

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 37-year-old employee of a defense contractor, was arrested for four alcohol-related offenses between 1994 and 1999 by security guards on an island atoll in the South Pacific where he lived and worked. The 1999 arrests caused Applicant to realize that he was developing a problem with alcohol and he returned to the U.S. mainland. The only punishment he received for any of the arrests was a letter of reprimand from the Army and six months probation for an arrest for public drunkenness. He did not list the arrests at Question 24 relating to his police record for alcohol offenses on his SF 86 because he did not regard the guards as police. Since 1999 he has changed his conduct having taken a course in anger management as affected by alcohol. Clearance is granted.

CASENO: 02-30373.h1

DATE: 07/30/2004

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30373

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 37-year-old employee of a defense contractor, was arrested for four alcohol-related offenses between 1994 and 1999 by security guards on an island atoll in the South Pacific where he lived and worked. The 1999 arrests caused Applicant to realize that he was developing a problem with alcohol and he returned to the U.S. mainland. The only punishment he received for any of the arrests was a letter of reprimand from the Army and six months probation for an arrest for public drunkenness. He did not list the arrests at Question 24 relating to his police record for alcohol offenses on his SF 86 because he did not regard the guards as police. Since 1999 he has changed his conduct having taken a course in anger management as affected by alcohol. Clearance is granted.

STATEMENT OF CASE

On December 19, 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 January 13, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, attached one exhibit and requested a hearing. The matter was assigned to me on April 19, 2004. A notice of hearing was issued on May 10, 2004. A hearing was held on May 26, 2004. The Government introduced six exhibits and the Applicant none. All exhibits were admitted into evidence. The Applicant and six other persons testified. The transcript was received on June 2, 2004.

FINDINGS OF FACT

Applicant is a 37-year-old employee of a defense contractor. 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 was arrested for four alcohol-related offenses in 1994, 1998, and two in 1999 on an island atoll in the South Pacific where he was working for his employer. The atoll consists of only 240 acres where 180 people live and work. He went there in 1991 and returned to the mainland U.S. in 1999. The 1999 arrests caused Applicant to realize that he was developing a problem with alcohol as a result of the tropical party atmosphere on the island and that was a key factor in his decision to transfer to a stateside assignment. Applicant met his wife on the atoll and they now have one son.

The only punishment he received for any of the arrests was a letter of reprimand from the Army and six months probation for the 1998 arrest for public drunkenness on a golf course. There is no evidence in the record of the terms of the probation or the source of the order. He did not list the arrests at Question 24 relating to his police record for alcohol offenses on his SF 86 dated December 17, 2001.

Applicant voluntarily reported in his answer to the SOR that he was involved in an argument in a bar with an employee of a competing company while on an overseas assignment in November 2002. This did not result in any legal difficulties but a fellow employees believed it indicated a behavioral problem and he was sent by his employer to an anger management course. The course lasted five weeks, four days a week, and four hours per session. He completed the course in 2003.

He continues to attend an aftercare session of the program once a month. He believes the program has had a positive effect on him and helped him to overcome the anger problem and also to control drinking. Applicant now drinks beer moderately on social occasions.

Applicant is highly regarded by his company. His supervisor and several fellow employees testified on his behalf concerning the type of work he performs, his value as a trusted crew member, his care concerning classified information, and his dedication to his job.

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 four arrests clearly shows that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G. Mitigating conditions (MC) are applicable

in that Applicant has shown that the problems with abuse of alcohol ended five 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.)

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 interpreted the question to require an answer only if there were police records. He regarded the contract security guards on the island as only security guards and not police as they wore shorts and T-shirts with the word "Security" on the back with the name of the contractor. There were several military police on a larger neighboring island who occasionally came to his island. Three of the incidents resulted in documentation from the Provost Marshall's office submitted by the government at the hearing (Exh. 3, 5, and 6) but there is no indication that Applicant was notified of their involvement. The second arrest record (Exh. 4) is only a violation notice from the island Police Department with the notation that Applicant had refused to sign it. There is no indication that he was ever served with any follow up papers from the guards or the Provost Marshall's office. Testimony was offered by one of his colleagues on the island to support his contention that the security guards were not regarded as police officers. Based on his testimony and the reason given for the omission, I conclude that the omission was not "deliberate" as required in the guideline.

A history or pattern of criminal activity or any criminal conduct creates doubt about a person's judgment, reliability, and trustworthiness under Criminal Conduct DC 1 under Guideline J. Mitigating Conditions (MC) are applicable in that the behavior was not recent (E2.A10.1.3.1.), and there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). It has now been almost five years since his last offense. Applicant has changed his lifestyle and the departed from the environment that was contributing to his behavioral problems. He has also taken a helpful course of instruction on anger related to alcohol and continues a follow-up program.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of criminal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

As the policy prescribes, the burden shifted to the Applicant to show that the mitigating conditions are applicable to him.

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, because of the passage of time and the fact that the Applicant has changed his habits, the allegations relating to alcohol and criminal conduct in the SOR have been mitigated. He advanced a credible explanation of his failure to list information on the SF 86 to mitigate that allegation and 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

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline J 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