

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant has been arrested and charged with driving under the influence (DUI) or other alcohol-related offense six times in 20 years. During this same period, he has also been arrested for two drug-related offenses and driving with a revoked driver's license, a misdemeanor. He deliberately omitted most of his arrests when completing his security clearance application. He has not mitigated the government's security concerns regarding his criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

CASENO: 03-22340.h1

DATE: 03/30/2006

DATE: March 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22340

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been arrested and charged with driving under the influence (DUI) or other alcohol-related offense six times in 20 years. During this same period, he has also been arrested for two drug-related offenses and driving with a revoked driver's license, a misdemeanor. He deliberately omitted most of his arrests when completing his security clearance application. He has not mitigated the government's security concerns regarding his criminal conduct, alcohol consumption, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 13, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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. Specifically, the SOR set forth security concerns arising under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct), of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On August 11, 2005, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on January 10, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated February 1, 2006, but no additional evidence. This case was assigned to me on February 9, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, all the allegations under Guidelines J, G, and E of the SOR.⁽¹⁾ Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 42-year-old facilities coordinator for a defense contractor.⁽²⁾ He has worked for this contractor for more than 19 years.⁽³⁾ He completed a security clearance application (SF 86) in December 2001.⁽⁴⁾

In January 1983 when he was 20 years old, the police arrested and charged Applicant with driving under the influence of liquor (DUI).⁽⁵⁾ The results of his breathalyzer test showed a blood-alcohol level of .21%.⁽⁶⁾ The disposition of this arrest is unknown. In October 1984 at age 23, the police arrested and charged him with DUI.⁽⁷⁾ The court found him guilty of DUI, fined him \$500.00 plus court costs, and sentenced him to 48 hours in jail.⁽⁸⁾ The police arrested and charged him with a third DUI in October 1987 when he was 25 years old.⁽⁹⁾ His breathalyzer test results indicated a blood alcohol level of .07%.⁽¹⁰⁾ The court found him not guilty on the DUI charge, but guilty of reckless driving and fined him \$59.00.⁽¹¹⁾

Six and one-half years later, in June 1993, at the age of 30, the police arrested and charged Applicant with drug paraphernalia, illegal possession of prohibited liquor, and possession of marijuana second degree, a misdemeanor.⁽¹²⁾ He pled not guilty to illegal possession of prohibited liquor.⁽¹³⁾ The court found him guilty as charged and fined him \$50.00.⁽¹⁴⁾ He pled guilty to the drug paraphernalia charge and the court fined him \$500.00, sentenced him to 180 days in jail, which was suspended, and placed him on probation for two years.⁽¹⁵⁾ The state dismissed the marijuana charge.⁽¹⁶⁾

The police arrested and charged Applicant with possession of cocaine, a felony, in January 2000.⁽¹⁷⁾ The State nolle prossed this case for lack of evidence connecting Applicant to the cocaine.⁽¹⁸⁾ In October 2000 at age 37, the police again arrested and charged him with DUI, driving on a suspended, revoked, or cancelled license, and failure to stop at a stop sign.⁽¹⁹⁾ The State nolle prossed the failure to stop and driving on a suspended, revoked, or cancelled license charges.⁽²⁰⁾ He pled guilty to the DUI, and the court sentenced him to 60 days in jail, suspended; placed him on two years of unsupervised probation; and fined him \$600.00 plus court costs and a \$50.00 assessment fee.⁽²¹⁾ A few months

later, in March 2001, the police again arrested and charged him with DUI when his breathalyzer test results showed a blood-alcohol level of .10%.⁽²²⁾ The court fined him \$1,000.00 and suspended his driver's license for three months.⁽²³⁾

Following another arrest in 2002 for DUI and possession of marijuana, second degree, the State nolle prossed its case against Applicant because of case age and the lack of a toxicology report.⁽²⁴⁾ His last reported arrest occurred in June 2003, when he was arrested and charged with driving with a revoked license, a misdemeanor under State law.⁽²⁵⁾ The disposition of this case is unknown.

Applicant states that he has been sober since December 2003;⁽²⁶⁾ has not missed work or been late to work because of alcohol issues;⁽²⁷⁾ and attends Alcoholics Anonymous (AA) three or more times a week.⁽²⁸⁾ He has not presented evidence, supporting his AA attendance and sobriety.

On December 4, 2001, Applicant completed his security clearance application. He answered "yes", and listed an arrest in March 2001, to the following question in the SOR:

Question 24. Your Police Record - Alcohol/Drug Offenses

Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 833 OR 18 U.S.C. 3607.

