

KEYWORD: Alcohol; Drugs; Personal Conduct

DIGEST: While Applicant had several alcohol-related traffic offenses most recently in 1995, he has since had changed his life style and drinks only rarely at family events. He also took two puffs of a marijuana cigarette with friends in 2001, an isolated event. He reported the 1995 offense and conviction on the 2002 SF 86 but not the prior offenses since his employer provided written guidance to him and others not to include offenses over ten years old. He did not report the marijuana experimentation believing that it was not use. The allegations are mitigated by passage of time and that the omissions on the SF 86 were not deliberate. Clearance is granted.

CASENO: 03-21220.h1

DATE: 02/03/2005

DATE: February 3, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21220

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

## **FOR GOVERNMENT**

James Bradley Norman, Esq., Department Counsel

## **FOR APPLICANT**

Sheldon I. Cohen, Esq.

## **SYNOPSIS**

While Applicant had several alcohol-related traffic offenses most recently in 1995, he has since had changed his life style and drinks only rarely at family events. He also took two puffs of a marijuana cigarette with friends in 2001, an isolated event. He reported the 1995 offense and conviction on the 2002 SF 86 but not the prior offenses since his employer provided written guidance to him and others not to include offenses over ten years old. He did not report the marijuana experimentation believing that it was not use. The allegations are mitigated by passage of time and that the omissions on the SF 86 were not deliberate. Clearance is granted.

## **STATEMENT OF CASE**

On May 10, 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 May 25, 2004, Applicant responded to the allegations, and requested a hearing. The matter was assigned to me on November 10, 2004. A notice of hearing was issued on December 1, 2004, and a hearing was held on December 13, 2004. Three government exhibits and five Applicant exhibits were admitted into evidence. The Applicant testified and called five witnesses who testified on his behalf. The transcript was received on December 20, 2004.

## **FINDINGS OF FACT**

After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 58 year-old employee of a defense contractor who had alcohol-related traffic offenses in 1974, 1978, 1981, 1989, and 1995. Before the last arrest he was fined and given suspended sentences. The 1995 arrest for DUI resulted in ten days confinement which he spent during five weekends.

Applicant admitted all of the allegations relating to his alcohol related incidents, but denied drinking to excess since 1995 when his confinement for the offense caused him to make a careful evaluation of the direction his conduct was taking him. He attended alcohol counseling and Alcoholics Anonymous (AA) sessions and has only consumed alcohol in small amounts on rare family celebrations since then. He admitted one marijuana use consisting of two puffs in 2001 while riding with friends in a truck. He denied a second alleged use in 1999. He denied allegations concerning deliberate falsifications on his security clearance application (SF 86). Applicant was a member of the Naval Reserve in the 1970s and occasionally used marijuana with his fellow reservists. He also experimented with cocaine at that same time (Exhs. C and D).

Applicant was evaluated by a qualified psychiatrist specializing in addiction psychiatry and alcohol abuse in September 2004, who interviewed Applicant and others with whom he associated. He concluded that Applicant was in full sustained remission from alcohol abuse since 1995, that he had never been alcohol dependent (Exhs. A and B), and could drink moderately without adverse effects (TR. 35-72). Applicant attends AA and finds their meetings helpful in continuing his abstinence from drink.

When he filed his SF 86 on July 15, 2002, he reported his 1995 arrest and conviction at Question 24 relating to alcohol and drug offenses but not the earlier ones. He was filing an application for top secret clearance and had been advised by his company that he was required to file information for only the past ten years (Exh E). He also failed to report the alleged use of marijuana in 1999 and 2001 on Question 27 relating to drug use during the past seven years, and on Question 28 concerning use while holding a security clearance. Applicant has no intention to use illegal drugs in the future.

Applicant is a divorced father of two grown sons. He had custody of one whom he raised as a single parent from age

eight and who testified for his father at the hearing. He also had some responsibility for the second son who was in the custody of his mother. Applicant's reputation as a parent is exceptional. He also cared for his elderly and infirm father for several years who lived in his home between 1999 and his death in 2004. Applicant also provides care and attention for a woman whom he regards as a best friend who suffers from multiple illnesses. Applicant is an active member of his church and attributes his behavioral changes since 1995 to that fact.

Applicant is highly regarded by his employer and has exemplary work ethic as evidenced by the testimony of the president of his company who hired him in 1982 and from a Navy project manager to whose office he is assigned by his company. Both know him well both professionally and personally. He has held a security clearance since 1974.

## **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 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.A7.1.2.2.) Applicant established mitigating factors including the fact that the problem 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.) The evidence offered at the hearing particularly that of the psychiatrist established that the mitigating factors are applicable.

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) Mitigating Conditions are applicable since 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.)

Applicant denied the allegation concerning drug use in 1999 but admitted that he took two puffs of a marijuana cigarette in 2001 while traveling with friends. Applicant admitted the 2001 incident to the investigator who testified at the hearing. The investigator also reported an alleged 1999 incident but his testimony was vague at best since his interview occurred in November, 2002, and he had not made notes or written a report at the time of interview since he had concluded that the incident was too removed in time to warrant a report (TR. 24). Applicant disputed the investigator's testimony about the alleged 1999 incident and, in view of Applicant's admission of the 2001 offense, the denial of the 1999 use, and the uncertain testimony of the investigator, I conclude in favor of Applicant on this allegation in that it was an isolated event and Applicant has demonstrated a sincere intent not to let it be repeated.

The government has also cited Guideline E (Personal Conduct) of the Directive, relating to questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has offered evidence 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 on his SF 86. (E2.A5.1.2.2.)

Applicant did report the 1995 arrest and conviction on his SF 86, the most serious of any of his offenses. He introduced in evidence an instruction sheet from his company that was presented to him and others at the time the employees were submitting their applications saying that it was only necessary to report incidents occurring in the last ten years (Exh. B). On two earlier SF 86s Applicant reported the prior offenses (Exhs. C and D). He reasonably believed that since they had been reported earlier, and in view of the corporate instructions to report only incidents occurring during the past ten years, they need not be listed on the SF 86. While the instruction was at variance with Question 24 on the SF 86 itself, it is not implausible that he should have followed the corporate guidance. His failure to list the marijuana use was attributed to his belief that two puffs did not constitute use. He now acknowledges that this was an erroneous interpretation but avers that it was a sincere belief at the time of the completion of the SF 86. I find that the omissions were not deliberate and are thus mitigated.

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. He expresses regret for his conduct and the omissions on his SF 86, and has offered credible explanatory reasons for not doing so. Testimony from his employer, a Navy contract manager, and his son provided persuasive evidence of his good character and integrity.

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 overall record of good conduct justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3 Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard  
Administrative Judge