

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant continues to consume alcohol after receiving treatment for diagnosed alcohol dependence, raising doubt as to whether his alcohol abuse is safely in the past. Applicant also used illegal drugs to at least 1996. He was not candid about his illicit drug involvement on his August 2002 security clearance application or in a June 2003 sworn statement. Alcohol consumption and personal conduct concerns persist. Clearance is denied.

CASENO: 03-21183.h1

DATE: 05/23/2005

DATE: May 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21183

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant continues to consume alcohol after receiving treatment for diagnosed alcohol dependence, raising doubt as to whether his alcohol abuse is safely in the past. Applicant also used illegal drugs to at least 1996. He was not candid about his illicit drug involvement on his August 2002 security clearance application or in a June 2003 sworn statement. Alcohol consumption and personal conduct concerns persist. Clearance is denied.

**STATEMENT OF THE CASE**

On May 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline G, alcohol consumption, and Guideline E, personal conduct, 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 the Applicant. [\(1\)](#)

In June 2004, Applicant submitted an undated Answer to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on November 1, 2004. A hearing was scheduled for November 12, 2004, Applicant having waived the 15-day notice requirement. At the hearing, the government offered six exhibits, five were admitted. Applicant testified, as reflected in a transcript received on November 22, 2004.

The record was held open for two weeks after the hearing for Applicant to submit work performance evaluations.

Nothing was received by the due date.

## FINDINGS OF FACT

DOHA alleged under Guideline G that Applicant consumed alcohol at times to excess from approximately 1971 to at least June 4, 2003, attended only one session of recommended outpatient counseling after he had been diagnosed as alcohol dependent in August 2002, and he continues to drink alcohol. Under Guideline E, Applicant was alleged to have deliberately falsified his August 2002 security clearance application by failing to report his use of marijuana from August 1995 through at least 1996, and to have misrepresented material facts in a June 2003 sworn statement by indicating he had not used marijuana since 1981 and had never used heroin. In his Answer, Applicant admitted drinking to excess from June to July 2002 due to his divorce, leading him to seek treatment. He acknowledged he had attended only one session of the recommended aftercare but denied the need for further treatment. Applicant acknowledged he was still drinking but "rarely and responsibly." Applicant denied the falsification allegations. Applicant's admissions are accepted and incorporated as findings of fact. After a complete review of the evidence, I make the following additional findings:

Applicant is a 50-year-old divorced father of three children (ages 19, 17, and 14). He has been employed as a test mechanic for a defense contractor (company A) since August 2002, having worked there before in the 1980s.

When he was about 15 years old, Applicant began to use marijuana two to three times per week when socializing with friends. He purchased the drug and occasionally sold it to friends as well. He also tried PCP, THC, mescaline, LSD, cocaine, and at age 19, heroin. At age 17, Applicant started drinking a couple of beers two to three nights per week with friends.

In December 1975, Applicant entered on active duty in the U.S. military where he was granted a secret-level security clearance. During his six years in the Navy, Applicant had an alcohol-related blackout on one occasion after consuming liquor in about February 1976. He otherwise consumed about four or five beers when in port with two or three of his shipmates. Applicant also continued to use illegal drugs, primarily marijuana, when in port. On one occasion in 1978, he used opium.

Following his discharge from the service, Applicant went to work for company A. Applicant continued to use a variety of illegal drugs and to drink beer. Applicant married in late August 1983. In about 1985, after a discussion with his spouse, Applicant ceased his involvement with illegal drugs other than a puff or two from a marijuana cigarette in social settings on average once every two years. With the birth of their three children (a son born in 1986 and daughters born in 1988 and 1990), and working second or third shift for company A, Applicant's alcohol consumption was limited to

the weekends where he drank up to eight or nine beers in the course of an evening.

In 1990, the workers went out on strike at company A. Having just bought a home, Applicant left company A to work as an instrumentation start-up technician in the construction of a new physical plant for another defense contractor. Applicant worked significant amounts of overtime into 1992 and opportunities to drink were limited to once every two or three weeks.

In the course of his collateral duties in emissions monitoring, Applicant made some engineering changes to an emissions detection device used in his work. In August 1992, Applicant accepted a lucrative offer from the manufacturer of the device to work for them as a senior field service representative. To June 2001, Applicant's work kept him away from home on average three days per week. He had several one to two week assignments as well. Applicant rarely drank when he was on travel. When he was home, he took care of other obligations around the house and coaching sports teams, but when he wanted to relax he drank beer. He consumed at least three or four beers, twice a week, usually on weekends. Once in the 1990s when he attended a professional football game, Applicant consumed 15 to 16 beers over the course of the day. He used marijuana on isolated occasions, no more than once every two years until 1996.

