

KEYWORD: Drugs; Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant is a 52-year-old research engineer who has worked for a federal contractor since 1999. He held a secret security clearance from 2000 until it was revoked in 2003. He celebrated his 50th birthday by becoming intoxicated and using marijuana. He has a history of alcohol related criminal offenses and two drug offenses from his past. He deliberately failed to list his prior drug charges on his security clearance application and made written false or misleading statements to investigators in sworn statements. Applicant failed to mitigate the security concerns raised under Guidelines H, J, G and E. Clearance is denied.

CASENO: 03-21045.h1

DATE: 05/25/2006

DATE: May 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21045

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Lee Deschamps, Esq.

SYNOPSIS

Applicant is a 52-year-old research engineer who has worked for a federal contractor since 1999. He held a secret security clearance from 2000 until it was revoked in 2003. He celebrated his 50th birthday by becoming intoxicated and using marijuana. He has a history of alcohol related criminal offenses and two drug offenses from his past. He deliberately failed to list his prior drug charges on his security clearance application and made written false or misleading statements to investigators in sworn statements. Applicant failed to mitigate the security concerns raised under Guidelines H, J, G and E. Clearance is denied.

STATEMENT OF THE CASE

On December 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (drug involvement), Guideline G (alcohol consumption), Guideline J (criminal conduct) and Guideline E (personal conduct).

In a sworn statement, dated February 4, 2006, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted the allegations under SOR ¶¶ 1.a, 1.b, 2.a - 2.f, 3.b - 3.f, and denied with explanations ¶¶ 3.a, and 4.a - 4.c. The case was assigned to me on February 27, 2006, and the date of the hearing was delayed due to Applicant's attorney's availability. A notice of hearing was issued on April 13, 2006, scheduling the hearing for May 3, 2006. The hearing was conducted as scheduled. The government submitted nine exhibits that were marked as Government Exhibits (GE) 1-9. The exhibits were admitted into the record without objection. Applicant testified on his own behalf and had four witnesses testify on his behalf. DOHA received the hearing transcript (Tr.) on May 19, 2006.

PROCEDURAL MATTERS

Department Counsel moved to amend SOR ¶ 4.b by deleting the words "2.a." Applicant did not object and the motion was granted.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 52 years old, married for the third time, college educated, and has worked as a research engineer for a federal contractor since 1999. He held a secret security clearance from approximately 2000 until 2003, when it was revoked due to issues related to his hearing.

On July 18, 2003, Applicant used marijuana, while under the influence of alcohol. ⁽²⁾ Applicant held a secret security clearance at the time. Applicant was celebrating his 50th birthday and college students who were his friends attended a party at his house and provided the marijuana to him. He stated I was "just going along with the crowd." ⁽³⁾ He later went to a bar to continue the celebration. He admits he was intoxicated. Coworkers were also present at the party, but did not participate in the drug use. On July 23, 2005, he was directed to submit to a random drug test by his employer and tested positive for marijuana.

Applicant was arrested twice for drug involvement in the past. In 1979, he was arrested and charged with possession of hashish, a felony. He and his brother were taking a trip and his brother brought hashish. They were stopped by the police for speeding and the drugs were found. ⁽⁴⁾ Applicant claimed he only used marijuana, as his drug of choice, but because the drugs were in the car he too was charged. ⁽⁵⁾ He pled guilty and was awarded probation. If he successfully completed the probation the charge would be dismissed. He did and the charge was subsequently set aside. He was advised by his then attorney, that

"the verdict of guilty has been set aside, and the accusation (indictment) has been dismissed, thereby releasing you from all penalties and disabilities resulting from the offense of which you were convicted. However, proof of this conviction

⁽⁶⁾

my be made known to the Court should you again be convicted of any criminal offense."

