

KEYWORD: Personal Conduct; Alcohol; Drugs; Criminal Conduct

DIGEST: Between 1995 and 1998, Applicant was arrested six times for drug- and alcohol-related offenses. His adverse alcohol-related conduct and his involvement with illegal drugs are mitigated by the passage of time; however, Applicant deliberately omitted his use of marijuana between 1995 and 1997, as well as all but one of his arrests from a recent security clearance application (SF-86), because he was concerned about the adverse consequences such information might have on his ability to get a clearance. Clearance is denied.

CASENO: 02-26253.h1

DATE: 08/26/2004

DATE: August 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26253

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1995 and 1998, Applicant was arrested six times for drug- and alcohol-related offenses. His adverse alcohol-related conduct and his involvement with illegal drugs are mitigated by the passage of time; however, Applicant deliberately omitted his use of marijuana between 1995 and 1997, as well as all but one of his arrests from a recent security clearance application (SF-86), because he was concerned about the adverse consequences such information might have on his ability to get a clearance. Clearance is denied.

STATEMENT OF THE CASE

On August 11, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his criminal and personal conduct, alcohol consumption, and involvement with illegal drugs. The SOR informed him DOHA adjudicators could not make the preliminary affirmative finding, based on available information, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On October 10, 2003, Applicant responded to the SOR (Answer), admitted all of the allegations therein, and requested a determination without a hearing. On January 16, 2004, DOHA Department Counsel submitted a file of relevant materials (FORM) with 11 exhibits (Items 1 - 11) attached in support of the government's preliminary decision. A copy of the FORM was sent to Applicant on July 15, 2004, and the Applicant timely submitted an undated response to which Department Counsel did not object. The case was assigned to me on August 11, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 27-year-old senior network engineer employed by a defense contractor full-time since March 2002. This appears to be his first application for a security clearance, but he has worked in the information technology field, primarily as a network engineer, continuously since at least October 1995. [\(2\)](#)

Applicant began drinking during his senior year in high school. He drank every weekend, usually to intoxication, after consuming between seven and ten beers. After his arrest for driving while intoxicated (DWI), discussed below, he abstained from alcohol altogether until October 1999. As of April 2002, his drinking consisted of going to happy hour with co-workers twice monthly and consuming three or four beers each time. [\(3\)](#)

On October 9, 1995, Applicant was cited for illegal possession of alcohol, a misdemeanor. He was 18 at the time, but the legal age for drinking in his state was 21. Applicant appeared in court, was found or pled guilty, and paid a fine. [\(4\)](#)

On March 12, 1996, Applicant was cited for reckless driving, a misdemeanor; specifically, he was driving in excess of 80 miles per hour. In court, he was convicted, his driver's license was suspended for 30 days, and he was fined \$1,500, all but \$200 of which was suspended. [\(5\)](#)

On December 12, 1996, Applicant was arrested for driving while intoxicated (DWI). He was convicted in March 1997, given a 30-day suspended jail sentence, assessed a \$3,000 fine, and ordered to attend an alcohol safety awareness program (ASAP). His driver's license was suspended for 12 months. [\(6\)](#)

In April 1997, Applicant was charged with simple possession of marijuana. Applicant was holding almost one-half ounce of marijuana for a friend. Two months later, Applicant was also charged with felony possession of a controlled substance after the marijuana confiscated from him tested positive for phencyclidine (PCP). When Applicant appeared in court in November 1997, the earlier charge of simple possession was *nolle prosequi* and entry of judgment withheld as to the felony possession charge. Applicant was placed on one year supervised probation, which included random drug screening. He was also ordered to enroll in intensive outpatient alcohol and drug services (ADS) treatment from April 1998 through August 1998. Due to a DWI arrest in August 1998 (discussed below), Applicant was re-enrolled in the ADS program from October 1998 through July 1999. During this time, he was also ordered to attend ASAP sessions and his probation was twice extended to allow him to complete these programs. Applicant was released from probation in December 1999. [\(7\)](#)