By 2001, Applicant and his spouse were experiencing marital difficulties. His spouse filed for divorce in May 2001. The following month, Applicant was involuntarily terminated from his job for poor performance. Applicant earned income "under the table" while collecting unemployment, installing security systems. For about 15 days in June 2002, Applicant moved back into the family home in an effort to reconcile with his spouse. Later that month, Applicant learned their divorce was proceeding. Depressed, he lived out of his truck for about three weeks, parking his car behind a bar where he worked as a bartender. Applicant consumed at least twelve beers daily. [\(2\)](#)

Depressed to the point of suicidal ideation by mid-July 2002, Applicant called his brother who brought him to a hospital. Applicant was admitted on an inpatient basis for treatment of diagnosed alcohol dependence and bipolar disorder type II. Applicant exhibited some minimization of his alcohol problem but he had good group participation. Four days later, he was discharged on a prescription antidepressant and on Antabuse into the facility's partial hospitalization drug and alcohol program. Applicant was advised he absolutely should not consume alcohol as it would worsen his situation. In early August 2002, after attending six sessions in an ambulatory day setting, Applicant was discharged on Antabuse and to followup in an outpatient program at another facility. It was also recommended that he become involved in a 12-step community support program. His prognosis was noted to be "improving," with concerns expressed about his ambivalence, problems with follow through, and his unstable lifestyle.

Applicant attended an initial evaluation session with a counselor from the outpatient program in early August 2002. Five days later, he started working for his present employer on second shift while doing electrical construction projects locally in the mornings. He decided to not pursue the aftercare counseling or Alcoholics Anonymous (AA), or take the prescribed medications.

On August 13, 2002, Applicant executed a security clearance application (SF 86) on which he reported his firing from his previous job in June 2001 for issues related to his performance. In response to whether his use of alcohol had resulted in any treatment, Applicant listed only the outpatient counseling, which he indicated had been from July 2002 to present. He also disclosed two delinquent credit card accounts.

Abstinent from alcohol since he entered the hospital in July 2002, Applicant in late 2002 began to drink two to four beers when socializing with a girlfriend at a local bar after work on Friday nights. Applicant continued to consume alcohol at that rate to at least July 2003. As of November 2004, he was drinking three beers when socializing with others (e.g., two drinks waiting for dinner and one after).

On April 24, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent about his termination from his job in June 2001, his divorce, and credit problems. Applicant explained he was fired from his employment because of his performance. Applicant admitted he had not always paid bills on time as he traveled frequently for work and was not concerned with personal finances.

On June 4, 2003, Applicant was reinterviewed by the agent, this time about his alcohol consumption, illegal drug use, and alcohol treatment. He provided a signed, sworn statement on that date in which he admitted he had drunk excessively for about two weeks before he sought alcohol treatment in July 2002. After several days in the hospital, he was referred for outpatient counseling, and attended only one session. Concerning his alcohol use, Applicant indicated he had consumed approximately three or four beers twice a week on weekends from the early 1990s until he was depressed over his divorce. After abstaining since July 2002, he resumed drinking in late 2002 and was currently consuming two to four beers a week with a girlfriend. While Applicant admitted using controlled dangerous substances such as PCP, THC, mescaline, LSD ("Acid"), cocaine and opium once or twice during summers when he was 15/16, he failed to disclose that his use of these more dangerous drugs continued to 1985. He also revealed he had smoked marijuana two to three times weekly in high school, purchased it for personal use and sold it to friends, and used it while in the U.S. Navy from the middle 1970s to 1981 at parties when in home port, but he falsely claimed no involvement with illegal drugs since he began working for company A in 1981.

On July 17, 2003, Applicant was interviewed by another DSS agent about his illegal drug involvement. Applicant corrected the record to reflect that he had used marijuana, angel dust, PCP, THC, mescaline, LSD, and cocaine in the early 1970s and early 1980. Since deciding to stop illegal drug use in 1985, he had taken "a couple of puffs of marijuana no more than once every two years" to about 1996. Applicant related he used heroin once in 1973, and opium once in 1978. Applicant denied intentional falsification of his SF 86 for failing to report his drug involvement, claiming "[he] did not consider very isolated incidents to taking an occasion [sic] puff of marijuana over a period of years to be significant enough to mention."

