

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant has a history of heavy consumption of alcohol. He was convicted twice of driving after consuming too much alcohol. After his 1999 conviction, Applicant lied to a physician tasked with evaluating him for a court-ordered Antabuse regimen. Applicant still believes he does not have a drinking problem. He failed to mitigate excessive alcohol consumption and personal conduct security concerns. Clearance is denied.

CASENO: 02-29739.h1

DATE: 04/08/2005

DATE: April 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29739

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Philip W. Ogden, Esq.

SYNOPSIS

Applicant has a history of heavy consumption of alcohol. He was convicted twice of driving after consuming too much alcohol. After his 1999 conviction, Applicant lied to a physician tasked with evaluating him for a court-ordered Antabuse regimen. Applicant still believes he does not have a drinking problem. He failed to mitigate excessive alcohol consumption and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 16 April 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 12 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 1 December 2004. On 25 February 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 10 March 2005.

FINDINGS OF FACT

Applicant is a 55-year-old employee of a defense contractor providing desktop administrative support. Ex. 1 at 1; Tr. 174. He retired from the U.S. Army in 1993 as an E-7 after 24 years of service. Ex. 1 at 6; Tr. 97. He has held a security clearance since 1969. Ex. 1 at 8; Tr. 173. His coworkers find him to be honest, trustworthy, and reliable.

Applicant started drinking in the Army when he was 19 years old. About once a month he would get drunk by consuming eight to ten beers. Ex. 2 at 1-2. In 1987, after he left his first wife, his consumption of alcohol increased. He did a lot of traveling and would drink in his hotel room almost every night. On the weekends, he would get drunk by drinking eight mixed drinks.

In July 1993, Applicant was arrested and charged with driving under the influence of alcohol (DUI). He pled guilty to the lesser charge of driving while ability impaired (DWAI) and was sentenced to unsupervised probation for 18 months and ordered to complete a level I alcohol education program and perform community service. His driving privileges were administratively suspended for three months by the state Department of Motor Vehicles. Answer at 2. Nevertheless, Applicant continued his heavy consumption of alcohol until 1995. In 1994, his second wife, whom he married in 1989, and his youngest daughter talked to him about decreasing his drinking. He still did not think it was a problem, so he made no changes in his drinking habits. Ex. 2 at 2-4.

From 1995 to September 1999, Applicant drank about three times a week with friends. He would usually drink three to four mixed drinks. *Id.* at 2. In September 1999, Applicant consumed two or three mixed drinks at home and then three or four more at a party. He got lost driving home and pulled over and started to go to sleep when a police officer knocked on his car window. Applicant failed the roadside sobriety test and was taken to a hospital for a blood test. The test showed a blood-alcohol content of .301%. Ex. 2 at 1; Ex. 5 at 5. Applicant was charged with DUI and driving a motor vehicle with an excessive alcohol content in his blood. Applicant pled guilty to DUI. The court sentenced him to serve 30 days in jail on a work release program, probation for 24 months during which time he was required to take Antabuse if medically able to do so, perform community service, pay court costs, and attend an AA course and complete a level II alcohol education program and receive 86 hours of therapy. Ex. 5 at 4. He completed both courses.

Disulfiram (Antabuse) is a medication used "to produce aversion to alcohol in the treatment of alcoholism because extremely uncomfortable symptoms occur when its administration is followed by ingestion of alcohol." *Dorland's Pocket Medical Dictionary* 255 (25th ed., Saunders 1995). The purpose of requiring Applicant to take Antabuse during the two-year probationary period was to inhibit him from taking the first alcoholic drink-it helps people become abstinent and establish abstinence. Tr. 46. When evaluated for the purpose of starting Antabuse, Applicant deliberately lied to the examining physician that "he was on Antabuse in 1984 and was taken off the medication due to intolerance of the side effects." Ex. 5 at 20. In a letter to the court, the physician noted the side effects described by Applicant were consistent with Antabuse and recommended Applicant not be required to take it because "these side effects could present a risk to his safety." *Id.* Applicant had never taken Antabuse. The symptoms he described to the physician he had read about on the Internet. Applicant continued to consume alcohol during the period of his probation.

Applicant was interviewed by an agent of the Defense Security Service (DSS) on 1 May 2001 about his alcohol consumption. Applicant admitted his two alcohol arrests, but did not mention that, in 1999, the court sentenced him to take Antabuse for 24 months. When the DSS agent went to the courthouse to retrieve copies of Applicant's 1999 conviction, she discovered the letter from the physician stating that Applicant had previously had a bad reaction to Antabuse and should not be required to take it. On 30 May 2001, after being confronted by the DSS agent, Applicant completed another statement in which he admitted lying to the physician so he would not have to take the Antabuse.

