

KEYWORD: Alcohol; Financial; Personal Conduct

DIGEST: Applicant is a 47-year-old employee of a defense contractor who has had alcohol and debt problems and omissions on her application for a security clearance (SF 86). She has had a serious problem with alcohol resulting in two DUI arrests and convictions in 1993 and 1998. She has been in treatment for alcoholism and has been an active participant in AA since 1999 and in hospital treatment prior to that time. She has shown considerable courage in seeking to solve her problem but has relapsed several times in the last six years most recently a few months ago. Clearance is denied.

CASENO: 02-15978.h1

DATE: 07/15/2004

DATE: July 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15978

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Jeffrey J. Plum, Esq.

SYNOPSIS

Applicant is a 47-year-old employee of a defense contractor who has had alcohol and debt problems and omissions on her application for a security clearance (SF 86). She has had a serious problem with alcohol resulting in two DUI arrests and convictions in 1993 and 1998. She has been in treatment for alcoholism and has been an active participant in AA since 1999 and in hospital treatment prior to that time. She has shown considerable courage in seeking to solve her problem but has relapsed several times in the last six years most recently a few months ago. Clearance is denied.

STATEMENT OF CASE

On October 1, 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 October 30, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on March 22, 2004. A notice of hearing was issued on April 23, 2004, and a hearing was held on May 12, 2004. The Government introduced 28 exhibits and the Applicant introduced one exhibit in addition to the 12 exhibits attached to her answer. All exhibits were admitted into evidence. The Applicant and four other persons testified. The transcript was received on May 26, 2004.

FINDINGS OF FACT

Applicant is a 47-year-old employee of a defense contractor who admitted all of the specific allegations in the SOR relating to alcohol and debt and two of the three allegations related to falsification on her application for a security clearance (SF 86). She disagreed with all of the conclusions reached in the SOR based on the allegations.

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 in 1993 for Driving Under the Influence and sentenced to 36 months probation. She was again arrested for the same offense in 1998 and placed under supervised probation for three years. During that period of probation a further restriction was placed on use of her license for only employment and educational purposes for 120 days. Applicant admits having had a drinking problem during the period of the offenses. She has been a member of Alcoholics Anonymous (AA) since 1998. She entered a twelve week program in 1999. She now attends AA meetings three or four times a week.

Applicant has attended numerous alcohol counseling programs from 1992 to 1999. She has had no alcohol related driving offenses since 1998. However, since 1998 she has had six relapses usually on weekends drinking by herself and consuming a pint of rum. The last one was only a few months prior to the hearing on this matter to which she attributes nervousness about this hearing. She has been diagnosed by medical professionals to be suffering from depression and being a late stage alcoholic. She is on medication.

As a result to her problems concerning alcohol she incurred medical debts that became delinquent as cited in the SOR. She has resolved those debts and offered proof of payment.

Applicant did not report her 1993 traffic offense on her SF86 but she did report the 1998 offense.

Applicant was issued a letter of probation by her employer in 2002 for excessive absences and reporting violations on her time card.

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 offenses, convictions and sentences clearly show that the Government has established reasons to deny her a security clearance because of alcohol abuse under Guideline G.

Applicant failed to establish that she has been rehabilitated from alcohol abuse despite having been in two programs for alcohol abuse and now being in AA. Her history of alcohol abuse and the pattern of her conduct over a long period of time indicates a failure of rehabilitation. I cannot conclude that Applicant has demonstrated that it is clearly consistent with national security to grant her a security clearance. While there have been serious efforts at rehabilitation there has been no positive changes in behavior supportive of sobriety and she fails to meet any of the mitigating conditions for this guideline since she has a pattern of abuse that has continued until several months ago. (E2.A7.1.3.)

Applicant's extensive debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has successfully mitigated this issue.

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 offered an explanation for failure to list the 1993 arrest believing, on the advice of her security officer, that only arrests during the last seven years were required to be reported. She explained her failure to list a judgment by a hospital to which she had been admitted for alcohol issues as having forgotten about it since it was several years ago and she had not been solicited for the debt. I can accept her first explanation but not the second.

Regarding Applicant's admonition from her employer in 2002, she has since modified her behavior and her employer reports that she has gone beyond her initial problems and is now a trusted and valuable employee. (Exhs. C-F) Her colleagues at AA testify to her character and devotion to solving her problems and performing her job. (Exhs.D-J) Her supporting witnesses vouched for her considerable efforts to solve her problems relating to alcohol and their belief that she was a person of good character and dedicated to her job and her friends. Thus, this allegation is mitigated by the passage of time and changed behavior. (E2.A5.1.3.2.)

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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that while the Applicant has made considerable efforts to change her habits regarding alcohol, it has not been sufficiently successful to justify granting a clearance. It is thus premature to grant her a clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Paragraph 2 Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: Against Applicant

DECISION

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

Charles D. Ablard

Administrative Judge