On August 14, 1997, just before his 20th birthday, Applicant was charged with driving on a suspended or revoked driver's license. His license had been suspended for 12 months as part of his sentence for the aforementioned DWI conviction in March 1997. He was jailed for two days, assessed a \$100 fine, and his driver's license was suspended for an additional 90 days. [\(8\)](#)

On August 8, 1998, Applicant was arrested for DWI while still on probation for his June 1997 felony drug possession arrest. (He had been drinking at the house of the same friend who had given him the marijuana he was convicted of possessing.) Applicant was convicted, given a 30-day suspended jail sentence, fined \$600, ordered to attend ASAP, and his driver's license was suspended for 12 months. [\(9\)](#)

Applicant used marijuana between 15 and 20 times from 1995 until his arrest in June 1997, when he was 19 years old. He no longer associates with his friends who use drugs and does not intend to use marijuana in the future. [\(10\)](#)

On March 18, 2002, Applicant submitted an SF-86. In response to question 24 regarding alcohol- or drug-related charges or convictions, he disclosed his 1998 DWI arrest and conviction. However, he omitted his 1995 arrest for illegal possession of alcohol, his 1996 DWI arrest, and his 1997 drug possession arrest. [\(11\)](#)

Applicant also answered "no" to question 21 regarding felony arrests, but it is clear from his own statements in the pre-sentencing reports that he knew the earlier simple possession charge was being changed to a more serious charge. [\(12\)](#) Applicant also answered "no" to question 27 regarding illegal drug use. The question covers any use of illegal drugs, including marijuana, during the preceding seven years; in this case, to March 18, 1995. Yet Applicant used marijuana between 1995 and 1997. [\(13\)](#)

In response to question 26, which addresses arrests, charges or convictions not listed in other SF-86 questions concerning criminal conduct, Applicant answered "no." However, he should have listed his 1996 reckless driving arrest and his 1997 arrest for driving on a suspended license. Applicant also failed to list, in response to question 30 regarding alcohol-related treatment or counseling. He claims he did not list his ADS treatment because it was delivered on an outpatient basis. [\(14\)](#)

On April 18, 2002, Applicant told a Defense Security Service (DSS) investigator he did not list his felony drug conviction on his SF-86 on advice of counsel. He had been told that if he stayed out of trouble during his one-year probation, the charges would be dismissed and the record of his arrest would be expunged. However, because Applicant was convicted of DWI during that year, his probation was twice extended, each time for six months. The charges were dismissed in December 1999, but there is no mention in the court records of any action to expunge or otherwise seal the record. In the same interview, Applicant also told the investigator he did not disclose his marijuana use because he was

concerned such a disclosure might prevent him from getting his clearance, and he "didn't want [his marijuana] use to uncover that charge of the marijuana and PCP possession."⁽¹⁵⁾

In the pre-sentencing report for his 1997 drug arrest, Applicant's mother described him as a good person and conscientious worker who nonetheless had trouble maturing.⁽¹⁶⁾ Applicant recently married his girlfriend of five years. They are trying to start a family and have bought a house. They both have full-time careers (she is a teacher), and Applicant ended his association with his high school friends with whom he used drugs and alcohol in about 1998.⁽¹⁷⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽¹⁸⁾ 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 SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline E (personal conduct), Guideline G (alcohol consumption), Guideline H (illegal drug involvement), 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⁽¹⁹⁾ 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 on the issue of whether, despite the government's information, it is clearly consistent with the national interest to grant or continue Applicant's access.⁽²⁰⁾

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.⁽²¹⁾

CONCLUSIONS

Excessive alcohol consumption is a security concern (Guideline G) because it 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.⁽²²⁾ The government has established a *prima facie* case for disqualification under this guideline. Between 1995 and 1998, Applicant was convicted of three alcohol-related crimes. (SOR 2.a) There is also evidence that he abused alcohol for a period of about four years starting when he was a senior in high school. After his two DWI arrests, he was ordered to attend ASAP sessions, and, in connection with his 1997 drug possession arrest, he was ordered to attend alcohol and drug outpatient counseling, which was extended for an additional 10 months after his 1998 DWI conviction. (SOR 2.b and 2.c) Guideline G disqualifying condition (DC) 1⁽²³⁾ and DC 5⁽²⁴⁾ apply here.

