

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant's DUI arrests in January 2001 and July 2001 demonstrate alcohol abuse. He falsified his January 2003 clearance application by wilfully concealing the January 2001 DUI. Clearance denied.

CASENO: 02-30785.h1

DATE: 07/30/2004

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30785

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's DUI arrests in January 2001 and July 2001 demonstrate alcohol abuse. He falsified his January 2003 clearance application by wilfully concealing the January 2001 DUI. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 3 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption and personal conduct.⁽¹⁾ Applicant answered the SOR on 20 March 2004 and requested a decision without hearing. He did not respond to DOHA's 1 June 2004 File of Relevant Material (FORM). The record closed 15 July 2004, when the response was due. DOHA assigned the case to me 19 July 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate his admissions as findings of fact. He is a 34-year-old associate employed by a defense contractor since May 2000. He has never applied for a clearance before.

Applicant describes himself as an inconsistent consumer of alcohol, demonstrating no pattern in his consumption. He may drink three or four beers at one sitting, but does not drink every day. He says he does not drink and drive as a rule, but had two DUIs within six months in 2001.

In January 2001, Applicant was arrested for DUI after being stopped for doing 50 m.p.h. in a 35 m.p.h. zone. Although

he claimed he drank only two large beers over four hours, he blew a .08 BAC--over the legal limit. He pled guilty and was given probation before judgment conditioned on paying fines, fees, and court costs, and a satisfactory alcohol evaluation. The alcohol evaluation noted Applicant's "strong organic disposition to alcohol use" and his understatement of his alcohol consumption on the night of his arrest (as the claimed use was inconsistent with the recorded BAC). However, Applicant successfully completed his probationary period.

In July 2001, Applicant was arrested for DUI after being stopped for crossing the center line and swerving back over the shoulder of the road. He had consumed eight beers over two hours and failed a field sobriety test. He blew .16 on his breath tests, twice the legal limit. His sentence included an alcohol evaluation, the results of which do not appear in the record.

When Applicant applied for his clearance in March 2002, he disclosed his July 2001 DUI, but failed to disclose the January 2001 arrest. During a June 2002 interview with the Defense Security Service, he claimed he omitted the January arrest because he was in a hurry to complete the form and because he thought the arrest had been deleted from his record for completing his probationary period.

POLICIES

The Directive, Enclosure 2 sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each adjudicative decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, I conclude the relevant, applicable, adjudicative guidelines are Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct).

BURDENS

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to

classified information. Applicant must then refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(2\)](#)

CONCLUSIONS

The government established a Guideline G case and Applicant did not mitigate his conduct. Applicant's two alcohol-related arrests within six months in 2001 and the "satisfactory" alcohol evaluation obtained, at least in part, by understating his drinking, demonstrates alcohol abuse, shifting to him the burden of persuasion to demonstrate that he does not have a problem with alcohol. His evidence falls short of that burden. Consequently, I conclude Guideline G against Applicant.

The government established a Guideline E case and Applicant did not mitigate his conduct. Even though Applicant received probation before judgment on the January 2001 DUI, his guilty plea to the charge, the extended conditions applied to his probation, and the fact that the probationary period had been completed only a few weeks before Applicant applied for his clearance satisfies me that Applicant recalled this arrest when he applied for his clearance and deliberately concealed it from the government. And it appears that he only disclosed the January 2001 arrest when it seemed his interviewer was close to confronting him with the information.

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).