Applicant interpreted this statement to mean that he did not have to list it under Question 21 on his security clearance application (SCA) requesting he provide information about whether he had ever been charged or convicted of any felony offense, regardless of whether the record had been sealed or otherwise stricken from the record, unless the conviction fell under a certain federal exemption, which it did not. (7)

Applicant was again arrested in October 1992, and charged with possession of a narcotic controlled substance. His apartment was being inspected by exterminators and they found drugs. (8) The police obtained a search warrant and confirmed the presence of the drugs. Applicant claimed at the hearing that he could not recall what kind of drugs he had in his possession. (9) When pressed, he admitted that the only drug he used was marijuana and he had been using it occasionally during this time period, perhaps every other week to every other month. (10) He admitted the marijuana was for his use. (11) He claims he did not use drugs after this last drug arrest. He was placed in a pretrial diversion program where he participated in group counseling once a week and was drug tested for 6-12 months. He successfully completed the program.

Applicant contradicted himself as to his drug use. Applicant stated at his hearing that he used drugs in college and had abstained from drug use until his 50th birthday on July 18, 2003. (12) He also stated that his last drug use prior to his birthday was 17-20 years before. (13) However, he also admitted that the drugs found in his apartment in 1992, were his and he had been using them occasionally. In a sworn statement he also stated, "I first started using marijuana when I was in college between the 1970s and early 1980's. I smoked marijuana cigarettes at parties or with friends. Occasionally, I purchased marijuana approximately six times per year and would pay around twenty dollars for half an ounce from friends." (14) He went on to say from the early 1980's until my fiftieth birthday, on 18 Jul 03, I did not use marijuana at all." (15) Applicant's testimony and sworn statements are contradictory. He denies using drugs from his college years until his 50th birthday, but was arrested in 1992 for possession and admits he used drugs during this period. His testimony was not credible. He attributes his drug use on his 50th birthday due to his intoxication and poor judgment. (16)

Applicant did not list his 1992 arrest on his SF 86 in answering Question 24 which asks if the applicant has ever been charged or convicted of any offense related to alcohol or drugs. The question specifically tells the applicant to list all charges regardless of whether the case has been sealed or otherwise stricken from the record. Applicant claimed he did not list the charge because he believed that in accordance with the state statute where he was arrested the arrest under the pretrial diversion program "shall be deemed to have never occurred." (17)

In a sworn statement made on May 4, 2001, when commenting on his three DUI arrests, Applicant went on to say "[o]ther than the above, I have not been arrested at any time, for any reason." (18) Applicant claims he thought because he had been in a diversion program that he did not have to list his prior arrests. I find Applicant was not credible. I find

based on Applicant's other inconsistencies that the affirmative statement made under oath was meant to mislead the investigator. It was not just a matter of not listing his arrest, but the bold statement that he had not been arrested at any time for any reason is a deliberate attempt to mislead.⁽¹⁹⁾ The question clearly advised Applicant that there was only one exception and he did not qualify for it.

Applicant was arrested three times for driving under the influence of alcohol. In March 1994, he was arrested and sentenced to alcohol treatment group sessions and fined. His license was also suspended, but he continued to drive anyway. He was aware he was breaking the law. In September 1994, he was arrested and charged with DUI, having a blood alcohol content over .08% or more, and a traffic offense. He was again sentenced to alcohol group counseling, fined, and placed on house arrest with an ankle monitor. In 1996, he was charged with DUI, blood alcohol of .08% or more, and driving on a suspended license. He pled guilty to the first two offenses and was sentenced to 365 days in jail which was stayed pending the completion of an alcohol program and five years summary probation. He was also ordered to pay a fine of \$1,568, report to alcohol counseling, and his driver's license was revoked for three years. From 1994 to 1996, Applicant admitted he drank every day, frequented bars and would consume various amounts of alcohol.⁽²⁰⁾ He also admitted that he would drive after he had been drinking during this period of time and did not get caught.⁽²¹⁾ He also continued to drive after his license was suspended.⁽²²⁾

In a sworn statement made on April 28, 2004 Applicant stated: "I quit consuming alcohol from approximately 1998 to 1999. Since then I only drink socially and might consume beer six to twelve times per year and drink from one to six beers per occasion."⁽²³⁾ He claimed he stopped drinking for awhile, but started again because of peer pressure.⁽²⁴⁾ He went on to state "I do not feel I have an alcohol problem."⁽²⁵⁾

