

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant has a lengthy history of alcohol-related criminal conduct. Applicant falsified his security clearance application by deliberately omitting information about charges and convictions related to alcohol. He failed to mitigate security concerns raised by his criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

CASENO: 03-21761.h1

DATE: 06/07/2005

DATE: June 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21761

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a lengthy history of alcohol-related criminal conduct. Applicant falsified his security clearance application by deliberately omitting information about charges and convictions related to alcohol. He failed to mitigate security concerns raised by his criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 14 January 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 2 February 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 24 March 2005. On 18 April 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 28 April 2005.

FINDINGS OF FACT

Applicant is 50 years old and employed by a defense contractor as a packer/shipper of military material. His manager reports Applicant is a reliable and diligent employee and exceptional team player. Ex. A. He has been employed there since November 2002. Tr. 15.

Applicant served in the U.S. Air Force for 20 years as a munitions specialist. He retired in September 1994 as a staff sergeant (E-5). Tr. 18. Applicant was married from 1975-78 and the couple had a daughter. They divorced after his wife refused to accompany him to an overseas duty location. Applicant met a woman in the overseas location who came to the U.S. and married Applicant in 1984. She returned to her home overseas in 1985. Applicant was again stationed in

that location from 1986-89 and they lived together. She declined to return to the U.S. when his tour overseas was completed. He has not had contact with her or their child in more than 11 years. Ex. 11 at 2. He has another daughter who is almost six years old by a third woman.

In 1975, Applicant drank to the point of intoxication with a friend. When he returned to the military installation, he "was getting a little rowdy and had an accident with a window in the laundry room." Tr. 18. He had to be taken to the hospital to have stitches. He was charged with drunk and disorderly conduct. Tr. 18-19.

In 1977, Applicant was arrested and charged with driving while intoxicated (DWI) in a civilian jurisdiction. He pled guilty to the offense and was fined \$500. Tr. 19.

In 1987, Applicant was arrested by U.S. military authorities overseas for driving under the influence of alcohol (DUI). He received nonjudicial punishment for the offense. At the time, Applicant was an E-5 but was on the list to be promoted to E-6. He ended up being reduced in grade to E-4. Tr. 19-20.

In October 1991, Applicant was arrested at his home for domestic assault. He was very intoxicated at the time of his arrest. Ex. 9 at 2. Applicant pled guilty to the charge of assault and his plea was held in abeyance for a year. As Applicant had no other similar violations over the next year, the court permitted the guilty plea to be withdrawn and the charge was dismissed. *Id.* at 5.

On 1 January 1993, Applicant was arrested for sexual abuse of a child, a second degree felony. Applicant was living with a woman and her six or seven year old daughter. The girl's father made the complaint. It appears charges were not levied until 1996. The charge was eventually dismissed and Applicant had it expunged from his record. Ex. 11 at 3-4; Tr. 25-26.

In March 1995, Applicant was arrested for drunk driving on a military installation twice within a week. He pled guilty to one of the charges before a U.S. magistrate. He was sentenced to one year on probation and a fine of \$1,000. Ex. 11 at 2.

In August 1997, Applicant was arrested for public intoxication. The police found him passed out in his vehicle in the parking lot of a bar. When he got out of the vehicle, he started to lose his balance. Applicant told the police he was intoxicated. He pled guilty to the offense of public intoxication, a misdemeanor. Ex. 7.

In May 1999, Applicant was arrested for assault. Applicant was living with a woman who was eight months pregnant. When he arrived home drunk and started to argue with her, she threatened to move out of the apartment. Applicant pushed her over the couch and slapped her twice across the face. He then wrestled her to the ground and began to strangle her. Applicant pled guilty to the lesser offense of disorderly conduct. He was sentenced to jail for 30 days, suspended, placed on probation for one year, and ordered to attend anger management classes. Ex.6

In February 2001, Applicant went to visit his daughter at her mother's residence. Applicant was drunk and his daughter's mother asked him to leave. He refused, choked her, then picked up the chair on which she was sitting and threw it into the wall and another chair causing her to fall to the floor. The charge was dismissed on motion of the prosecution after the alleged victim failed to appear at the hearing. Ex. 5 at 2, 5, 10.

In March 2001, Applicant was driving his automobile after consuming alcoholic beverages in celebration of St. Patrick's Day. He realized he had consumed too much and should not be driving. He pulled his car off the highway to sleep. He failed to remove his keys from the ignition and was arrested and charged with DUI. His Breathalyzer revealed a concentration of 0.20%. He pled guilty, paid a fine of \$1,400, was placed on probation, and was ordered to perform community service and attend alcohol awareness counseling. Ex. 11 at 2; Ex. 13 at 1. The court also ordered that an ignition interlock device be installed on his vehicle for one year. Ex. 3 at 8.

Applicant entered an Alcohol and Drug Abuse Training Program (ADAPT) in June 2001 as a result of his March 2001 DUI. He received a diagnosis of alcohol abuse and was suspected of being alcohol dependent. He admitted being intoxicated three times in the previous six months, binge drinking while overseas, and reporting for duty intoxicated while he was overseas. As a result of the diagnosis, Applicant was referred to a 16-hour advanced education program to satisfy the state requirements for persons convicted of DUI, and was also referred for formal treatment. Applicant completed the 16-hour education program, but dropped out of the treatment program after one session. Ex. 13 at 1; Ex. 10 at 2.

