

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 39 years old. He is an aircraft technician in a managerial role for a defense contractor. He is divorced and has four children. Applicant has five alcohol-related arrests from 1985 to 2003, no alcohol evaluation, and he drank beer until the summer of 2004. He failed to disclose his history of arrests on his security clearance application. Applicant failed to mitigate his alcohol consumption, personal conduct, and criminal conduct security concerns. Clearance is denied.

CASENO: 03-22904.h1

DATE: 07/27/2005

DATE: July 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22904

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 39 years old. He is an aircraft technician in a managerial role for a defense contractor. He is divorced and has four children. Applicant has five alcohol-related arrests from 1985 to 2003, no alcohol evaluation, and he drank beer until the summer of 2004. He failed to disclose his history of arrests on his security clearance application. Applicant failed to mitigate his alcohol consumption, personal conduct, and criminal conduct security concerns. 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 October 5, 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on November 5, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on December 22, 2004. On May 5, 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. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on May 20, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old, divorced with four children. He works for defense contractor as an aerospace products technician, and has for the past 20 years. His performance evaluations show he exceeds expectations, and his site manager testified as to his competency and dedicated work ethic. (Tr. 14, 26, 38, 42, 43, 49-58; Exhibits 1, A and B)

Applicant completed his security clearance application (SCA) on January 22, 2003. He was involved in a major project, working 12 to 16 hours daily, when told to complete his SCA. He failed to disclose his four alcohol-related arrests and convictions from 1985 to 1998 in response to Question 24 of the SCA ("Have you *ever* (emphasis added) been charged with or convicted of any offenses related to alcohol or drugs?") Applicant answered "no". Applicant disclosed his January 12, 2003, driving while intoxicated arrest in response to Question 23's inquiry about pending charges. Applicant claimed he rushed through the SCA, thought Question 24 only asked for arrests in the past 10 years while still omitting the 1998 arrest. Applicant's job requires him to read technical manuals to work on the aircraft, and he has no difficulty with his high school degree education comprehending those manuals. (Tr. 23, 27, 28, 46, 48, 59; Exhibits 1, 2, and 3 at 6)

Applicant has five alcohol-related offenses between 1985 and 2003. July 27, 1985, after graduating from high school, he was arrested for driving while intoxicated (DWI), testing showing a blood-alcohol content (BAC) of .12%. He was fined \$500 and given 24 months probation. Next, on August 3, 1990, he was arrested in the same community for DWI and the charges were dismissed when Applicant's attorney had witnesses and his bar tab showing how much Applicant ordered and drank. In August 1991, Applicant was arrested for DWI, speeding, and having a non-operative taillight while returning from a weekend at a lake. His BAC was .11%, over the legal limit in that state. Applicant had beer and pizza at a restaurant with friends before being arrested. Applicant was fined and put on probation. Applicant was arrested for public intoxication on October 17, 1998, when found asleep at the wheel of his car on a public highway. He did not contest the charge and forfeited his \$100 bond as a fine after he was unable to return to court due to his company sending him out of town on a job. Finally, on January 12, 2003, he was arrested for DWI, sentenced to a fine of \$500, court costs, 40 community service hours, 180 days in jail with probation for one year. The jail time was suspended pending successful completion of the probation. Applicant did successfully complete probation. (Tr. 17, 28-33; Exhibits 1 at 6, 3 at 3-5)

Applicant participated in a substance abuse/recovery program on his own initiative. The program consisted of 20 hours spread over 10 weeks. He completed it in March 2004. Applicant drank alcohol in the summer of 2004, after playing golf, and this was the last time he had alcohol. Beer is the alcohol he drank when he drank. The only other alcohol-related program in which he participated was a three day program in 1991. He does not consider himself an alcoholic or alcohol abuser and there is no evidence he has been diagnosed with either condition. He no longer drinks alcohol. (Tr. 15, 18-21, 39, 40; Exhibits 3 at 6, C)

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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security

clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Exec. Or. 12968 § 3.1(b).

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:

Guideline G: Alcohol Consumption : *The Concern: 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.* E2.A7.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

Guideline J: Criminal Conduct: *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* E2.A10.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. I conclude the following specific Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable to the facts in this case.

Regarding Guideline G (Alcohol Consumption), DC 1 (Alcohol-related incidents away from work E2.A7.1.2.1) applies. Applicant has five arrests and four dispositions after findings of guilty by state courts over an 18 year period. The charge was dismissed on his fifth arrest.

Applicant asserts he stopped drinking. An applicant may mitigate alcohol consumption security concerns by demonstrating he has made positive changes supportive of sobriety (MC E2.A7.1.3.3). Applicant has not had a drink since the summer of 2004. MC E2.A7.1.3.3 applies.

An applicant may also show mitigation by demonstrating that following a diagnosis of alcohol abuse or alcohol dependence, he has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Applicant offers the 2004 alcohol education program documentation (Ex. C) to support his contention he has no alcohol problem. But Exhibit C does not explain the program in detail, nor does it contain an alcohol evaluation by a licensed clinical social worker employed by a recognized alcohol treatment program, or a diagnosis by a credentialed medical professional of Applicant's true relationship with alcohol. MC E2.A7.1.3.4 does not apply.

After reviewing all of the evidence, I am convinced Applicant failed to mitigate alcohol consumption security concerns. Although he has made positive changes supportive of sobriety, in light of his past problems with alcohol, enough time has not elapsed to establish a firm track record of sobriety. Therefore, I conclude this security concern against Applicant.

Regarding Guideline E (Personal Conduct), the DC 2 (deliberate omission of relevant and material facts from an SCA; ¶E2.A5.1.2.2) applies. Applicant failed to disclose his history of alcohol-related arrests as SCA Question 24 requires.

No MC apply. Applicant would have me believe he could not read the questions, rushed through the SCA, and forgot about his history of arrests. He made his own record, and it is not believable to me that he could have forgotten all of those arrests. He knew them and deliberately failed to disclose them. Question 24's language is clear and simple, and someone experienced and smart enough to read aircraft technical manuals cannot now claim he could not understand a simple question on a governmental form. I conclude this guideline against Applicant.

Finally, Guideline J (Criminal Conduct) has DC 1 (Allegations or admissions of criminal conduct, regardless of whether the person was formally charged E2.A10.1.2.1) and DC 2 (Multiple lesser offenses E2.A10.1.2.2) applicable. Applicant admitted his alcohol-related arrests, and there are five of them.

No MC apply. I considered all of them, but none pertain to Applicant's history of arrests. Therefore, I conclude this guideline against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to 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).