In response to the SOR, Applicant's attorney referred Applicant for evaluation to a clinical psychologist with considerable experience in the diagnosis and treatment of alcohol dependence.

The clinical psychologist recommended Applicant have a complete physical to include liver enzyme studies. Tr. 66.

Applicant did not do so. The clinical psychologist opined that Applicant may have been alcohol dependent in 1999-he was having six drinks each night and had blacked out five times-but was definitely an alcohol abuser. Tr. 77-79; Ex. G at 5. Applicant's psychological testing was "clearly not indicative of current alcohol dependence and/or severe drinking disorder." Ex. G at 6. Nevertheless, based on Applicant's history, the clinical psychologist recommended Applicant become abstinent and seek "therapy relative to his style of defensiveness, denial, and generalized coping skills." Ex. 6 G at 7; see Tr. 82. Applicant continues to drink, although apparently not if he is going to drive. He has not sought the therapy recommended by his clinical psychologist.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol at times to excess and the point of intoxication from 1968 until May 2001 (¶ 1.a), was arrested and convicted of DUI in 1993 (¶ 1.b), received court-ordered alcohol counseling in 1994

(¶ 1.c), was arrested in 1999 and convicted of DUI with a BAC of .301% (¶ 1.d), received alcohol counseling from April 2000 to May 2001 (¶ 1.3), and continued to consume alcohol while on probation, in the counseling program and during a period in which he had been ordered to take Antabuse (¶ 1.f). Applicant denied each of the allegations with explanations that admitted the essential facts alleged. 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.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline G. Applicant had alcohol-related incidents away from work-his DWAI and DUI. DC E2.A71.2.1. He was diagnosed as an alcohol abuser by his clinical psychologist. DC E2.A7.1.2.3. He is a habitual and binge drinker (DC E2.A7.1.2.5) and continues to consume alcohol after being diagnosed as an alcohol abuser (DC E2.A7.1.2.6).

Applicant does not believe he has an alcohol problem despite the evidence to the contrary. He believes he is in control of his drinking. But he admitted in his treatment evaluations that, at times, he drank more than he intended to, and at other times, he drank with the intent to get drunk. After his 1999 conviction, he told one evaluator that he may have blacked out once between 1971-72, but "could not recall any alcohol related physical problems since that time." Ex. 5 at 5. Yet he admitted to his clinical psychologist that he blacked out five times. Tr. 78. Applicant believes the problem with excessive alcohol consumption is that he might drive drunk. He does not seem to understand the security concern raised by excessive alcohol consumption is that it often leads to questionable judgment, a failure to control impulses, and increases the risk of unauthorized disclosure of classified information.

In mitigation, the alcohol-related incidents do not indicate a pattern. MC E2.A7.1.3.1. Although the last alcohol-related incident occurred a number of years ago, I am not convinced Applicant's problem is resolved. Therefore, I have not applied MC E2.A7.1.3.2.

It is mitigating if an Applicant makes positive changes in behavior supportive of sobriety. MC E2.A7.1.3.3. In this case, I conclude Applicant has not made such positive changes. While he says he has decreased his level of consumption of alcohol, I did not find his testimony about decreasing his drinking to be credible. I find against Applicant on ¶ 1.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately provided false information to a physician to avoid court-ordered Antabuse treatment for his alcohol consumption (¶ 2.a). Applicant denied the allegation, but admitted misleading the physician about his physical reaction to Antabuse so he would not have to take the medication. Answer. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline E. Applicant deliberately lied to a physician and caused the physician to erroneously report to the court that Applicant had previously been taken off of Antabuse "due to intolerance of the side effects." Ex. 5 at 20. His conduct showed a lack of candor, dishonesty, and an unwillingness to abide by the rules of the court. Furthermore, Applicant failed to disclose this ruse when initially interviewed by the DSS agent. It is true, as Applicant claims, the court did not order him not to consume alcohol during his two-year probation. But he fully understood the reason the court ordered the Antabuse regimen was to prevent him from taking that first drink. This is not a naive 19 year old. Applicant was 49 years old and had served over 20 years in the military. I do not believe that he was too busy, as he claims, or too awed by the court to express his concerns about Antabuse and request alternate treatment. And his statement that he did not like to take pills is controverted by his use of vitamins and herbal supplements that were not approved by his physician. Applicant still does not believe he has an alcohol problem. I am convinced Applicant lied to the physician because he did not believe he had an alcohol problem and wanted to continue drinking. I further find Applicant deliberately misled the DSS agent by failing to tell her about his Antabuse ruse. He did not correct that misimpression until confronted by the agent with a copy of the physician's letter to the court. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).