

KEYWORD: Alcohol; Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a recovering alcoholic who also abused drugs for several years in connection with her drinking. She is active in Alcoholics Anonymous (AA) and has not used drugs since 1995 or alcohol since 1999. Applicant failed to fully disclose her drug use as required by her SF 86 in October 2000 and in her first interview with investigators. She has mitigated the security concerns about her drug use, alcohol abuse, personal conduct, and criminal conduct. Clearance is granted.

CASENO: 02-17816.h1

DATE: 01/31/2005

DATE: January 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17816

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esquire, Department Counsel

FOR APPLICANT

Demal Matson, Jr., Esquire

SYNOPSIS

Applicant is a recovering alcoholic who also abused drugs for several years in connection with her drinking. She is active in Alcoholics Anonymous (AA) and has not used drugs since 1995 or alcohol since 1999. Applicant failed to fully disclose her drug use as required by her SF 86 in October 2000 and in her first interview with investigators. She has mitigated the security concerns about her drug use, alcohol abuse, personal conduct, and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On October 21, 2003 the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline H (Illegal Drugs), and Guideline J (Criminal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On December 1, 2003, Applicant answered the SOR (Answer), admitted (with explanation) all of the allegations except for the allegation in subparagraph 4.a, and requested a hearing. The case was assigned to me on August 17, 2004. On September 14, 2004, I convened a hearing at which the government presented nine exhibits and called one witness to support the SOR. In response, Applicant also presented nine exhibits as well as the testimony of five witnesses, including the Applicant. DOHA received the transcript (Tr) on September 23, 2004.

FINDINGS OF FACT

Applicant admitted with explanation all of the SOR allegations except for subparagraph 4.a. Accordingly, those allegations are entered as facts. After a thorough review of the pleadings, transcript, and exhibits, I also find the following:

Applicant is 36 years old and works as a drafter / technical writer for a defense contractor. She is a single mother of two and served in the U.S. Navy between 1988 and 1990. At hearing, Applicant testified in her own behalf, and I found her testimony credible, sincere, and very forthcoming about all of the adverse information in her background.

Applicant began drinking alcohol in 1982 when she was 14 years old. She also began smoking marijuana around this time. In high school, in addition to drinking, Applicant tried LSD twice, cocaine two or three times, and was also arrested for being a minor in possession of alcohol. Her drinking was such that, by February 1995, she was a "blackout drunk" who still has trouble remembering details of what she did when drinking. Applicant was also using various drugs in addition to marijuana. Her drug use included abuse of prescription sedatives and anti-depressants, as well as cocaine and crack cocaine. While her drug use generally occurred only after she had been drinking, Applicant eventually became addicted to crack.

Applicant joined the Navy in June 1988, and wanted to be either an electronics technician or a data processor. Her recruiter told her both rates were closed but that she may be able to strike for those rates after boot camp. After boot camp, Applicant was told she still could not work in one of her desired ratings, so she reluctantly agreed to strike for mess management specialist.

Despite an apparently sound performance record in the Navy, her drinking did not abate. Applicant also found the work uninspiring and wanted to get out of the service when she realized she would never get to work in her desired field. She decided to smoke marijuana between three and five times over the course of three months in 1989 (her use of marijuana had stopped when she enlisted in 1988) in the hopes she would get caught and kicked out of the service. She was caught once and awarded non-judicial punishment at Captain's Mast for violating Uniform Code of Military Justice (UCMJ) 112A (wrongful use of a controlled substance). When she was caught a second time, she was found guilty at a special court martial of another violation of UCMJ Article 112A and given a bad conduct discharge.

After leaving the service in August 1990, Applicant found work as a bartender and her drinking escalated significantly. When she became pregnant with her first child that same year, she moved in with her mother and sister. Her mother found Applicant a job that led to her current career as a drafter / technical illustrator, but Applicant did not stop drinking or using illegal drugs.

In 1991, Applicant was charged with driving under the influence of alcohol (DUI) after she was involved in a single-car accident. There is no information available about the disposition of that charge.

