

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant repeated the same pattern two days before the hearing by drinking alcohol instead of calling her sponsor. The ease in which she turned to alcohol rather than AA in January 2005 raises continuing security concerns there will be a recurrence of excessive alcohol consumption in the future. Clearance is denied.

CASENO: 03-21113.h1

DATE: 06/27/2005

DATE: June 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21113

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's marijuana use while holding a security clearance is mitigated because she used the drug very infrequently to alleviate pain of a medical condition associated with her excessive alcohol use. However, the lack of a strong network of support, as well as Applicant's inability to fully accept her powerlessness over alcohol, requires a finding against Applicant under the alcohol consumption guideline. Applicant has also failed to mitigate her deliberate falsification of government documents during the security investigation. Clearance is denied.

STATEMENT OF CASE

On August 24, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant. The SOR provided 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. On September 14, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on January 3, 2005. On January 12, 2005, this case was set for hearing on January 25, 2005. The Government submitted eight exhibits (GE) and Applicant submitted one exhibit (AE) containing character references, awards, citations, and performance evaluations. Testimony was taken from Applicant. The transcript (Tr.) was received on February 2, 2005.

RULINGS ON PROCEDURE

During the hearing, the Government moved to amend paragraph 1 of the SOR by adding the following allegation to paragraph 1 (drug involvement, Guideline H): "You have used marijuana after being granted a security clearance in 1992 and 1998." The proposed amendment was denied as it is cumulative to the next proposed amendment which was granted. The Government moved to amend paragraph 3 by adding the following allegation: "You falsified material facts on a Security Clearance Application, Standard Form 86, executed by you under date February 13, 2002, in response to "Question 28. Your use of Illegal Drugs and Drug Activity-Use in Sensitive Positions Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or a courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" You deliberately failed to indicate you had used marijuana while holding a security clearance. This motion was granted to conform the SOR to the evidence presented. (Directive, E3.1.17.)

FINDINGS OF FACT

The SOR alleges drug involvement, excessive alcohol consumption and adverse personal conduct. Applicant's admissions to all factual allegations shall be incorporated in the factual findings. Applicant is 42 years old and has been employed as an administrative assistant for a defense contractor since September 1998. She seeks a secret clearance.

Drug Involvement. Applicant began using marijuana in early 1991, sometimes on a daily basis. Applicant stopped using marijuana at an unknown time in 1991. Just before being hospitalized in January 1997, Applicant inhaled marijuana between one and four times on one to four occasions. The next time she used marijuana a few times was in April 2003 just before being hospitalized. She used marijuana in January 1997 and April 2003 as a way to dull the pain from a liver problem associated with alcohol abuse. ⁽¹⁾ She has not used marijuana since April 2003.

Alcohol Considerations. Applicant began drinking alcohol in 1982. The record contains little information about the scope and frequency of her drinking until early 1993. Applicant described her drinking between early 1993 and her first hospitalization in January 1997 as follows:

I am married to an alcoholic who does not consider himself to be an alcoholic. Until approximately early 1993, I considered myself to be a social drinker. I was not drinking to get drunk, rather I was just being "sociable." I finally started drinking more and more with my spouse and we would drink at home almost every night. My drink of choice was Rum & Coke, and I would drink up to a quart ⁽²⁾ each night. I did start having problems going in to work every day and finally realized I had a drinking problem. (GE 3)

Applicant consulted her family doctor, and, on his recommendation, admitted herself to a local hospital on January 20, 1997 for health problems related to alcohol abuse. She had taken a leave of absence from her work. On January 24, 1997, Applicant was diagnosed with alcohol abuse and released. (GE 8) She transferred to another hospital on January 24, 1997 for an extended treatment plan followed by aftercare. On March 4, 1997, Applicant was diagnosed with alcohol dependence and released from inpatient treatment. (GE 6) After her discharge, she participated in Alcoholics Anonymous (AA) and worked the 12 step program. She also returned to school.

During a Christmas party in 2001, about four years and nine months after her last alcoholic drink, she decided to take a drink, believing she could control her consumption. Her drinking gradually increased until she was again drinking at the same levels she had prior to her hospitalization in January 1997. Periodically after her drinking resumed in 2002 until she was hospitalized in January 2003, Applicant notified her employer she would have to take off from work because she was sick from a hangover.

