

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 49-year-old employee of a defense contractor and 23 year Air Force retiree who works as a security analyst and specialist. Applicant was arrested twice in 2001 within a three month period for driving under the influence of alcohol and was found not guilty of each after trials. Applicant reported each incident to his supervisors and his security officers. After his trials he entered a counseling program for six months during which time he totally abstained from alcohol. Since then he drinks moderately twice a week and no more than two beers at each occasion. He does not drink and drive. He did not report two counseling sessions since one was over ten years old and the other involved only marital counseling. Clearance is granted.

CASENO: 02-20258.h1

DATE: 08/16/2004

DATE: August 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20258

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

James Bradley Norman, Esq., Department Counsel

FOR APPLICANT

Matthew S. Freedus, Esq.

SYNOPSIS

Applicant is a 49-year-old employee of a defense contractor and 23 year Air Force retiree who works as a security analyst and specialist. Applicant was arrested twice in 2001 within a three month period for driving under the influence of alcohol and was found not guilty of each after trials. Applicant reported each incident to his supervisors and his security officers. After his trials he entered a counseling program for six months during which time he totally abstained from alcohol. Since then he drinks moderately twice a week and no more than two beers at each occasion. He does not drink and drive. He did not report two counseling sessions since one was over ten years old and the other involved only marital counseling. Clearance is granted.

STATEMENT OF CASE

On September 4, 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 November 3, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, attached ten exhibits and requested a hearing. The matter was assigned to me on April 29, 2004. A notice of hearing was issued on May 5, 2004. A hearing was held on June 2, 2004. The Government introduced eight exhibits and the Applicant introduced four additional exhibits. All exhibits were admitted into evidence. The Applicant testified. The transcript was received on June 15, 2004.

FINDINGS OF FACT

Applicant is a 49-year-old employee of a defense contractor who retired from the Air Force after 23 years as a security analyst and specialist. After a complete review of the evidence in the record and upon due consideration of the record, the following findings of fact are made:

Applicant voluntarily entered a behavioral health program for six months in 1999 where issues relating to depression and alcohol were addressed. He was diagnosed with alcohol abuse. He has been married and divorced twice in 1988 and 1998.

Applicant was arrested twice in 2001 within a three month period between March and May for driving under the influence of alcohol and was tried and found not guilty of each. Applicant reported to and discussed each incident with his supervisors and his security officers. At the time of the arrests he was having difficulties in his personal life.

Applicant held a Sensitive Compartmented Information (SCI) clearance for a number of years. The Air Force suspended the clearance after the 2001 arrests but restored it in November 2001.

After his second trial in 1991 he recognized the need to address the root causes of his conduct and voluntarily entered a counseling program June 2001 for six months during which time he totally abstained from alcohol as the program required. He entered the program because he knew he had to insure control over excessive drinking. Since concluding the counseling he drinks moderately twice a week and no more than two beers at each occasion. He does not drink and drive.

Applicant is highly regarded by his company. His supervisors applaud his work and his care in handling security matters. Since his counseling concluded in 1991 he has received a performance award in 2003 and completed a college degree program in 2004 that he began in 1997.

Applicant omitted information on his SF 86 filed in 1998 at Question 19 regarding counseling he received in 1986 and in 1996.

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 concerning Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) raises the issues 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 two arrests and his diagnosis 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 three 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.).

Based on the evidence of record the Government has established reasons to deny him a security clearance because of alcohol and personal 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.

Applicant has no arrests for alcohol abuse either before or after the two 2001 arrests. He acknowledges these were mistakes in conduct and he has gone through a strict analysis of his conduct as a result of the incidents and the counseling he received thereafter. His testimony indicates his serious concern based in large part on the fact that he has been a professional in the security field and recognizes that such incidents reflect adversely on his favorable career record. He manifests in a credible way a strong desire and determination not to allow a recurrence.

The Government conceded at the hearing that the omission of his 1988 counseling treatment was not required to be reported on his 1998 SF 86 since it was more than ten years old and thus beyond the reporting window. His 1996 counseling was for marital counseling prior to his second divorce. Applicant reasonably believe he was not required to report it as it was not a mental health matter.

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, 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

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.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