In 1992, Applicant drove to a bar and left her one-year-old child alone at home while she drank at the bar. The bartender knew she had a child and called police who, in turn, contacted social services. No further action was taken against Applicant. A 1993 arrest for possession of drug paraphernalia and a charge of having an open container of alcohol were dismissed.

Sometime in 2000, Applicant left her then-nine-year-old daughter at home alone. The daughter was home from school on holiday break, but Applicant had to visit her office briefly to retrieve some files she needed to work at home. While Applicant was gone, her daughter made a prank phone 911 call. Police responded, but no adverse action was taken against the Applicant. This was the last time Applicant has left either of her children alone.

Around February 1995, after Applicant's mother (an alcoholic) and sister went on vacation to the Caribbean and did not return, and after she was arrested a second time for DUI, Applicant realized she needed to get help. She self-referred to an in-patient treatment facility where she was diagnosed as an alcoholic and where she began her recovery. She was so intent on getting help she went into debt to pay what her insurance did not cover for the full 21-days of treatment.

Applicant has not used illegal drugs or abused prescription drugs since 1995. She also abstained from alcohol and was active in Alcoholics Anonymous (AA) until undergoing a brief relapse in October 1999. Her relapse consisted of a brief period when, as is not unusual with recovering alcoholics, Applicant thought she might be able to handle social drinking on her own. In October 1999, Applicant drank between three and six beers on three or four different occasions. Fortunately, she realized she would eventually return to her old habits and returned to AA. She has been sober and a dedicated, active member of AA since then.

On or about October 13, 2000, Applicant signed and submitted an application for a security clearance (SF 86). In response to question 27 regarding use of illegal drugs in the preceding seven years, Applicant omitted her use of marijuana, cocaine and other drugs as discussed above. An agent of the Defense Security Service (DSS) interviewed Applicant on April 11, 2002. Applicant provided a signed, sworn statement wherein she denied marijuana use after 1989, denied cocaine use after high school, and denied involvement with any other illegal drugs or having purchased illegal drugs.

The next day, Applicant called the DSS agent and requested another interview to clarify and correct what she had told the agent about her drug and alcohol use. Applicant was re-interviewed on April 15, 2001 and provided a second written statement, wherein she disclosed more information about her drug use. Applicant explained that, because her drug use was generally occurred only when she had also been drinking, and because she often could not remember the details of what she did when she drank (including the details of her drug use) she did not immediately place her cocaine and marijuana use in the time period covered by the SF 86 and in the first interview. Nor could Applicant agree that she had bought or sold drugs because she simply could not recall all of the details of her actions while she was abusing drugs and alcohol through early 1995.

Applicant twice applied to the Board for Correction of Naval Records (BCNR) to have her bad conduct discharge changed. Her first application in October 2000 was denied. However, a subsequent application was granted in April 2002 and her discharge is now reflected, based on substantial information of her sobriety, reform, and community activism, as a general discharge under honorable conditions.

Since completing her treatment in February 1995, Applicant has been a model citizen. She acts as a sponsor for others in AA and has had sponsors for her own ongoing recovery. Testimony from her sponsor and a fellow member of AA show she has maintained her sobriety since her relapse and that she is completely committed to the strictures of AA. Applicant's co-workers, past and present, are aware of her drug and alcohol problems. They hold her in the highest regard because of her integrity, honesty, and seemingly boundless energy. The latter quality is shown by the fact she is active in several community volunteer organizations, has been pursuing her personal and professional education in night school with excellent grades, and is an involved single mother of two.