DOHA referred Applicant for a mental health evaluation to determine the extent of his alcohol problem. In an evaluation dated 30 April 2004, he was diagnosed with alcohol abuse by a clinical psychologist. The psychologist suspected Applicant was also alcohol dependent. Ex. 13 at 1. Applicant denied he had an alcohol problem or is in need of treatment, although he admitted he continued to drink alcohol daily. The psychologist evaluated Applicant as having a "guarded" prognosis and strongly urged him to seek treatment. Applicant declined treatment. Ex. 13.

Applicant still consumes alcoholic beverages. At the hearing, he estimated that he still drinks to the point of intoxication every other weekend. Tr. 38. He passed out from drinking alcohol just three weeks before the hearing. Tr. 39. Applicant believes he has "a mild addiction to alcohol." Tr. 42.

On 20 February 2003, Applicant signed a security clearance application (SCA) certifying that his answers were "true, complete, and correct" to the best of his knowledge and belief, and acknowledging that "a knowing and willful false statement" could be punished under 18 U.S.C. § 1001. Question 24 asked if he had ever been charged with or convicted of any offenses related to alcohol. Applicant answered "yes," but listed only his most recent DUI from March 2001. Ex. 1.

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

CONCLUSIONS

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted of a 24 March 2001 DUI (¶ 1.a), was arrested in February 2001 for domestic violence and simple assault (¶ 1.b), was arrested for spouse abuse in May 1999 and pled guilty to disorderly

conduct (¶ 1.c), was arrested in August 1997 for intoxication and pled guilty (¶ 1.d), was arrested twice within a week in March 1995 for DUI (¶ 1.e), was arrested in January 1993 for sexual abuse of a child (¶ 1.f), was arrested in October 1991 for domestic assault (¶ 1.g), was arrested at a military installation in Germany in 1987 for DWI (¶ 1.h), was arrested for DWI in 1997 (¶ 1.i), and was arrested for being drunk/disorderly in 1975 (¶ 1.j). Applicant admitted ¶¶ 1.a, 1.e, 1.h, 1.i, and 1.j, and denied the rest. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.A

Applicant was charged with sexual abuse of a child. *See* SOR ¶ 1.f. There is no evidence, other than the arrest, that he actually committed the offense. There is no requirement that an applicant even be charged with a criminal offense for his conduct to be disqualifying. Nevertheless, there must be sufficient evidence of record to convince the judge Applicant committed the offense. *See* ISCR Case No. 01-12452 at 3 (App. Bd. Jan. 27, 2003). The evidence of record does not convince me Applicant committed the offense.

The evidence is sufficient to establish each of the other allegations contained in SOR ¶ 1. There are allegations, admissions, and convictions of criminal conduct. DC E2.A10.1.2.1, E2.A10.1.2.2. An applicant may mitigate such criminal conduct by showing his criminal behavior was not recent. MC E2.A10.1.3.1. The last criminal behavior established by the record occurred more than four years ago. Therefore, I conclude MC E2.A10.1.3.1 applies. Nevertheless, I find against Applicant on all allegations in SOR ¶ 1, except ¶ 1.f. Applicant's lengthy record of criminal behavior fueled by alcohol, his failure to recognize he has a problem, his continuing to drink to the point of intoxication every two weeks, and his refusal to submit to treatment are cause of great concern. Security clearance decisions are predictive judgments based on an applicant's past conduct and present circumstances. ISCR Case No. 02-22240, 2004 WL 2152736 (App. Bd. Jul. 16, 2004). If he had obtained such treatment and had not been involved in criminal behavior in four years, I could find Applicant had presented clear evidence of rehabilitation. Under the current circumstances, I am unable to do so.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant was diagnosed with alcohol abuse in April 2004 (¶ 2.a), was diagnosed with alcohol abuse in August 2001 (¶ 2.b), consumes five to six beers daily and 12 beers on weekends (¶ 2.c), and his alcohol-related arrests as specified in ¶ 1 (¶ 2.d). Applicant denied all of the allegations. 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. Directive ¶ E2.A7.1.1.

The Government produced evidence of potentially disqualifying conditions under Guideline G. Applicant was involved in alcohol-related incidents away from work-including five driving offenses and several assaults. DC E2.A7.1.2.1. On at least two occasions, Applicant has been diagnosed with alcohol abuse by medical professionals who were unable to rule out that he was alcohol dependent. DC E2.A7.1.2.3. Yet he continues to consume alcohol to the point of intoxication. He habitually (every two weeks) consumes alcohol to the point of intoxication. DC E2.A7.1.2.5. Applicant believes a person's drinking habits are private. He fails to understand that a person who is intoxicated has impaired judgment that increases the risk of a careless unauthorized disclosure of classified information. None of the listed mitigating

conditions apply. I find against Applicant on ¶ 2.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material information on his SCA by deliberately failing to disclose he had been charged with alcohol-related offenses as specified in ¶¶ 1.d, 1.e, 1.h, 1.i, and 1.j. ¶ 3.a. Applicant denied the allegation. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established that Applicant failed to list the alcohol-related offenses of which he was charged as alleged in ¶¶ 1.d, 1.e, 1.h, 1.i, and 1.j. At the hearing, he claimed he thought the question only asked for charges in the last seven years, he thought one of the allegations with which he was charged was "bogus," all of the incidents in which he was charged are on file with the military, so an investigator could go there to find it, and he viewed the SCA as another job application and "the fewer people that's privy to my past the better as far as I'm concerned." Tr. 48-50. An applicant's history of alcohol related charges and convictions is relevant and material to a determination of his security worthiness. After observing Applicant's demeanor and listening carefully to his testimony, I find Applicant deliberately falsified his SCA.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: 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.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).