That addendum was not properly transcribed and included with Applicant's SF 86 information.

I have considered all the facts surrounding the circumstances associated with the omission of Applicant's disclosure of all of his DUI offenses and conclude Section E2.2.1.2 of Enclosure 2 of the Directive, (*The circumstances surrounding the conduct, to include knowledgeable participation*) applies in this case. Applicant provided the substantive information and through an oversight unbeknownst to him it was not included in his application. Applicant was unaware that the information was not properly submitted.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, including Applicant's appearance, demeanor and credibility while testifying. I have also considered him under the "whole person" concept. I am satisfied that Applicant presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline G and Guideline E are decided for Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Alcohol Consumption (Guideline G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Paragraph 2 Personal Conduct (Guideline E) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

DECISION

In light of all 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*, Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.