After abstaining from alcohol for a period of time Applicant started consuming small amounts and then he gradually started to increase the amount and frequency.⁽²⁶⁾ In his answer to interrogatories he provided on September 27, 2005, he stated he drank daily and consumed 3-4 beers in two hours and 3-6 shots of tequila.⁽²⁷⁾ At his hearing he stated he would drink 3-4 beers and 3-5 shots 4 to 6 days a week. Applicant's testimony and sworn statements are inconsistent and attempt to minimize how much and how often he was drinking.⁽²⁸⁾

Applicant has attended different alcohol counseling programs from August 31, 1994 to March 29, 1996, May 29, 1996 to March 27, 1998, and February 18, 1997 to September 10, 1999. All of Applicant's alcohol counseling was court ordered. On September 2003, he received an alcohol assessment due to his drug use on July 18, 2003, and a diagnosis was not provided.⁽²⁹⁾ Applicant provided the information to the interviewer and minimized his alcohol use claiming he had only used alcohol twice in the past thirty days, which is inconsistent with his testimony and other sworn statements.⁽³⁰⁾ He also provided information that he had not used marijuana for the past twenty years, which was also inconsistent with him being arrested in 1992 for drug possession and his admitted use of marijuana during that period. Also in his sworn statement of April 28, 2004, he stated "From the early 1980's until my fiftieth birthday, on 18 Jul 03, I did not use marijuana at all."⁽³¹⁾ This statement is inconsistent with his hearing testimony and the fact he had been arrested in 1992 and admitted to using marijuana during that period of his life. He also admitted at the hearing that his statement on April 28th was false.⁽³²⁾ He admitted he did not think anyone would find out about his prior drug use.⁽³³⁾

Applicant claimed to the interviewer that he had not been charged with any crimes during his life, which was obviously false. He admitted lying because he wanted a good evaluation.⁽³⁴⁾ At the time, he strongly believed he did not have a problem with drugs or alcohol. Much of the information provided by Applicant to the interviewer used for making the assessment was not true and minimized Applicant's use of alcohol, drugs, and criminal conduct relating thereto.⁽³⁵⁾ Applicant admitted at his hearing that he "probably did not tell the whole truth"⁽³⁶⁾ to the interviewer. The results of the assessment are obviously factually based and without honest and truthful answers they are not given any weight.

Prior to this hearing, Applicant enrolled in an alcohol program that started two days after his hearing. He stated "I've enrolled in a treatment program here as of last week to curb that problem."⁽³⁷⁾ This is the first program he has voluntarily attended. He has not consumed alcohol since April 23, 2006. He admits he has known since the mid-1990s that he is an alcoholic and his present motivation for attending alcohol counseling is to keep his job and regain his security clearance. He admits he has made bad decisions when he drank. He does not intend to use drugs in the future.

Applicant's supervisor testified he is punctual, a good communicator and worker. He has had contact with him for the past 5-6 years and believes he is trustworthy and takes his job and attitude toward national security very seriously. A coworker and a partner in a business with Applicant testified he believes him to be trustworthy and has not shown signs of poor judgment. Applicant had told him several times that he intended to cut down on his drinking. Two other witnesses testified that they believe Applicant to be trustworthy.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to

grant or continue a security clearance for an applicant. ⁽³⁸⁾ The government has the burden of proving controverted facts. ⁽³⁹⁾ The burden of proof is something less than a preponderance of evidence. ⁽⁴⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽⁴¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽⁴²⁾

No one has a right to a security clearance ⁽⁴³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽⁴⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽⁴⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽⁴⁶⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline H-Drug Involvement is a security concern because improper or illegal involvement with drugs, 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.

Guideline G-Alcohol Consumption-a security risk may exist because 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.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines H, G, J and E.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*⁽⁴⁷⁾), applies. Applicant used marijuana while holding a security clearance.

I considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*); DI MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*), and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*). Applicant has a past history of using drugs that remained dormant for a period of time until in 2003 he used marijuana to celebrate his 50th birthday. DI MC E2.A8.1.3.1 does not apply. DI MC E2.A8.1.3.2 does not apply because although his latest drug use occurred after a considerable period of dormancy, he resurrected it while drinking alcohol and while celebrating. He had a history of drug use and therefore his most recent use was neither isolated nor an aberrational event. Although Applicant claims he will not use drugs in the future, his past conduct shows that when drinking alcohol and the opportunity arose for him to use drugs again, he did so. Without having some idea of why he would use drugs again at this stage of his life, it is too uncertain to believe that he will not do so again in the future. Applicant attempted to minimize and hide his past involvement with drugs, which is also a grave concern. Applicant failed to mitigate the drug involvement concern under Guideline H.

Based on all the evidence, I considered all the disqualifying conditions and especially considered Alcohol Consumption Disqualifying Condition (AC DC) 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*), and conclude it applies. I have also considered Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) and conclude they apply. Applicant has three DUI charges/convictions and two charges for drug possession, one of which was a felony. The felony was dismissed after completing probation and the other possession charge was handled through a pretrial diversion program. He also drove on a suspended licence and was convicted of that charge.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition

(AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). I conclude none of the mitigating conditions apply. Applicant's problems with alcohol have carried over to criminal charges, most of which are alcohol or drug related and clearly indicate a pattern. When Applicant drinks alcohol he makes poor decisions, such as driving and using drugs, especially while holding a security clearance. He attempted to minimize how much he drank and, when he was given an evaluation in anticipation of his hearing, he was not truthful to the evaluator, in both his past consumption and his legal background, thereby raising concerns of his willingness to hide his background, his judgment, trustworthiness and reliability. Applicant has been through numerous alcohol treatment programs that have done little to curb his alcohol abuse. Although apparently in the past he recognized he probably is an alcoholic, it was not until days before his hearing that he voluntarily signed up for a program. But he had not yet attended any counseling. There is a clear pattern of alcohol related incidents and AC C E2.A7.1.3.1 does not apply. There is clear evidence the problem still exists as the Applicant has only been sober for less than two weeks. AC MC E2.A7.1.3.2 does not apply. Without a significant track record of sobriety and positive changes in Applicant's life towards sobriety AC MC E2.A7.1.3.3 can not be applied. I find at this time there is insufficient evidence to conclude Applicant is not a security risk due to his past behavior and there is a lack of record to support a meaningful period of sobriety or changes in Applicant's behavior.

With regard to Applicant's criminal activity I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), CC MC E2.A10.1.3.3. (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*), CC MC E2.A10.1.3.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), and conclude none apply. Applicant's illegal use of drugs occurred in 2003, and although he was not arrested or charged it is still a criminal offense. He has a past history of drug and alcohol charges. Therefore, I find the criminal activity was recent and not isolated.. In addition, Applicant has three past DUI arrests and two drug charges that also support his criminal activity was not a mere aberration. There is no evidence he was pressured or coerced into committing any of the criminal acts. CC MC E2.A10.1.3.1, CC MC E2.A10.1.3.2 and CC MC E2.A10.1.3.3 do not apply. There is no evidence the criminal acts were not voluntary. CC MC E2.A10.1.3.4 does not apply. There is no clear evidence of successful rehabilitation. His recent enrollment in a treatment program is not proof sufficient to verify his commitment to sobriety. Without that part of his life being under control, a finding can not be made that violations are not likely to recur or there is clear evidence of successful rehabilitation. I find that CC MC E2.A10.1.3.6 does not apply.

Many of Applicant's criminal offenses were related to his alcohol and drug abuse. I find because of his long history of abusing alcohol, his recent drug use, and past drug history, his attempt to minimize his alcohol abuse, his lack of commitment to resolving his alcohol problems in the past, and his very recent enrollment in a alcohol program, that he failed to mitigate the security concern raised about his alcohol consumption and criminal conduct, under Guidelines G and J.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2A5.1.2.2 (*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*), PC DC 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), and PC DC E2.A5.1.2.4 (*Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply in this case.