By contrast, Applicant abstained from alcohol from about October 1998 until October 1999. Since then, the only available information indicates Applicant's drinking has moderated and there is no indication he drives after drinking. The SOR alleges he has continued to drink even after he completed the court-ordered ASAP sessions and ADS treatment. (SOR 2.d) While this is a relevant fact, because there is no evidence Applicant was diagnosed as an alcohol abuser or alcohol dependent, I do not conclude it works to disqualify Applicant. Further, there is no indication of a current problem insofar as Applicant has not experienced any adverse alcohol-related conduct or incidents in over six years. The record also contains information which indicates positive lifestyle changes in support of sobriety. Applicant has continued to work without interruption in his chosen profession, he has severed ties with former friends with whom he drank and abused drugs, and he has assumed added responsibilities of marriage and home ownership. Guideline G mitigating condition (MC) 2⁽²⁵⁾ and MC 3⁽²⁶⁾ apply here. On balance, I believe Applicant's abuse of alcohol is no longer a part of his life and, based on the absence of adverse alcohol-related conduct since 1998, that he is unlikely to repeat this conduct in the future. I find for Applicant as to the allegations contained in SOR paragraph 2.

Involvement with illegal drugs is a security concern (Guideline H) because it 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.⁽²⁷⁾ The illegality of this conduct further undermines the government's confidence that an applicant who is involved with drugs can be relied on to follow rules and procedures for safeguarding classified information. The government has established a *prima facie* case for disqualification under this guideline. Applicant used marijuana several times between 1995 and 1997 (SOR 3.a) and was convicted of possession of a controlled substance in 1997. (SOR 3.b) Guideline H DC 1⁽²⁸⁾ and DC 2⁽²⁹⁾ apply here.

However, there is no indication Applicant has used marijuana or any other illegal substance since 1997. Applicant was 20 years old at the time and was associating with at least one friend with whom he used drugs and alcohol. On two occasions, his association with one friend directly resulted in Applicant's arrest, once for DWI (SOR 1.a) and once for drug possession (SOR 1.c and 1.d). Applicant no longer runs in these circles and is unlikely to become involved with drugs in the future. Guideline H MC 1⁽³⁰⁾ and MC 3⁽³¹⁾ apply here. The same change of circumstances that make it unlikely he will be involved with illegal drugs again also support a conclusion Applicant will not abuse alcohol or be involved in alcohol-related incidents in the future. I find for Applicant as to the allegations in SOR paragraph 3.

Criminal conduct is a security concern (Guideline J) because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. A person who is willing to disregard laws intended to protect society may also disregard rules and procedures intended to protect classified information. The government has established a *prima facie* case for disqualification under this guideline. Between 1995 and 1998, Applicant was twice convicted of DWI (SOR 1.a and 1.e). He was also charged with misdemeanor possession of marijuana (SOR 1.d), a charge that was later changed to felony possession of a controlled substance, for which he was placed on probation for over two years. (SOR 1.c). Applicant was also convicted of reckless driving (SOR 1.f), driving on a suspended driver's license (SOR 1.b), and illegal possession of alcohol as a minor (SOR 1.g). These facts support application of Guideline J DC 1⁽³²⁾ and DC 2.⁽³³⁾

In weighing availability of the listed Guideline J mitigating conditions, MC 1⁽³⁴⁾ and MC 6⁽³⁵⁾ might apply. Applicant's last arrest was over six years ago and his probation ended in December 1999. He has also made significant changes in his life as noted above. While he may be credited with leaving behind his drug and alcohol problems, as discussed below under Guideline E, Applicant recently, deliberately, and repeatedly falsified his SF-86. He also made a false statement to a DSS agent during a subject interview. This conduct is a violation of federal law under 18 U.S.C. 1001, which makes it a felony to make a false statement or representation to a U.S. agency concerning a matter within its jurisdiction. When Applicant signed his SF-86, an advisement about the applicability of this statute was printed clearly just above the signature line. The written statement he gave to DSS (Item 6) also contained a similar advisement. Applicant's conduct in this regard negates application of either MC 1 or MC 2 and severely undermines the government's confidence in his judgment and reliability relative to abiding by rules for safeguarding classified information. I find against the Applicant as to the allegations in SOR paragraph 1.

