

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant has a history of drinking to the point of intoxication that continued until at least the end of May 2005. He also deliberately omitted relevant and material information from his security clearance application about his 1992 arrest for possession of marijuana. Clearance is denied.

CASENO: 03-19273.h1

DATE: 07/15/2005

DATE: July 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19273

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of drinking to the point of intoxication that continued until at least the end of May 2005. He also deliberately omitted relevant and material information from his security clearance application about his 1992 arrest for possession of marijuana. 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 22 November 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 7 December 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2005. On 21 June 2005, 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 29 June 2005.

### **FINDINGS OF FACT**

Applicant is a 32-year-old senior engineering analyst for a defense contractor. He has worked for his present employer for nine years. Applicant has an excellent record of performance and is deemed by his supervisors to be a loyal and trustworthy employee.

Applicant started using illegal drugs in 1988. Ex. 3 at 6. In August 1992, Applicant was stopped for speeding. He was arrested and charged with possession of marijuana, under two ounces, after the officer found three marijuana cigarettes on his person. He was found guilty and paid a fine of \$500. Applicant was only 19 years old at the time of his arrest. He was scared and he claims it had quite an impact on him. Tr. 40-41. Nevertheless, he continued to use illegal drugs,

including marijuana, cocaine, and methamphetamine until 1994. Ex. 3 at 6-7.

In September 1994, Applicant accepted his brother's invitation to move to another city to get away from his drug using friends. Applicant last used illegal drugs in 1994.

Applicant began drinking alcohol while he was in high school-his father is an alcoholic who has been arrested six times for driving under the influence of alcoholic beverages (DUI). Applicant has consumed alcohol to the point of intoxication for many years. Applicant has described himself as an alcoholic and admitted having experienced blackouts and gray outs (unable to recall all or part of his actions while drinking). Ex. 3 at 5. In November 1994, after he moved in with his brother, Applicant was arrested for speeding and DUI. His blood alcohol level was .18%, in excess of the state standard of .10%. Applicant pled guilty to the lesser offense of driving while ability impaired (DWAI). He was sentenced to one year of probation, 24 hours of community serviced, a fine, and was ordered to attend an alcohol education awareness program.

Applicant was arrested in December 2002 and charged with DUI and speeding. His blood alcohol level was .22%. Tr. 50. Upon the advice of his attorney, Applicant attended a Level 2 alcohol education awareness program and performed 75 hours of community service before his case went to court.

Applicant continues to drink, although he denies that he has driven while intoxicated since his 2002 arrest. He has been intoxicated approximately eight times so far in 2005-the last time being Memorial Day. Tr. 55-56

Applicant completed a security clearance application (SCA) on 17 January 2001 in which he certified that his statements were "true, complete, and correct" to the best of his knowledge and belief, and acknowledged that a knowing and willful false statement could be punished under 18 U.S.C. § 1001. Ex. 1 at 8. Question 24 asked if Applicant had ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered "yes," and listed his 1994 arrest for DWAI. He did not list his 1992 arrest and conviction for possession of marijuana. He admitted intentionally omitting the information because he did not want his security officer to see the information. Ex. 3 at 8.

## **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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline G-Alcohol Consumption**

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication and blackouts from 1990-2003 (¶ 1.a), pled guilty to DWAI after a November 1994 arrest (¶ 1.b), and was arrested in December 2002 and charged with DUI (¶ 1.c). Applicant denied the allegation in ¶ 1.a, but admitted the others. 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. Directive ¶ E2.A7.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline G. Applicant was involved in alcohol-related incidents away from work (DC E2.A7.1.2.1) and has a history of drinking to the point of impairment-blackouts (DC E2.A7.1.2.5). He admits a lengthy history of intoxication and continues to drink to the point of intoxication, as recently as 22 days before the hearing. Under the circumstances, Applicant failed to establish the applicability of any mitigating conditions to his case. I find against Applicant on ¶ 1.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified his SCA by failing to disclose he was charged with possession of marijuana in 1992 (¶ 2.a). In his answer, Applicant admitted the arrest, but denied he deliberately falsified his SCA. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions constitute substantial evidence of potentially disqualifying conditions under Guideline E. Applicant deliberately falsified material facts on his SCA by failing to list his 1992 arrest for possession of marijuana. DC E2.A5.1.2.2. An applicant's use of drugs is relevant and material to a determination of his security worthiness. Although Applicant denied in his answer that he deliberately falsified his SCA, I am not persuaded. He admitted that his arrest scared him and had a large impact on him during the hearing and he had previously admitted he purposely omitted the information so his security officer would not see it. Ex. 3 at 8. None of the mitigating conditions listed under Guideline E apply. I find against Applicant on ¶ 2.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

## DECISION

In light of all of the circumstances 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. As required by 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 (Directive).