

KEYWORD: Alcohol; Drugs

DIGEST: This 25-year-old employee of a defense contractor has a history of drug involvement going back to 1995. He also has a history of sometimes excessive alcohol consumption that began in 1998 and has resulted in three alcohol-related arrests. The record does not establish that the two problems are safely behind him. Mitigation has not been shown. Clearance is denied.

CASENO: 03-20995.h1

DATE: 06/01/2005

DATE: June 1, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20995

DECISION OF ADMINISTRATIVE JUDGE

BARRY M SAX

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire,
Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 25-year-old employee of a defense contractor has a history of drug involvement going back to 1995. He also has a history of sometimes excessive alcohol consumption that began in 1998 and has resulted in three alcohol-related arrests. Applicant has not established that the two problems are safely behind him. litigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On May 10, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e, without a hearing. A File of Relevant Materials (FORM) was issued on October 18, 2004, in which Applicant was advised to file any response within 30 days of receipt of the FORM. Any such response was due by December 3, 2004, but no new submission was received by DOHA. The matter was assigned to me on December 17, 2004.

FINDINGS OF FACT

Applicant is a 25-year-old employee of a defense contractor. The SOR contains five allegations under Guideline G (Alcohol Consumption), and six allegations under Guideline H (Drug Involvement). Applicant admits allegations 1.c. - 1.f., and 2.a- 2.f. He denies the factual accuracy of 1.a. and 1.b. The admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence found in the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline G (Alcohol Consumption)

1.a. - Applicant has a history of alcohol consumption, at times to excess, from approximately 1996 to 2003. He continues to consume alcohol (Items 3, 5, 6, 6, 7, 8, and 9).

1.b. - As of August 13, 2003, Applicant drank to the point of intoxication at least twice monthly. He continues to consume alcohol.

1.c. - Applicant was arrested on November 4, 2001 in State A, and charged with Disorderly Conduct. He was intoxicated at the time (Items 6 and 7).

1.d. - Applicant was arrested on August 19, 2000 in State B and charged with Driving Under the Influence/Alcohol (DUI) (Item 6).

1.e. - Applicant was arrested on November 28, 1998 in State C and charged with Unlawful Delivery of Alcohol to a minor (Item 9).

1.f. - From about July 13, 2001 to July 15, 2001, Applicant received court-ordered counseling pursuant to an alcohol-related conviction (Item 4, at Question 30).

Guideline H (Drugs)

2.a. - Between 1995 and 2002, Applicant used marijuana on average on a weekly or monthly basis.

2.b. - Between May 1998 and December 2000, Applicant used hallucinogenic mushrooms approximately five (5) times. He purchased hallucinogenic mushrooms for his personal use.

2.c. - Between May 1998 and December 2000, Applicant used opium approximately ten (10) times. He purchased opium for his personal use.

2.d. - Between October 1999 and March 2000, Applicant misused the prescription drug, Codeine, approximately three (3) times.

2.e. - Between January 2000 and March 2000, Applicant used Ecstasy approximately ten (10) times December 2000. He purchased Ecstasy for his personal use.

2.f. - Between June 2000 and November 2000, Applicant misused a prescription drug, Adderall, approximately three (3) times.

2.g. - Between August 2000 and February 2001, Applicant used LSD approximately three (3) times.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

The concern stated under *Guideline G (Alcohol)* is that 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.

I have carefully considered Applicant's submissions in the case. The last information received from him is contained in his May 10, 2004 Response to the SOR (Item 3). As of that date, Applicant continues to consume alcohol (but not to excess since competing the security clearance application (SCA) (Item 4, and Item 5) in July 2002. I have considered Applicant's comments about the meaning of the terms "intoxication" and "excessive alcohol consumption" and conclude he has missed the point of the Government's concerns. Applicant was born in September 1979, so he is now in his mid 20s. The overall record establishes that he has consumed alcohol, to some degree since 1996, when he was about 17, to the present (meaning the closing of the record). The record also establishes that at various times during the years since 1976, the he consumed alcohol to the degree that his impaired judgment resulted in a series of three alcohol related arrests and a period of court ordered counseling that does not seem to have made a meaningful impression on him, since he continued to consume alcohol.

Two of the Guideline's stated Disqualifying Conditions (DC) are applicable:

1. - alcohol-related incidents away from work, such as driving under the influence, . . . or other criminal incidents related to alcohol use.

4. - habitual or binge consumption of alcohol to the point of impaired judgment.

None of the possible Mitigating Conditions are applicable. The incidents do show a pattern of conduct that has not been shown to have ended, the problem is still recent; and there is no evidence of positive changes in behavior supportive of sobriety.

The stated concern under *Guideline H (Drug Involvement)* is that the improper or illegal involvement with drug raises questions about an individual's willingness or ability to protect classified information. The rationale is that drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Two of the Guideline's stated Disqualifying Conditions (DC) are applicable:

1. Any drug abuse.
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

None of the possible Mitigating Conditions are applicable. The drug involvement is still considered to be recent, was not an infrequent or isolated event, and Applicant has not demonstrated an intent not use drugs in the future.

Summary

In his Response to the SOR, Applicant states that in the two years since completing the SCA, i.e., 2002 - 2004, "I have consumed alcohol in a controlled manner" (Item 3). While this is certainly a step in the right direction, his continued use of alcohol does not overcome the negative impact of his long history of alcohol (and other substance) abuse. To the degree that Applicant has stopped or curtailed his substance abuse, it clearly occurred after he completed his SCA. While this is certainly a positive step, it is also clearly a reaction to authority and not necessarily a reflection of any fundamental change in his thinking.

Under Directive 5220.6, Applicant has the ultimate burden of demonstrating his eligibility to hold a security clearance. He has not adequately mitigated the negative aspects of his past behavior under either Guideline.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline G (Alcohol Involvement) 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

Guideline H (Drug Involvement) 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

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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE