

KEYWORD: Alcohol; Drugs; Personal Conduct

DIGEST: Applicant failed to mitigate allegations of drug and alcohol use including several arrests for alcohol related driving offenses, and failure to report an alcohol education program on an assessment form even though he has changed his lifestyle during the past year. An insufficient period of time has passed since this change to justify the grant of a security clearance. Clearance is denied.

CASENO: 03-20730.h1

DATE: 07/20/2005

DATE: July 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20730

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate allegations of drug and alcohol use including several arrests for alcohol related driving offenses, and failure to report an alcohol education program on an assessment form even though he has changed his lifestyle during the past year. An insufficient period of time has passed since this change to justify the grant of a security clearance. Clearance is denied.

**STATEMENT OF CASE**

On August 24, 2004, 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 September 3, 2004, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 25, 2005. A notice of hearing was issued on May 27, 2005, and a hearing was held on June 14, 2005. Twelve government exhibits were admitted into evidence. The Applicant introduced 25 exhibits, testified, and called five witnesses who testified on his behalf. The transcript was received on June 22, 2005.

## FINDINGS OF FACT

Applicant admitted with explanations all of the specific SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor working as a security analyst. He first held a security clearance in 1989. He has worked for his employer since 2001 and worked for other government contractors requiring a security clearance since 1995.

Applicant applied for security clearances in 1988 and in 1992. At the time of the latter application it was known that he drank to excess and he agreed not to drink or use drugs. He was granted a clearance but the pledge was broken by his own admission.

Applicant has had a long history of drug and alcohol use and attendant problems arising from that use. These consisted of arrests for alcohol related driving offenses in 1985, 1991 (2), 1999, 2001, and 2003. Several of the arrests resulted in fines, some were not tried and dismissed, and one in 1991 resulted in a sentence of ten days in jail. As late as 2003, the date of his last arrest, Applicant regarded drinking six to twelve beers over a five or six hour period as moderate.

Applicant used marijuana with varying frequency, from 1988 until 2001. He used cocaine and crack cocaine, with varying frequency, from 1995 until early 2001. This was a period in which he held a security clearance. He also used other illegal drugs including LSD, PCP, mushrooms, and opium one or more times between 1992 and 1999. During part of that time he held a security clearance working for a defense contractor. He attended counseling for drug use for two months in 1991 and 1992 but did not report it on a court assessment form for fear that he would be required to attend additional counseling.

Since 2003 Applicant has reduced the amount of alcohol he drinks and now does not drink at all. He does not use drugs and has not for four years. He first realized the full extent of his misconduct and the problems it has created when he received the SOR almost a year ago in August, 2004. He attends Alcoholics Anonymous (AA) and is in a stable relationship with a steady girlfriend who is also in the AA program. Together they are both on the road to recovery and present a credible case for his eventual recovery and her continued support for him.

In September, 2004, Applicant began treatment with a licensed clinical social worker who submitted an evaluation in February, 2005, concluding he had achieved his goals of maintaining sobriety, increasing self-esteem and social skills, and developing a plan to achieve sobriety. Part of this plan is to continue with AA for another year. She terminated his treatment and concluded that his prognosis was very good (Exhibit A.1).

Applicant is well regarded for his work by his supervisor and the customers of his employer who testified and submitted statements for him (Exhs. A.3-8). He is regarded as intelligent, highly motivated and reliable and has received numerous awards (Exhs. A 15 and 16). He performs at a high level of competency (Exhs. A 9-18) and makes significant contributions to the work of his employer (Exhs. A.20-25). He is regarded as sensitive to the security needs of his company. He volunteers for extra duties including mentoring new employees and advising colleagues. He is active in an indoor sports league that provides a stable environment and support for himself and his girlfriend.

## 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 it is clearly consistent with the national interest to grant or continue a security 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

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.1.) Possible mitigating factors include the fact that several events occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.) While there have been changes in behavior there has been insufficient period of time since sobriety to justify the application of the mitigating factor.

The government has cited Disqualifying Condition (DC) 1 under Guideline H concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug . . . ." (E2.A8.1.1.3) Possible Mitigating Conditions that might be applicable are that the drug involvement was not recent. (E2.A8.1.3.1.), the drug involvement was an isolated or aberrational event (E2.A8.1.3.2), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) The Applicant has indicated a strong intent not to use drugs in the future and has not used drugs for four years. Ordinarily, this would justify the application of the mitigating factor based on the passage of time but the fact that the use occurred while holding a security clearance leads me to conclude that it should not be applied until a greater period of time has elapsed without use of illegal drugs and alcohol.

Under Guideline E (Personal Conduct) of the Directive, questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant has been involved in a pattern of rule violations (E2.A5.1.2.5.) and has failed to give complete and accurate information in 2001 on an assessment form required by a court to avoid further counseling. (E2.A5.1.2.2.) No mitigating factors are applicable.

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 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 is an

impressive person of talent who has risen in his company to a responsible position. However, his conduct in the extensive and recent use of alcohol leads to the conclusion that it is premature to grant a security clearance. While he expresses sincere and credible regret for his conduct and the omissions, there has not been sufficient time since his change of lifestyle to justify the grant of a security clearance. The fact that he made a similar promise in 1992 that was not kept, and that the gravity of his problem only became apparent to him less than a year ago further supports a decision to deny him a clearance at this time.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is not clearly consistent with the national interest to grant a security clearance to him. It is premature to grant Applicant a clearance at this time.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2. Guideline H AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g: Against Applicant

Paragraph 3. Guideline E AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

