

KEYWORD: Alcohol; Drugs; Criminal Conduct; Personal Conduct

DIGEST: The Applicant has a long history of alcohol abuse, drug abuse and criminal conduct. His arrests include alcohol related offenses, various drug offenses and several serious crimes, which were reduced to Disorderly Conduct. This conduct is recent and not mitigated. In addition, the Applicant falsified a security clearance application in 2003. On the whole, adverse inference is not overcome. Clearance is denied.

CASENO: 03-22594.h1

DATE: 07/15/2005

DATE: July 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22594

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a long history of alcohol abuse, drug abuse and criminal conduct. His arrests include alcohol related offenses, various drug offenses and several serious crimes, which were reduced to Disorderly Conduct. This conduct is recent and not mitigated. In addition, the Applicant falsified a security clearance application in 2003. On the whole, adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On December 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 10, 2005, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on March 28, 2005. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on April 4, 2005, and elected not to submit any additional information. The case was received by the undersigned for Decision on May 18, 2005.

FINDINGS OF FACT

The Applicant is 26 and single. He is employed by a defense contractor as a Material Handler, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline G - Alcohol consumption). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Applicant admits in his Answer subparagraphs 1.a. through 1.e. of the SOR. These admissions are hereby deemed findings of fact.

The Applicant has a ten year history of drinking to excess and to the point of intoxication, beginning when he was 16 years old. This alcohol use resulted in at least five alcohol related arrests.

In 1996 (SOR 1.b.) and 2003 (SOR 1.e.) the Applicant was arrested for Driving Under the Influence. The last conviction resulted in a fine, attendance at a Weekend Intervention Program and the suspension of the Applicant's drivers license for 180 days. In addition, he was sentenced to two years probation, which expired in April 2005.

The Applicant was arrested for Felony Arson in 1997 (SOR 3.a.). He started a fire at a rock concert. The Applicant admitted that his actions were "due in part to my use of alcohol." (Item 5 at 4.) He was convicted of a lesser charge of Disorderly Conduct, fined and ordered to perform community service.

His use of alcohol resulted in an arrest for Possession of Marijuana and Using False Identification to Obtain Alcohol in 1998 (SOR 1.c.) and Urinating in Public in 2001 (SOR 1.d.). He plead guilty to a reduced charge in the 1998 case and was fined. The 2001 case resulted in a guilty plea followed by community service and a suspended fine.

Paragraph 2 (Guideline H - Drug abuse). The Government alleges in this paragraph that the Applicant is ineligible for

clearance because he abuses illegal drugs.

The Applicant admits in his Answer subparagraphs 2.a. through 2.f. of the SOR. These admissions are hereby deemed findings of fact.

The Applicant first began using marijuana in about 1996. He used it until at least 2001. According to the Applicant, his use ranged from monthly to twice a week. (Item 3 at 2 and Item 5 at 6.) As set forth under Paragraph 4, below, the Applicant is not a trustworthy reporter concerning his past. Therefore, it is impossible to state with certainty when he last used marijuana.

The records show that the Applicant was arrested three times for drug related offenses. He was arrested as a juvenile in 1997 for Drug Abuse (SOR 2.c.). In 1998, the Applicant was arrested for Possession of Marijuana (SOR 2.d.). Finally, in 2001, he was convicted of Drug Abuse (SOR 2.f.). In addition, while on probation for the offense described in SOR 3.b., below, he tested positive for marijuana three times in 1999. (Item 12.)

Paragraph 3 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

The Applicant admits in his Answer subparagraphs 3.a. through 3.d. of the SOR. These admissions are hereby deemed findings of fact.

The Applicant's criminal conduct involving alcohol and drugs, set forth under Paragraphs 1 and 2, above, will also be considered under this Paragraph. (SOR 3.c.) In addition, his conduct in falsifying a Government questionnaire, alleged below under Paragraph 4, will also be considered under this Paragraph. If the Applicant did falsify a Government questionnaire, it would be a violation of 18 USC, Section 1001, a felony. (SOR 3.d.)

As stated under Paragraph 1, above, the Applicant was arrested in 1997 for felony arson. He was convicted of the lesser charge of Disorderly Conduct, was fined and sentenced to community service. (SOR 3.a.)

In 1998, the Applicant was arrested for Menacing (SOR 3.b.) By his own admission, this incident occurred because of his involvement with a friend whose drug deal had gone bad. (Item 5 at 3-4, Item 18.) He pleaded guilty to a reduced

charge of Disorderly Conduct. He received a suspended jail sentence, a year's probation, and a fine. He was also required to receive Alcohol/Drug Counseling and not to have any further contact with the complainant.