## 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 has 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Concerning the evidence as a whole, the following adjudicative guidelines are most pertinent to this case:

**Alcohol Consumption.** 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. (¶ E2.A7.1.1.)

**Personal Conduct.** Conduct 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.(¶ E2.A5.1.1.)

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines G and E:

Applicant is a diagnosed alcoholic who has no record of alcohol-related incidents away from work or at work. Although the records of Applicant's alcohol treatment in July 2002 indicate he lost his job in June 2001 due to performance issues and alcohol, Applicant denies his drinking played any part in his termination and there is no documentation from the company showing alcohol was involved. However, the absence of any work-related impairment does not negate the security significance posed by off duty abusive drinking, as the protection of classified information is a 24-hour-per-day responsibility. As recently as July 2002, he consumed twelve beers a day. The evidence warrants application of disqualifying conditions E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*, and E2.A7.1.2.6. *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*. Diagnosed as suffering from alcohol dependence in July 2002, Applicant completed both the inpatient and partial hospitalization programs only to resume drinking beer in late 2002.

Applicant submits as mitigating his limited consumption of alcohol since late 2002 (three to four beers per occasion). While this is a positive change in his behavior in support of sobriety (*see* MC E2.A7.1.3.3.), the Directive sets forth very specific requirements to mitigate alcohol dependence, a medical condition characterized by cognitive, behavioral, and physiological symptoms in which total and permanent abstinence is usually required for the individual's recovery. As set forth in MC E2.A7.1.3.4. of the Directive, the individual must successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or similar organization, abstain from alcohol for at least 12 months, and receive a favorable prognosis from a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Applicant elected to not pursue recommended aftercare counseling beyond his initial intake. He is not involved in AA, and continues to drink alcohol against medical advice. Applicant's failure to satisfy MC E2.A7.1.3.4. does not mandate an adverse outcome, but it is not clear that he understands the seriousness of his alcohol problem. Unable to conclude that Applicant's alcohol abuse is safely in the past, I find against him as to SOR ¶¶ 1.a., 1.b., and 1.c.

Applicant's misrepresentations about his illegal drug abuse history raise significant personal conduct concerns, notwithstanding the last drug use of record was in 1996. Applicant knowingly falsified his SF 86 when he failed to indicate that he used marijuana as recently as 1996. While the evidence does not establish that Applicant used marijuana during the entire period August 1995 through 1996, he admitted in July 2003 to having used marijuana "in about 1996" when he was with friends on the back deck of a bar, which would have been within the seven-year scope of the SF 86 inquiry. Moreover, Applicant also responded negatively on his SF 86 to question 28 concerning whether he had ever illegally used a controlled substance while possessing a security clearance. Applicant used marijuana while he was in the military and held a secret clearance. Although this falsification was not alleged in the SOR, it renders suspect Applicant's denials of any deliberate misrepresentation. Under the personal conduct guideline DC 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*, is potentially security disqualifying.

The personal conduct concerns generated by intentional concealment may be mitigated where there is a prompt good-faith effort to correct the falsification before being confronted with the facts. (MC E2.A5.1.3.3.) Applicant did not

volunteer information about his drug use during his first interview with a DSS agent, although there is also no indication he was asked about any illicit drug involvement. When confronted in June 2003 with treatment records that apparently reflected cannabis use on his part, Applicant falsely claimed in a sworn statement provided to the DSS agent that his use of drugs other than marijuana had been limited to once or twice when he was 15 and 16 years old, that he had never used heroin, and that he stopped all drug use, using marijuana, in 1981. This lack of candor compounds the doubts for his judgment and reliability raised initially by his SF 86 falsification, and is itself security disqualifying. 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*, applies.

The government can ill afford to have individuals decide for themselves the timing and extent of disclosure. Applicant has shown little appreciation for his obligation to provide full and frank information, *e.g.*, "I did not consider very isolated incidents of taking an occasional puff of marijuana over the years to be significant enough to mention" (*see* Ex. 6).SOR ¶¶ 2.a. and 2.b. are resolved against him.

## FORMAL FINDINGS

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

### Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

### Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: 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. Clearance is denied.

**Elizabeth M. Matchinski**

**Administrative Judge**

1.

2. Applicant denies any excessive consumption beyond the three week period preceding his voluntary admission for treatment in July 2002. (Tr. 56) In his answer, he attributed his enrollment in the alcohol rehabilitation program to his recognition that his consumption over the previous six weeks was making matters worse. Treating personnel found some evidence of minimization by Applicant as to his alcohol problem. It is likely Applicant drank to excess for longer than just two weeks.