

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant has a 1994 driving while intoxicated conviction, entered a voluntary four-day treatment program in 2000 for alcohol dependence, and continues to consume alcohol while attending multiple weekly Alcoholics Anonymous meetings. Applicant make an addition about his alcohol treatment in 2000 to the security clearance application he submitted in 2001 after he initially completed it in 1998, only to find out his employer mislaid it and never submitted it to the Government for investigation. Applicant did not mitigate the alcohol and personal conduct concerns. Clearance is denied.

CASENO: 02-24372.h1

DATE: 09/24/2004

DATE: September 24, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24372

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esq., Department Counsel

FOR APPLICANT

Cathy Steele, Esq.

SYNOPSIS

Applicant has a 1994 driving while intoxicated conviction, entered a voluntary four-day treatment program in 2000 for alcohol dependence, and continues to consume alcohol while attending multiple weekly Alcoholics Anonymous meetings. Applicant made an addition about his alcohol treatment in 2000 to the security clearance application he submitted in 2001 after he initially completed it in 1998, only to find out his employer mislaid it and never submitted it to the Government for investigation. Applicant did not mitigate the alcohol and personal conduct concerns. Clearance is denied.

STATEMENT OF THE CASE

On October 31, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under the personnel security Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn Answer, dated December 18, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me November 12, 2003.

A Notice of Hearing was issued March 23, 2004, setting the hearing for April 14, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits which were admitted into evidence. Applicant appeared and testified. Applicant submitted four exhibits. I received the transcript (Tr.) of the hearing April 23, 2004.

FINDINGS OF FACT

Applicant admitted all allegations in the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 54 years old, married with two adult children, and an engineer with a defense contractor for the past 32 years. Applicant has managed up to 50 employees on various projects during the term of his employment, and has always complied with security requirements. (Tr. 13, 40, 41, 45, 64 to 70; Exhibit 1)

When his mother died, and then his father five years later, Applicant began to drink alcohol again after an 11 year sobriety period (1983 to 1994). During that period, Applicant was arrested in November 1994 for driving in an intoxicated condition. The charge was later amended to driving with excessive blood alcohol content (.19%), Applicant then pled guilty, and paid a fine and court costs totaling \$412. Applicant disclosed this arrest on his security clearance application (SCA) that he completed in 1998, only later to be lost by his company's security office until 2001 when it was resubmitted to the government and dated for February 2001. Applicant did not make any changes on his resubmitted SCA in February 2001, including not amending it to add the information about his voluntary treatment for alcohol use in September 2000 for four days. Applicant was afraid of the repercussions of disclosure on him and his job, so he chose not to disclose the treatment in response to Question 30 on the SCA until November 2001 when he was interviewed by the Government investigator and voluntarily disclosed it at that time. Applicant checked himself into a hospital for four days of alcohol treatment, during which the physician diagnosed Applicant with alcohol dependence with chronic abuse of alcohol features. Applicant continued to see a counselor after his treatment. Applicant was concerned about adverse inferences from his employer or risk to his security clearance. (Tr. 18, 19 to 21, 36 to 39, 54, 55, 60, 61, 78 to 80, 83; Exhibits 1 to 4)

Applicant had 11 years of sobriety from 1983 to 1994. He has no other involvement with law enforcement officials than the 1994 arrest. Applicant's recent longest period of sobriety is six months. Applicant is a member of Alcoholics Anonymous (AA) and has been for 23 years. Applicant has been chairperson of his AA group at times. Applicant attends four AA meetings per week, arriving home around 8 p.m., after which he will have dinner and several martinis totaling about 16 ounces of gin over a three hour period, until he goes to bed. Applicant does not drink and drive, and does not think he is impaired by the alcohol when he is having dinner or at his bridge games. Applicant has never had any problem at work from any consumption of alcohol. Applicant considers himself an alcoholic, because he has a craving for alcohol but at a lower level than for other men with whom he has met in AA, but his reading and experience in AA informs him that his metabolic consumption of the alcohol is different from that of other men and his will power allows him to stop drinking for long periods of time. Applicant recognizes his condition, but finds himself unique and able to control his situation. He does want to quit drinking and continuously tries to do so. He also drinks at his twice-monthly bridge games with long-time friends, but those alcoholic drinks are usually three beers and alternately a mixed drink or two. Applicant receives continuing support from his AA sponsors and other men in his AA groups.