Paragraph 4 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant admits in his Answer subparagraph 4.a. of the SOR without any reservations. That admission is hereby deemed a finding of fact.

On January 29, 2003, the Applicant completed an official DoD questionnaire in which he stated that he had used marijuana between 1996 and June 1999. (Item 4, question 27.) This statement was a false answer to a material question pertaining to the Applicant's former involvement with illegal substances. (SOR 4.a.)

In the same questionnaire, the Applicant was asked in question 24 about his police record concerning drug or alcohol offenses. The Applicant admitted that he had been charged or convicted in 1996 for Driving Under the Influence, 1997 for Disorderly Conduct, 1998 for Possession of Marijuana and 2001 for Urinating in Public. He did not list his citation for Possession of Drug Paraphernalia in 2001. In his Answer, the Applicant states that his failure to set forth this incident was an oversight. That argument is rejected since that incident occurred only two years before he filled out the questionnaire, was the most recent drug related offense, and resulted in the suspension of his driver's license.

The Applicant attended a court-ordered Weekend Intervention Program in June 2003. This was in conjunction with his last arrest for Driving Under the Influence. As part of this program various program related forms were filled out. (Item 6.) (SOR 4.c., 4.d. and 4.e.) The Applicant admitted not being completely truthful with the program about his drug use, because the program was only related to his alcohol use. I have examined the documents in conjunction with the Applicant's Answer and his statement (Item 5). I do not believe that the documents in Item 6 have sufficient indications of reliability, in that not all of them were prepared by the Applicant. Accordingly, I am finding for the Applicant with regards to SOR subparagraphs 4.c., 4.d. and 4.e.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the

1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under "Conclusions," below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in criminal conduct, drug and alcohol use and acts of falsification that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has used alcohol to excess (Guideline G); used illegal drugs (Guideline H); has been involved in criminal conduct for many years

(Guideline J); and that he intentionally made false material statements to DoD, in violation of a felony criminal statute (Guidelines E and J).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. As set forth above, subparagraphs 4.c., 4.d. and 4.e. are found for the Applicant as the available evidence is not sufficient to support the allegations.

The Applicant has had a serious alcohol problem for several years. He has had a series of alcohol related arrests from 1996 until 2003. His two years of probation for the last arrest just expired this year. He states that his alcohol use has been drastically curtailed since 2003. However, given that he is not a very reliable reporter, this statement cannot be taken at face value. Under Guideline G, Disqualifying Condition E2.A7.1.2.1. applies, *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 abuse*. None of the Mitigating Conditions apply. Paragraph 1 is found against the Applicant.

Applicant's marijuana use ended over three years ago. From the evidence that has been presented, it is obvious that the Applicant had a serious drug problem at least during the 1999-2001 time frame. Given his history of falsification, and the extent of the drug use, I am unable to find that he has mitigated this paragraph. Disqualifying Condition E2.A8.1.2.1. under Guideline H applies, *Any drug use*. No Mitigating Conditions apply. Paragraph 2 is found against the Applicant.

The Applicant has a long history of criminal offenses. These offenses range from drug and alcohol offenses to arrests for Menacing and Felony Arson, which were both reduced to Disorderly Conduct. Other than his own statements, the Applicant has presented no evidence showing that he has reformed and that incidents like those set forth in this Decision will not occur in the future. The extent and nature of these many offenses show that they are the result of a habit of behavior, and not aberrations. In my opinion, the Applicant needs more time to show that he has truly reformed and has learned the error of his ways. Disqualifying Conditions E2.A10.1.2.1., *Allegations or admission of criminal conduct, regardless of whether the person was formally charged* and E2.A10.1.2.2., *A single serious crime or multiple lesser offenses*, apply. None of the Mitigating Conditions apply. Paragraph 3 is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. The Applicant's falsifications concerning his drug use and arrest record were recent and material. Disqualifying Condition E2.A5.1.2.2. applies, *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*. None of the Mitigating Conditions apply. Guidelines E and J are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 3, and 4 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: Against the Applicant.

Subparagraph 2.f.: Against the Applicant.

Subparagraph 2.g.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: Against the Applicant.

Subparagraph 3.c.: Against the Applicant.

Subparagraph 3.d.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subparagraph 4.a.: Against the Applicant.

Subparagraph 4.b.: Against the Applicant.

Subparagraph 4.c.: For the Applicant.

Subparagraph 4.d.: For the Applicant.

Subparagraph 4.e.: For 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 the Applicant.

Wilford H. Ross

Administrative Judge