On January 20, 2003, Applicant was admitted to a local hospital for about three days for alcohol abuse treatment after losing her vision and balance. (GE 5) In the first page of the exhibit, "history of present illness," Applicant informed admitting personnel her last drink was the night before she was admitted. The second page of the exhibit contains an assessment plan that uses the word "alcoholism," and describes Applicant's frustration in failing to achieve long-term sobriety. (3) The treating doctor also noted (in the assessment plan) his recommendation for continued treatment, which Applicant declined because she had to care for her two children and make certain her husband was taking care of everything. Also noted in the plan is Applicant's statement that she was really concerned about bringing her withdrawals under control; she indicated she would return to AA after her discharge. Applicant did not resume AA until her treatment in May 2003.

Between January and when she entered treatment in May 2003, Applicant continued to drink with periods of up to three weeks when she consumed no alcohol. (Tr. 48) On April 20, 2003, she consumed five mixed drinks, and on April 21, 2003, she consumed some beer before her interview with an investigator from the Defense Security Service (DSS). (GE 3)

From May 5 to May 21, 2003, Applicant received additional inpatient treatment. Though she admitted in her answer to the SOR she was treated for alcoholism, I find no diagnosis to support her position. However, based on (1) GE 5 (medical records of treatment in January 2003), (2) the frequency of her alcohol consumption between January and May 2003, and (3) the treatment dynamics in May and June 2003 described in Applicant's interrogatory answers (GE 2), I find she received additional treatment for alcohol abuse and probably alcohol dependence. Part of the inpatient treatment included regular AA meetings in which she also participated while she was in outpatient treatment. Applicant received a certificate of completion of the outpatient program in June 2003. (GE 2)

Since her outpatient treatment in June 2003, Applicant consumed alcohol a few times in October 2004 (Tr. 51, 54.)

because she was stressed over the length of the current security investigation. The next time she consumed alcohol was January 23, 2005 (two days before the hearing) when she consumed several drinks to alleviate a stress-related panic attack. (Tr. 51.) The panic was also caused by the current security investigation.

Since Applicant's outpatient treatment in June 2003, Applicant was attending AA every night for a while. (Tr. 52.) Her answers to interrogatories in January 2004 reveal she was attending AA three times a week. (GE 2) Her last AA meeting was in December 2004. Her last contact with her sponsor was approximately 10 days before the hearing. When asked why, with all the treatment and AA instruction she has received over the years, she would resort to drinking two days before the hearing rather utilize some element of her network of support, she identified stress and disappointment. (Tr. 63)

Personal Conduct. On February 13, 2002, Applicant submitted a security clearance application (SCA). She deliberately answered "no" to question 27, requiring information about drug use since the age of 16 or in the last seven years, whichever is shorter. Applicant did not disclose her drug use because she was ashamed to her drug use and afraid of the repercussions. (Tr. 37.) On April 21, 2003, Applicant provided false information during an interview with an investigator of the Defense Security Service (DSS) by stating she had not consumed alcohol after February 2003. On February 13, 2002, provided false information on her SCA when she answered "no" question 28, requiring information of having ever used a controlled substance while possessing a security clearance. Applicant answered "no" to question 28 because she was afraid of losing her job. (Tr. 42, 69-70.)

Character Evidence. Applicant's friend of about 30 years considers Applicant a good wife and mother. The friend has never known Applicant to be under the influence of alcohol during work hours. Applicant's security manager believes she is dependable and trustworthy. Applicant's manager characterizes her as an honest person with integrity. Applicant's performance evaluations from 2002 through 2004 reflect ratings which are very good. However, there is a notation in the 2004 evaluation noting a problem with Applicant's attendance. Applicant has received periodic performance citations, promotions, and pay raises. Applicant received her associates degree in business administration in October 2004.

While Applicant's husband's drinking habits have not changed, he is supportive of her decision to stop drinking. Her sisters are supportive of Applicant's desire to remain sober. One sister is keenly aware of Applicant's condition because she like Applicant is married to an alcoholic. Applicant tries to bolster her sobriety network by reading the AA big book.