He did not list any of his arrests from 1983 through 2000.⁽²⁹⁾ He explains that he listed all the arrests he could remember and that the system would not allow him to enter arrests beyond a certain period of time, which he thinks was ten years.⁽³⁰⁾

Applicant completed a security clearance application around 1990 and signed two written statements related to his application. In the first statement signed on arch 31, 1992, he swore that he did not drink and drive, and did not intend to do so in the future.⁽³¹⁾ In the second statement given on April 13, 1992, he acknowledged that he had not be truthful about his marijuana use in his previous statement.⁽³²⁾ Finally, in his December 2001 security clearance application, he stated that he had not and would operate a motor vehicle when he had consumed an alcohol beverage.⁽³³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, 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.⁽³⁴⁾ 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.⁽³⁵⁾ The government has the burden of proving controverted facts.⁽³⁶⁾ The burden of proof is something less than a preponderance of the evidence.⁽³⁷⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽³⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³⁹⁾

No one has a right to a security clearance⁽⁴⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴²⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁴³⁾ 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 a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Criminal Conduct - Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Alcohol Consumption - Guideline G: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Except for the allegation in subparagraph 1.f., the government established its case under Guideline J. Over a period of 20 years between 1983 and 2003, Applicant has been arrested six times for DUI, twice for drug-related offenses, once for possession of illegal liquor, and once for driving on a revoked license. His criminal conduct raises Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission 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*). Because the State dismissed the January 2000 possession of cocaine charge for lack of any evidence connecting Applicant to this crime, none of the disqualifying conditions apply to allegation 1.f. [\(44\)](#)

While some of his arrests occurred many years ago, he continued to drink, which resulted in additional arrests not only for DUI, but also for driving with a revoked license and drug paraphernalia. Thus, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1. (*The criminal behavior was not recent*) and CC C E2.A10.1.3.2. (*The crime was an isolated incident*) do not apply. Likewise, he was not pressured into drinking; rather he voluntarily drank alcohol, knowing the potential criminal consequences of his conduct. CC MC E2.A10.1.3.3. (*The person was pressured or*

coerced into committing the act...) and CC C 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 reoccur*) are not applicable.

Even though he has stated that he stopped drinking alcohol in December 2003, and thus, his criminal conduct related to drinking will not occur in the future, he has not presented any clear evidence in the form of documentation of his AA attendance or his alcohol rehabilitation. He has not established that CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*) applies.

The government established its case under Guideline G. Applicant's DUI arrests in 1983, 1984, 1987, 2000, 2001, and 2002 as well as his 1993 arrest for possession of illegal liquor are alcohol-related incidents away from work. Applicant has been drinking for more than 20 years. He often drank to excess and to intoxication, causing his judgment to be impaired. His numerous DUI arrests reflect that his alcohol consumption has been excessive on numerous occasions. Applicant's conduct clearly falls within 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 AC DC E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*).

Applicant states that he attends Alcoholics Anonymous.⁽⁴⁵⁾ The record does not contain any reports from a qualified physician, medical professional, or licensed clinical social worker indicating that he is alcohol dependent or an alcohol abuser. Thus, Alcohol Consumption Disqualifying Conditions E2.A7.1.2.3. (*Diagnosis by a credentialed medical profession... of alcohol abuse or alcohol dependence*), AC DC E2.A7.1.2.4. (*Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) and 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*) do not apply.

A security concern based on alcohol consumption can be mitigated in several ways. Applicant's more than 20 years of drinking and related DUI arrests reflect a long pattern of alcohol consumption. Thus, he has not established a mitigating condition under Alcohol Consumption Mitigating Conditions (AC MC) E2.A7.1.3.1. (*The alcohol related incidents do not indicate a pattern*).

Applicant has a long history of drinking and driving, with his first alcohol-related arrest occurring in 1983 and his last alcohol-related arrest occurring in 2002. Although Applicant states that he has been sober for the last two years and is an active participant in AA, he has not submitted any documentary evidence to support his statements. Without some clear evidence of an ongoing change in his behavior, the fact that he has not been arrested for any alcohol-related incidents in two and one-half years is not indicative of a change in his behavior or sobriety. The record reflects that from 1987 until 1993, he was not arrested for any alcohol incidents and that after his 1993 arrest, he was not arrested for another alcohol-related incident until 2000. Even though he only had one arrest over a period of 12 years, a possible indicator of sobriety, he actually continued drinking, which led to several arrests between 2000 and 2003. His problems with alcohol continued until recently. He has not establish that 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.A6.1.3.3. (*Positive changes in behavior supportive of*

sobriety) apply. Finally, since the record contains no evidence of a diagnosis of alcohol abuse or alcohol dependence, AC MC E2.A7.1.3.4. (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation...*) does not apply.

