

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 39-year-old employee of a defense contractor who has had difficulties relating to use of alcohol and three arrests for alcohol-related offenses all over six years old . He failed to provide accurate answers on his SF 86 regarding the arrests but some of the problems with his answers arose as a result of advice he received from counsel and others from his dyslexia that resulted in the inversion of numbers and a phonetic place spelling. Clearance is granted.

CASENO: 02-21759.h1

DATE: 07/28/2004

DATE: July 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-21759

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

## **APPEARANCES**

### **FOR GOVERNMENT**

Kathryn Antigone Trowbridge, Esq., Department Counsel

### **FOR APPLICANT**

Vance T. Nye, Esq.

## **SYNOPSIS**

Applicant is a 39-year-old employee of a defense contractor who has had difficulties relating to use of alcohol and three arrests for alcohol-related offenses all over six years old . He failed to provide accurate answers on his SF 86 regarding the arrests but some of the problems with his answers arose as a result of advice he received from counsel and others from his dyslexia that resulted in the inversion of numbers and a phonetic place spelling. Clearance is granted.

## **STATEMENT OF CASE**

On October 24, 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 December 2, 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 April 19, 2004. A notice of hearing was issued on May 7, 2004. A hearing was held on May 25, 2004. The Government introduced five exhibits and the Applicant introduced eight. All exhibits were admitted into evidence. The Applicant and two other persons testified. The transcript was received on June 4, 2004.

### **FINDINGS OF FACT**

Applicant is a 39-year-old employee of a defense contractor who admitted some allegations in the SOR relating to use of alcohol but denied most of them and also denied that he deliberately failed to provide accurate answers on his SF 86. He disagreed with the conclusions reached in the SOR. 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 consumed alcohol to excess and to the point of intoxication at times, but completed an alcohol rehabilitation program in March 2000 and has had no legal problems as a result of alcohol for over four years. In 1992 he was arrested in Iowa, and charged with operating a vehicle while impaired. This was a first offense and was dismissed. In 1998 and 1999 he was arrested in two different cities in California for driving under the influence of alcohol, was convicted both times, served jail sentences, and paid fines. Both were identified in court records as misdemeanors (Exh. 4, 5, and H).

When completing his SF 86 on November 2, 2000, Applicant revealed the second and third arrests but not the first on Question 24 relating to alcohol offenses. He listed none of them in answer to Question 21 that asked about being charged or convicted of felony offenses.

Applicant has had serious health problems and was advised to lose weight, give up smoking, and stop drinking. He has done the first two but not the third. However, he now consumes only the occasional beer and does not drink and drive. On two occasions since 1999, he did drive after consuming one or two beers.

### **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.) and 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 three arrests, and two convictions, and sentences clearly show that the Government has established reasons to deny him a security clearance under Guideline G. Mitigating conditions are applicable in that Applicant has shown that the problems with alcohol ended four 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.) Total abstinence is not required under the guideline.

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 inverted the date for the 1998 arrest on the SF 86 showing a date when he would have been just 15 years old. He also listed a phonetic spelling of the city name where the arrest occurred. The SOR erroneously listed the location of the 1992 arrest in the wrong state and giving a suburb of the state's capital city . The Applicant was understandably confused by the SOR errors when in his answer he denied the allegation. The SOR was also erroneous as a result of Applicant's inversion of 1998 date. The government construed that arrest as being the 1992 arrest.

Applicant had listed both the 1998 and 1999 arrests in his answer to Question 24 relating to alcohol-related charges or convictions. He admitted an arrest in the capital city at the hearing but did not list it at Question 24. He listed none of them in answer to Question 21 concerning felony charges or convictions. When filling out the SF 86 he was advised by counsel that the 1998 and 1999 charges were not felonies and that the 1992 arrest did not result in a charge. Based on the reasons advanced for the omissions and his demeanor at the hearing, I conclude that the omissions were not deliberate as required in the guideline.

Applicant is highly regarded by his supervisor who testified at the hearing. He is a reliable manager of a team of workers who is sent to various locations to serve different sites 300 days of the year. He has tested and attended counseling sessions required as a result of his last arrest and conviction. He has been evaluated by a drug and alcohol evaluator. The evaluator concluded that he had a low probability of substance abuse.

Applicant's guardian from age nine who holds a master's of social work and is a probation officer in the city where Applicant was raised submitted a statement relating to his upbringing, his dyslexia, and his good conduct as a youth (Exh.C). Applicant is married with two children and is a responsible parent notwithstanding his extensive travel in his work.

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.

Although some of the allegations in the SOR relating to medical advice and use of alcohol are factual in nature, they do not relate to the requirements under the Guideline.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has changed his habits sufficiently that the allegations in the SOR have been mitigated. Although he did not exhibit the care required for preparing the application for a security clearance he advanced a credible explanation to explain his incorrect answers.

### **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

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

#### Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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