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) that must be given consideration in making security clearance decisions. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Drug Involvement

Illegal involvement with drugs raises questions regarding an individual's willingness to protect classified information.

Alcohol Considerations

Excessive alcohol consumption offer leads to the exercise of questionable judgment, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Personal Conduct

Conduct involving questionable judgment or dishonesty may indicate the person may not properly safeguard classified information.

Burden of Proof

The Government must prove controverted facts by substantial evidence. After the Government meets its burden, the applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue a her security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484U.S. 518, at 531.

CONCLUSIONS

Drug Involvement. Drug abuse or dependence can impair social or occupational functioning and may lead to the risk of unauthorized disclosure of classified information. In 1991, Applicant used marijuana from an occasional to a regular basis. She used the drug a few times before she was hospitalized in January 1997 and April 2003. Her marijuana use falls within scope of drug involvement disqualifying condition (DI DC) E2.A8.1.2.1. (*any drug abuse*) In addition, her storage of the drug in her freezer for a period of time also makes DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) applicable. Furthermore, she used marijuana while possessing a security clearance. DI DC E2.A8.1.2.5. (*recent drug involvement, especially following the granting of a security clearance*)

Applicant's use of marijuana is mitigated as there is no diagnosis of abuse or addiction. Though DI mitigating condition (MC) E2.A8.1.3.1. (*the drug involvement was not recent*) is inapplicable because Applicant used marijuana within the past two years, her use was isolated in January 1997 and April 2003. Because of the isolated nature of her use in the last seven years and DI MC E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*), by throwing away the remainder of the marijuana in her freezer in April 2003, I am confident Applicant will forego all drug use in the future. Additionally, the record contains convincing evidence that alcohol, not marijuana, has been Applicant's drug of choice over the years.

Alcohol Consumption. The proper handling classified information is an around-the-clock responsibility. Excessive alcohol consumption can lead to the exercise of poor judgment which increases the risk of mishandling classified information. Applicant's history of excessive alcohol consumption (AC) began in early 1993 when she described drinking sometimes up to a quart of alcohol with her husband on a daily basis. Applicant finally realized her drinking was serious when she discovered she had problems going to work. AC DC E2.A7.1.2.5. (*habitual or binge consumption of the alcohol to the point of impaired judgment*).

In January 1997, Applicant was admitted to the hospital after experiencing health problems and a liver condition. Her diagnosis on discharge at the first hospital on January 24, 1997 was alcohol abuse. Her diagnosis on discharge at the second hospital March 4, 1997 was alcohol dependence. AC DC E2.A7.1.2.3. (*diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence.*)

Applicant is commended for remaining sober for about four years and nine months. However, in late December 2001, Applicant believed she could control her drinking so she consumed some alcohol. Before long, she was consuming alcohol at the same, abusive levels she had been before her hospitalization in January 1997. In January 2003, Applicant was hospitalized about three days for alcohol abuse. Shortly, after her discharge she resumed drinking although there were periods of up to three weeks in which she consumed no alcohol. On April 20, 2003, Applicant consumed five mixed drinks. The next day before an interview with DSS, she drank some beer and continued to drink at varying frequencies until her next treatment in May 2003. Though there is no documentation showing she was diagnosed with alcoholism in May 2003, she provided documentation showing her treatment and successful completion of the outpatient program in June 2003. AC DC E2.A7.1.2.3. Based on all available evidence, I conclude she received additional treatment for alcohol abuse and probably dependence. However, I find for her under subparagraph 2.c. of the SOR because of the absence of proof of an alcoholism diagnosis and even though Applicant repeatedly stated she is an

alcoholic.

Even after her May 2003 treatment and successful completion of the outpatient program in June 2003, Applicant consumed alcohol a few times in October 2004 and once on January 23, 2005. However, AC DC 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.*) does not apply because there is no evidence that a medical professional diagnosed Applicant with alcoholism.