The government has established its case under Guideline E. In answering the security clearance application, Applicant responded "yes" to Question 24, then listed only one of his many DUI and drug-related arrests. He omitted two arrests that had occurred within two years of his answer. By so doing, he deliberately omitted material and relevant facts necessary to the determination of his security clearance eligibility and trustworthiness. His conduct clearly falls with Personal Conduct Disqualifying Conditions E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement.....*) and 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*).

Question 24 clearly asks if he had ever been arrested for any offense(s) related to alcohol or drugs. Applicant truthfully answered "yes", but then listed only one DUI arrest in 2001. In the two years prior to completing his answers, he had been arrested twice for alcohol and drug offenses. His statement that he could not remember these arrests is not credible, given the nearness in time between the arrests and his answers. Likewise, his claim that the computer would not allow him to enter arrests over ten years old does not explain why he did not list his two arrests in 2000 and his arrest in 1993, all of which occurred within ten years of December 4, 2001, the date he completed his security clearance application. His lack of credibility is supported by his earlier statements to investigators where he repeatedly said he would not drink and drive, yet his subsequent DUI arrests indicate he did so. He deliberately avoided listing his arrests before his answer would show a pattern of alcohol-related arrests. He has not mitigated the governments concerns as to his personal conduct.

Finally, I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. He has a long history of drinking and alcohol-related arrests. Given his pattern of not telling the truth, without supporting documentation, his assertion that he has remained sober since December 2003 is not sufficient evidence to show he has stopped drinking. The government places a high degree of trust in those to whom it grants a security clearance. His drinking and untruthfulness brings into question his trustworthiness and reliability. He has not overcome the government's security concerns. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to 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 J (Criminal Conduct): 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

Paragraph 2, Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, dated August 11, 2005) at 1; Supplemental response dated February 1, 2006.
2. Item 4 (Applicant's security clearance application, dated December 4, 2001) at 1.
3. *Id.*
4. *Id.*
5. Item 5 (Police arrest report, dated January 7, 1983) at 2, 6.
6. *Id.* at 1.
7. Item 2 (Statement of Reasons, dated July 13, 2005) at 1; Item 3, *supra* note 1, at 1.
8. *Id.*
9. Item 10 (Police arrest report, dated October 4, 1987) at 1.
10. *Id.* at 4.
11. *Id.* at 3.
12. Item 11 (Court documents related to the June 1993 arrest) at 3, 6, 7.
13. *Id.* at 5.
14. *Id.*
15. *Id.* at 9.

16. *Id.*
17. Item 13 (Complaint, warrant, and other documents related to the January 2000 arrest) at 1-2.
18. *Id.* at 5-6.
19. Item 12 (Court records and complaints regarding the October 1, 2002 arrest) at 2, 4, 6.
20. *Id.* at 1, 3.
21. *Id.* at 7.
22. Item 4, *supra* note 2, at 4.
23. *Id.*
24. Item 14 (Police arrest report and court documents related to March 20, 2002 arrest) at 1, 4.
25. Item 15 (Traffic ticket and complaint, dated June 3, 2003); State Code 1975 § 32-6-19.
26. Item 3, *supra* note 1, at 1; Supplemental response, *supra* note 1, at 1.
27. Supplemental response, *supra* note 1, at 1.
28. *Id.*
29. Item 4, *supra* note 2, at 4.
30. Item 3, *supra* note 1, at 1; Supplemental response, *supra* note 1, at 1.
31. Item 6 (Applicant's signed, sworn statement, dated March 31, 1992) at 4.
32. Item 7 (Applicant's signed, sworn statement, dated April 13, 1992) at 3.
33. Item 4, *supra* note 2, at 4.
34. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
35. ISCR Case No. 96-0277 (July 11, 1997) at 2.
36. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
37. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
38. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
39. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
40. *Egan*, 484 U.S. at 531.
41. *Id.*
42. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
43. Executive Order No. 10865 § 7.

44. Applicant admitted the arrest, stating that he was falsely accused.

45. Item 3, *supra* note 1, at 1 and Supplemental response, *supra* note 1, at 1.