Applicant attempted to minimize and mislead investigators about his past conduct, to include how much alcohol he consumes, his frequency of drug use and his criminal record. Although he points to factors for why he failed to provide the requested information, such as he believed he did not have to divulge the information because he was in a pretrial diversion program or the charge was dismissed, I find when considering all of his testimony and sworn statements that he intentionally meant to mislead investigators. Applicant is an educated person and was fully aware of his criminal past and the only exceptions to not providing the information. His other statements support his effort to mislead and falsify, especially when he claimed he was never charged with any crimes during his life. Surely, he could not have been confused about his three DUI arrests and two drug arrest, one of which was a felony.

In addition, Applicant used drugs with college students and where coworkers had assembled, while he held a security clearance. This type of conduct makes Applicant especially vulnerable to exploitation

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), PC MC E2.A5.1.3.4 (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant has consistently lied about his drug and alcohol abuse and problems. Applicant deliberately misled and provided false information to defense investigators on more than one occasion. Because of his attempts to minimize his drug, alcohol, and criminal conduct when providing sworn statements, I find he was not credible in his claims he believed he did not have to list his offenses under Questions 21 and 24. These were not isolated incidents and Applicant did not provide the correct information voluntarily. Applicant's testimony raised serious credibility concerns. Using drugs while holding a clearance is a serious violation. Until Applicant resolves his alcohol problem the personal conduct concerns remain. Based on the reasons provided above under Guidelines H, G and J, and the other analyses, I find Applicant failed to mitigate the personal conduct security concerns under Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person, his testimony, demeanor and credibility, in addition to his past work performance and exemplary comments from witness. After considering all of the evidence, I am persuaded by its totality, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines H, G, J and E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a-f: Against Applicant

Paragraph 3. Guideline G: AGAINST APPLICANT

Subparagraph 3.a-f: Against Applicant

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a-c: 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Tr. 17.

3. Tr. 61.

4. Tr. 19.

5. Tr. 19.

6. GE 3.

7. Tr. 41.

8. Tr. 17-18

9. Tr. 17, 39.

10. Tr. 38-39.

11. Tr. 39.

12. Tr. 16-17

13. Tr. 17.

14. GE 4 at 2.

15. GE 4 at 2.

16. GE 4 at 2.

17. Answer, Attachment 2.e.

18. GE 3 at 2; Tr. 43.

19. Tr. 46.

20. Tr. 31.

21. Tr. 32.

22. Tr. 32-33.

23. *Id.*

24. In GE 3, a sworn statement dated May 4, 2001, Applicant states he stopped drinking completely from approximately March 1996 for about 12 to 18 months. In 1998 he began consuming alcohol again. He also stated he had been arrested three times for DUI and other than that he had not been arrested any other time for any other reason. In GE 4, a sworn statement dated April 28, 2004, he states he quit consuming alcohol from approximately 1998 to 1999 and since then he only drinks socially and might consume beer six to twelve times a year and drinks from one to six beers per occasion. These inconsistencies and the others mentioned throughout the decision are not considered for disqualifying purposes, but are considered when analyzing the "whole person" and to address whether these were mere oversights or misstatements meant to deceive or misrepresent and deliberate falsifications.

25. *Id.*

26. Tr. 34-36.

27. GE 9; Tr. 36.

28. *See* GE 3, GE 4 and GE 9.

29. Answer.

30. Tr. 48.

31. GE 4.

32. Tr. 48.
33. Tr. 48.
34. Tr. 50.
35. GE 8.
36. Tr. 48-50.
37. Tr. 29.
38. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
39. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
40. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
41. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
42. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
43. *Egan*, 484 U.S. at 531.
44. *Id.*
45. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
46. Executive Order 10865 § 7.
47. E2.A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.