Applicant's evidence in mitigation after her treatment in March 1997 is persuasive because she was able to remain sober for the next 4 years and nine months. In that time, Applicant made some changes in her lifestyle, like working the precepts of AA, so she could enjoy long term sobriety. AC MC E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*) While she suffered an excusable relapse in December 2001, her conduct after that relapse becomes less excusable because she knew what steps to take to regain her sobriety but declined to take them until her health was threatened again in January 2003. Even then, she was only concerned with alleviating her withdrawals rather than going through the full treatment regimen. So, following the brief stay to remove her withdrawals, she resumed drinking. While she claims she abstained for varying periods between her January withdrawal hospitalization and her May 2003 treatment, I conclude there were few periods of abstinence.

AC MC E2.A7.1.3.4. (*following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient treatment rehabilitation along with aftercare requirements, participates frequently in meetings of AA or a similar organization, has abstained from alcohol for a period of at least 12 months, and has received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized treatment program*) clearly identifies the elements of an applicant's case that should be present to potentially satisfy the condition and the guideline. With the diagnosis of alcohol abuse in January 2003, and continuing treatment in May 2003, Applicant has shown she successfully completed outpatient and aftercare requirements. She has been sober for a year before she had a relapse in October 2004. The information missing from the E2.A7.1.3.4. is a favorable prognosis from a medical professional or a licensed clinical social worker.

Also missing from Applicant's case in mitigation is detailed evidence from her support network to help her confront and remedy her recurring stress. With all the instruction she has received from her treatment and AA about remaining alcohol-free, she instead bypassed her resource tools and consumed alcohol a few times in October 2004. Applicant repeated the same pattern two days before the hearing by drinking alcohol instead of calling her sponsor. The ease in which she turned to alcohol rather than AA in January 2005 raises continuing security concerns there will be a recurrence of excessive alcohol consumption in the future.

Personal Conduct (PC). Furnishing false information during a security investigation suggests a person may not properly safeguard classified information. Applicant deliberately omitted material information from her SCA on February 13, 2002 when she answered "no" to question 27, requiring information concerning drug use. The omission falls within PC DC E2.A5.1.2.2. (*the deliberate omission or falsification of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility.*) The information was material in that

it had the potential of affecting the security clearance investigation. Applicant's second deliberate omission of material information from the same SCA was in her "no" response to question 28, requiring information of whether the applicant has used drugs while possession a security clearance. The omission also falls within PC DC E2.A5.1.2.2.

Applicant also intentionally falsified material facts during the her interview with DSS on April 21, 2003. PC DC E2.A5.1.2.3. (*deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination*)

Applicant's fear of the consequences of disclosing her drug use and the full history of her alcohol consumption does not excuse lying to an investigator about subjects the Government should be aware of before making a decision about security worthiness.

The three mitigating conditions under PC have been considered but none can mitigate Applicant's deliberate misconduct. PC DC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness and reliability*) does not apply to these facts as a person's drug use and alcohol history is always relevant to judgment. PC DC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) It is true Applicant subsequently provided truthful information on subsequent occasions but only after she had provided untruths initially. PC DC E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) does not apply as Applicant was confronted about her drug use and repeated questioning about her alcohol consumption before giving all the details of her substance abuse.

In reaching a finding for Applicant under the DI guideline and against Applicant under the AC and PC guidelines, I have also reviewed Applicant's laudable, job-related evidence and all the surrounding circumstances of this case under the general policy factors of the whole person concept.

E2.2.1. In view of Applicant's deliberate falsifications and excessive alcohol consumption, I am unable to find in Applicant's favor at this time.

FORMAL FINDINGS

Paragraph 1 (drug involvement, Guideline H): FOR THE APPLICANT.

a. For the Applicant.

Paragraph 2 (alcohol consumption, Guideline G): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

c. For the Applicant.

d. Against the Applicant.

e. Against the Applicant.

f. Against the Applicant.

Paragraph 3 (personal conduct, Guideline E): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

c. 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.

Paul J. Mason

Administrative Judge

1. The small amount of marijuana Applicant used in 1997 and 2003 had been stored in her freezer; she discarded the remainder after her brief use in 2003.
2. In the "history of present illness" portion of her medical records of hospitalization in January 1997(GE 6), Applicant stated the amount was a pint every night.
3. Although Applicant considers herself an alcoholic, there are no medical records or other evidence from a credentialed medical professional identifying her alcohol problem as alcoholism.