(Tr. 15, 18, 24 to 33, 46, 48 to 53, 58, 59, 81, 87, 93)

Applicant managers and peers think well of Applicant's work performance. He has had many responsible engineering and management positions during the past 32 years of employment. Applicant submitted three annual evaluations of his work performance. Applicant has never been impaired or impeded in his work performance by his alcohol consumption. (Tr. 72 to 77; Exhibits A to D)

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. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline G - Alcohol Consumption

The Concern: 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.
E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work, such as driving while under the influence. E2.A7.1.2.1.
- (3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence. E2.A7.1.2.3
- (5) Habitual consumption of alcohol to the point of impaired judgment. E2.A7.1.2.5.

Conditions that could mitigate security concerns include:

- (2) The problem occurred a number of years ago and there is no indication of a current problem. E2.A7.1.2.1.

Guideline E - Personal Conduct:

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

(B) Conditions that could raise a security concern and may be disqualifying include: E2.A5.1.2.

- (2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2.

(C) Conditions that could mitigate security concerns include:

(2) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. E2.A5.1.3.2.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. I reached conclusions which have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Addressing the alcohol involvement under Guideline G, the Government has well established its case against Applicant. Applicant had a DUI incident in 1994. Disqualifying Condition (DC) 1 applies. Furthermore, Applicant has a diagnosis by a credentialed medical professional (physician) of alcohol abuse, so that DC 3 applies. Applicant's long and continued history of drinking alcohol to intoxicating levels, including his current consumption and belief that he has control over his alcohol problem makes DC5 applicable. Applicant continues to drink alcohol after he participated in the 2000 alcohol rehabilitation program, and after he had a diagnosis of alcohol abuse. He continued to drink after he admitted to himself he was an alcoholic, and admitted the same at the hearing. The consumption of 16 ounces of alcohol, a pint, each evening, is a significant quantity, and DC 5 applies. Couple this fact with Applicant's admitted craving for alcohol is evidence of a problem with alcohol that has not been alleviated. Furthermore, Applicant does not have 12 months of sobriety since his diagnosis of alcohol dependence with chronic abuse in 2000.

I conclude Mitigating Condition (MC) 3 applies to Applicant only to his DUI arrest. Applicant's DUI arrest was ten years ago, and has not been repeated. However, Applicant continues to consume alcohol, yet he attends at least three and sometimes four weekly AA meetings. He saw a counselor after his treatment in 2000. Yet Applicant admitted to his craving for alcohol and the consumption of a pint of alcohol every evening is a serious problem. The dichotomy of attending AA three times per week and continuing to drink is unique because one of the goals of AA to get its members to acknowledge the power of alcohol over them and get the members away from alcohol. Applicant tries to blend AA and alcohol, and his self-diagnosis and justification is not credible or persuasive. Accordingly, I conclude against Applicant on Guideline G.

Considering Paragraph 2 and Guideline E, I conclude the Government established its case. Applicant did not disclose his 2000 voluntary alcohol treatment program on his 1998 SCA because it had not occurred yet. When his employer realized his SCA was lost, they reprinted it and asked him to resign it. He did resign it in 2001, but did not update it with the treatment information, as he should have done. Applicant admitted he did not disclose the information upon the resigning of the SCA in February 2001. Therefore, DC 2 applies.

MC 2 applies to these facts. Applicant disclosed his 1994 DUI arrest, so the government was on notice there was an alcohol problem in Applicant's background. Applicant disclosed voluntarily the one omission from his SCA when the government investigator was following the routine procedure of going through the SCA question by question to verify the contents and obtain updated information. Applicant was more concerned about his co-workers not knowing of his voluntary alcohol treatment than trying to hide it from the government because he had already disclosed the DUI arrest. The omission of the treatment was in 2001 was not recent. Applicant has a 32 year history at his employer of adherence to security standards. After considering all the evidence and applying the appropriate conditions from the Directive, I conclude for Applicant on Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2 Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

DECISION

In light of all the circumstances and facts 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. Clearance is denied.

Philip S. Howe

Administrative Judge