Personal conduct (Guideline E) 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.⁽³⁶⁾ Here, the government is concerned with Applicant's allegedly deliberate falsification of a security clearance application and has established a *prima facie* case for disqualification under this guideline. In his Answer, Applicant admits he falsified his answers to SF-86 questions regarding his criminal conduct (SOR 4.b, 4.c, and 4.d), his drug use (SOR 4.a), and alcohol-related treatment and counseling (SOR 4.e). He also told a DSS agent he did not disclose his drug use because he was afraid it would lead to discovery of his 1997 drug possession arrest and would hurt his chances of getting a clearance. Also significant, although not alleged, is Applicant's statement to DSS that he did not get into trouble while on probation between from November 1997 through at least November 1998, when the record clearly shows he was arrested for DWI in August 1998. The government has a compelling interest in ensuring applicants for clearance can be relied on to be candid in responding to inquiries about their background, even if it means disclosing information that may be adverse to their personal interests. The facts here support application of Guideline E DC 2⁽³⁷⁾ and DC 3.⁽³⁸⁾

By contrast, Applicant's falsifications cannot be mitigated on these facts. They are recent, multiple, and there was no effort made to correct them. If anything, Applicant attempted to minimize his criminal conduct by lying about his conduct while on probation. I find against the Applicant as to the allegations in SOR paragraph 4.

These facts raise reasonable doubts 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. While Applicant should be lauded for leaving his drug and alcohol problems behind and for the changes he has made in his life, his ongoing criminal conduct and lack of candor prolong the government's concerns about his judgment and reliability. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude the record evidence weighs in favor of the government's decision to deny Applicant access to classified information.

FORMAL FINDINGS

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

Paragraph 1, Criminal Conduct (Guideline J): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Paragraph 2, Alcohol Consumption (Guideline G): 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

Paragraph 3, Drug Involvement (Guideline H): FOR THE APPLICANT

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: For the Applicant

Paragraph 4, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 4.a: Against the Applicant

Subparagraph 4.b: Against the Applicant

Subparagraph 4.c: Against the Applicant

Subparagraph 4.d: Against the Applicant

Subparagraph 4.e: Against the Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM, Item 4.
3. FORM, Item 5.
4. FORM, Items 3, 8, and 10 (Pre-sentence Report, page 4).
5. Id.
6. Id.
7. FORM, Items 3, 6, 9, 10, and 11.
8. FORM, Items 3 and 10.
9. FORM, Items 3, 4, 5, and 11.
10. FORM, Items 3, 6 and 10.
11. FORM, Items 3 and 4.
12. FORM, Items 3, 4, and 10.
13. FORM, Items 3, 4, 6, and 10.
14. FORM, Items 3, 4, and 6.
15. FORM, Item 6.
16. FORM, Item 10.
17. FORM, Items 3 and 6; Applicant's Response to FORM.
18. Directive, Enclosure 2.
19. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
20. *See Egan*, 484 U.S. at 528, 531.
21. *See Egan*; Directive E2.2.2.
22. Directive, E2.A7.1.1.
23. 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;
24. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
25. Directive, E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;
26. Directive, E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;
27. Directive, E2.A8.1.1.1.

28. Directive, E2.A8.1.2.1. Any drug abuse...;
29. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
30. Directive, E2.A8.1.3.1. The drug involvement was not recent;
31. Directive, E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;
32. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
33. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
34. Directive, E2.A10.1.3.1. The criminal behavior was not recent;
35. Directive, E2.A10.1.3.6. There is clear evidence of successful rehabilitation.
36. Directive, E2.A5.1.1.
37. 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;
38. 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;