POLICIES

The Directive sets forth adjudicative guidelines⁽²⁾ 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 applicable to the facts and circumstances of each case. Each 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 of a conclusion for or against an Applicant. However, specific applicable 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. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline H (Illegal Drugs), and Guideline J (Criminal Conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽³⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.⁽⁴⁾ 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 one who will protect the national interests as his or her 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.⁽⁵⁾

CONCLUSIONS

Guideline G (Alcohol Consumption). 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.⁽⁶⁾ The government established its case under Guideline G by showing that Applicant consumed alcohol to excess and to the point of addiction. She was also arrested multiple times because of her alcohol abuse and exercised exceedingly poor judgment when she left her toddler at home while she went drinking. Applicant's drinking was addressed through two periods of treatment. Guideline G Disqualifying Condition (DC) 1⁽⁷⁾ and DC 5⁽⁸⁾ apply here. While there can be no doubt that Applicant was addicted to, or at least dependent on alcohol, there is no record of a clinical diagnosis thereof as contemplated by DC 3,⁽⁹⁾ DC 4,⁽¹⁰⁾ and DC 6.⁽¹¹⁾

By contrast, aside from a brief and relatively uneventful relapse in late 1999, Applicant has been sober since February 1995. Further, to say she is active in AA would be an understatement. Witness testimony from her AA associates as well as from co-workers and friends strongly supports a conclusion that Applicant is deeply committed to a sober lifestyle and is unlikely to drink again. Guideline G mitigating condition (MC) 2⁽¹²⁾ and MC 3⁽¹³⁾ apply her. I conclude Guideline G in favor of Applicant.

Guideline H (Illegal Drug Use). Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Such conduct may also be criminal and indicative of a disregard for rules and regulations in place to protect national interests.⁽¹⁴⁾ The government established its case under Guideline H by showing that Applicant used marijuana, cocaine, crack cocaine, LSD and other drugs from 1982 until February 1995. Applicant was also prosecuted twice while in the Navy for violating the UCMJ proscription against using illegal drugs. Her use of marijuana eventually resulted in a bad conduct discharge from the service after conviction for drug use by a special court martial. Guideline H DC 1⁽¹⁵⁾ applies. As noted under Guideline G, above, there is no documentation of a clinical diagnosis of drug addiction, abuse, or dependence. Therefore, despite Applicant's admissions of addiction to crack, Guideline H DC 3,⁽¹⁶⁾ DC 4,⁽¹⁷⁾ and DC 5⁽¹⁸⁾ may not also be applied.

In Applicant's favor, her drug use was directly linked to her drinking and she has not used or been involved with illegal drugs in nearly 10 years. Guideline H C 1 ⁽¹⁹⁾ and MC 3 ⁽²⁰⁾ apply here. To her credit, she did not use drugs during her 1999 relapse. For many of the same reasons discussed relative to her sobriety, and because the underlying trigger for her drug use, namely her drinking, is no longer a factor, the likelihood Applicant will use drugs at any time in the future is remote at best. Guideline H is concluded for the Applicant.

Guideline E (Personal Conduct). An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information. ⁽²¹⁾ Here, the government's concern stems from Applicant's conduct related to her abuse of drugs and alcohol, and from her alleged falsification of her SF 86 and subsequent statements to a DSS investigator about her drug use. As to the former concern, Applicant did, indeed, leave her toddler at home in 1992 when she went to a bar. She also left her nine year old alone briefly while she went to the office in 2000. However, as discussed above, Applicant's drinking is no longer a factor and there is no indication she has knowingly endangered her children since the 1992 incident and is unlikely to do so again.

Regarding the allegations of falsification, the government has shown that Applicant omitted her drug use from her SF 86 and that she did not fully disclose her drug use during her first subject interview with DSS. Applicant's claim that she did not remember the fact she used cocaine after high school because of her blackout drinking is difficult to accept in light of her later acknowledgment she was addicted to crack cocaine. More plausible is her explanation that her drug use after high school did not extend into the period covered by the SF 86 or the scope of the interview. On the facts here, DC 2 ⁽²²⁾ and DC 3 ⁽²³⁾ must be considered here; Applicant made false statements on her SF 86 and in her first interview with DSS.

However, for these matters to be disqualifying they must have been made deliberately with intent to mislead the government about information relevant and material to an assessment of her background to decide if she is suitable to hold a clearance. I cannot discount Applicant's explanation for her actions in light of the uncontroverted severity of her alcohol problem that arguably clouded Applicant's recollection of her drug involvement. It also appears, based on the record as a whole, that Applicant's drug use is not the dominant factor in her thinking when she is faced with questions about her past. Rather, recovery from her drug problems is subsumed by her recovery from alcoholism. That being the case, and considering that she may not have been able to recall everything she did when she was in the deepest throes of her drinking days, I conclude that Applicant lacked the intent to mislead the government when she submitted her SF 86 and in her first interview with DSS.

