

KEYWORD: Personal Conduct

DIGEST: Applicant was arrested for driving under the influence of alcohol. He admitted his arrest in both his security clearance application and in a signed, sworn statement to a Defense Security Service agent. But in the statement, he deliberately provided false information by asserting he quit consuming alcoholic beverages after the arrest. Clearance is denied.

CASE NO: 02-25750.h1

DATE: 06/08/2004

DATE: June 8, 2004

In re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25750

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT*Pro Se***SYNOPSIS**

Applicant was arrested for driving under the influence of alcohol. He admitted his arrest in both his security clearance application and in a signed, sworn statement to a Defense Security Service agent. But in the statement, he deliberately provided false information by asserting he quit consuming alcoholic beverages after the arrest. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 14 August 2003, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 25 September 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge on 16 January 2004 but was transferred to me 3 February 2004 because of a change in venue. On 24 March 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 5 April 2004.

FINDINGS OF FACT

Applicant is a 24-year-old electronics technician for a defense contractor. Ex. 1 at 1, 2; Tr. 12. In March 2001, a highway patrol officer received a report from his dispatcher that a vehicle had been reported weaving on the highway

near his location. The officer pulled out and followed a vehicle matching the description provided by the dispatcher. Almost immediately, the vehicle exited the highway and pulled into a gas station. The officer followed and pulled in behind the vehicle as Applicant got out to pump gas. The officer put on his flashing lights, got out of the vehicle and approached Applicant. Ex. 3 at 1, 2.

The officer smelled the odor of alcoholic beverages coming from Applicant. Applicant's eyes were watery and red and his face was flushed. The officer advised Applicant he was being stopped for impaired driving and asked him if he had been drinking. Applicant initially denied it, but later admitted drinking two beers. Applicant failed to properly perform several field sobriety tests and the officer took him into custody. Applicant was taken to the county jail, where he agreed to take a breath test for alcohol. Both tests showed Applicant's blood-alcohol level was significantly over the level at which the state presumed a driver was impaired.⁽²⁾ *Id.* at 2. Applicant was charged with driving under the influence of alcohol (DUI), but the charge was dismissed in August 2001 after the evidence was suppressed because the officer did not have sufficient evidence of criminal activity. *Id.* at 3; Ex. 2 at 3. Nevertheless, Applicant attended and completed a state approved DUI course in November 2001. Ex. 4.

On 19 November 2001, Applicant completed his security clearance application (SCA). Question 24 asked if Applicant had ever been charged with or convicted of any alcohol-related offense. Applicant answered "yes" and listed the dismissed DUI charge. Ex. 1 at 7.

On 4 June 2002, Applicant provided a signed, sworn statement to an agent of the Defense Security Service (DSS) concerning his 2001 DUI arrest. In it, Applicant asserted that, since his arrest for DUI, he had not consumed any alcoholic beverages.

I decided to stop drinking alcohol because I did not want it to interfere with my personal or professional life. I never felt that I had a problem with alcohol at any time. I just decided that I was fortunate enough to have gotten a DUI charge dismissed and never wanted to put myself in that position again. I have not thought about future consumption at this time. I am just taking my life day by day right now.

Ex. 2 at 2. Applicant knew this statement was untrue because he had continued to drink alcoholic beverages after this 2001 arrest. Answer; Tr. 11. He claims he falsified the statement because he was "concerned about [his] job and thought that [he] would lose [his] job right then. [He] was also concerned about hurting [his] family." Answer.

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 judgment, 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 predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged Applicant drove his car while under the influence of alcohol (¶1.a.) and deliberately falsified material facts in the signed, sworn statement he submitted to the DSS agent by claiming he had not consumed alcoholic beverages since his DUI arrest (¶ 1.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant's DUI is evidence of questionable judgment and may be disqualifying as reliable, unfavorable

information. DC E2.A5.1.2.1. Applicant's statement to the DSS agent that he had stopped drinking alcoholic beverages was a deliberate false statement concerning relevant and material matters to an investigator in connection with a personnel security determination. DC E2.A5.1.2.3. It was also the concealment of information that increased his vulnerability to coercion. DC E2.A5.1.2.4.

Applicant was 21 years old at the time of the DUI and just short of his 23rd birthday when he deliberately falsified his statement. I considered MC E2.A5.1.3.2.-the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily-but find it inapplicable to Applicant's case. The falsification was not an isolated incident-he also lied to the officer at the time of his arrest concerning the extent of his drinking that evening-and there is no evidence Applicant provided the correct information voluntarily. By admitting in his answer and at the hearing his DUI and his deliberate falsification of the statement, Applicant took positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. MC E2.A5.1.3.5. After carefully weighing all of the evidence and the disqualifying and mitigating conditions, I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: 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 continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Applicant's breath tests showed a blood-alcohol content of .127 and .136. The state standard is .08.