In mitigation, Applicant asked for a second subject interview within 24 hours of her first session with DSS. Despite the fact 18 months had passed between her SF 86 and her first subject interview, it is plausible that, in light of the fact she was more concerned with her alcoholism than the attendant drug use she experienced, that Applicant did not see a need to correct her initial answers to the drug-related questions in the SF 86. When first interviewed by DSS in April 2002, it did not immediately dawn on Applicant that she may have been misleading about her drug use. Further, there is no evidence that Applicant was confronted at the interview with anything other than what she had already listed in her SF 86; however, almost immediately after the interview, Applicant, consistent with one of the 12 steps for recovery from alcoholism - taking a daily inventory - mulled over what she had told the DSS agent. The next day she requested another interview and provided a full account of her experiences with illegal drugs. Guideline E MC 3 ⁽²⁴⁾ applies here.

I also found Applicant's testimony to be very open and forthcoming, traits reinforced by more than 30 character references from various facets of her life, and by the testimony of all of her witnesses at hearing. In fact, rarely have I encountered a record of rehabilitation as impressive as this. Any concerns about her truthfulness raised by alleged falsifications during her background investigation have been assuaged by her straightforward demeanor and willingness to provide the most candid answers possible beginning with her second interview and at her hearing. Because Guideline E is intended to assess suitability in part through an applicant's truthfulness, I conclude Applicant has demonstrated through her efforts at rehabilitation, characterized by that part of her recovery predicated on honesty with oneself and others, that she has overcome the government's concerns under this guideline. Accordingly, I conclude Guideline E for the Applicant.

Guideline J (Criminal Conduct). Criminal conduct is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in reliability and trustworthiness.⁽²⁵⁾ Here, there is a single allegation of criminal conduct based on Applicant's alleged falsification of her SF 86 and her statement to DSS in her first subject interview. If proved, these acts violate federal law. Title 18 of the United States Code, Section 1001, which makes it a crime to knowingly and willfully make a false statement or representation to any department or agency of the United States concerning a matter within its jurisdiction. As discussed above, I conclude the Applicant did not intend to deceive the government about her drug use. As such, none of the listed disqualifiers apply and I conclude Guideline J for the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. A fair and commonsense assessment⁽²⁶⁾ of the record before me, which reflects a person who has not only overcome her past problems but has gone on to thrive in every way imaginable, mitigates the government's concerns about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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, Illegal Drugs (Guideline H): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: For the Applicant

Subparagraph 2.e: For the Applicant

Subparagraph 2.f: For the Applicant

Subparagraph 2.g: For the Applicant

Paragraph 3, Personal Conduct (Guideline E): FOR THE APPLICANT

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: For the Applicant

Subparagraph 3.c: For the Applicant

Subparagraph 3.d: For the Applicant

Subparagraph 3.e: For the Applicant

Paragraph 4, Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 4.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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Directive, Enclosure 2.
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.
6. Directive, E2.A7.1.1.
7. Directive, E2.A7.1.2.1. 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;
8. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
9. Directive, E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
10. Directive, E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
11. Directive, E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program
12. Directive, E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;
13. Directive, E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;
14. Directive, E2.A8.1.1.1.
15. Directive, E2.A8.1.2.1. Any drug abuse...;
16. Directive, E2.A8.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or

psychiatrist) of drug abuse or drug dependence;

17. Directive, E2.A8.1.2.4. Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

18. Directive, E2.A8.1.2.5. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

19. Directive, E2.A8.1.3.1. The drug involvement was not recent;

20. Directive, E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;

21. Directive, E2.A5.1.1.

22. Directive, E2.A5.1.2.2. 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;

23. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

24. Directive, E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

25. Directive, E2.A10.1.1.

26. Directive, E2.2.3.