

KEYWORD: Alcohol; Personal Conduct

DIGEST: Between December 1999 and November 2001, Applicant was arrested twice for driving while intoxicated (DWI). On another occasion she was arrested for public intoxication, but avoided being charged with DWI by lying to the police about who was driving. In a statement to the DSS, Applicant admitted her alcohol problem and lying to the police. Through her confession, her abstinence from consuming alcoholic beverages, and the unlikelihood of recurrence of these problems, Applicant mitigated alcohol consumption and personal conduct security concerns. Clearance is granted.

CASENO: 03-24907.h1

DATE: 05/25/2005

DATE: May 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24907

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between December 1999 and November 2001, Applicant was arrested twice for driving while intoxicated (DWI). On another occasion she was arrested for public intoxication, but avoided being charged with DWI by lying to the police about who was driving. In a statement to the DSS, Applicant admitted her alcohol problem and lying to the police. Through her confession, her abstinence from consuming alcoholic beverages, and the unlikelihood of recurrence of these problems, Applicant mitigated alcohol consumption and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 28 December 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 11 January 2005 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 14 February 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 10 March 2005 and failed to respond. The case was assigned to me on 18 May 2005.

FINDINGS OF FACT

Applicant is a 37-year-old employee of a defense contractor. She was granted a secret clearance on 25 August 1997.

Applicant consumed beer with friends after work at a bar. She would "usually drink to the point of intoxication, 6 plus beers." Item 6 at 4. In December 1999, she drank too many shots of whiskey and tabasco sauce. Shortly after she left the bar, police stopped her while she was driving at excessive speed. She was subsequently charged with driving while intoxicated (DWI). She submitted to an alcohol breath test that registered above the legal limit. Applicant pled guilty to the reduced charge of reckless driving and paid a fine of \$800.

In September 2000, Applicant was at a bar drinking beer with friends. She estimates she had six to seven 12-ounce beers. Later that evening, she drove her vehicle into a fire hydrant. When police arrived, she denied driving the vehicle because she did not want another arrest for DWI and the larger fine that would inevitably result from a DWI conviction. She was arrested for public intoxication and subsequently pled guilty to that offense.

In November 2001, after consuming six beers with friends at a bar, Applicant walked home, got into her car, and drove to a friend's house. On the drive, she was stopped for speeding. She was administered a field sobriety test which she failed. She was arrested for DWI and submitted to an alcohol breath test. She tested over the legal limit. She pled guilty to DWI in January 2003, was fined and ordered to attend a DWI class and a victim's impact panel.

Applicant stopped drinking alcoholic beverages in 2002 because she wanted to quit smoking and she smokes when she drinks.

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

CONCLUSIONS

Guideline G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to excess and to the point of intoxication from 1999 to at least April 2002 (¶ 1.a); was arrested for DUI in December 1999 (¶ 1.b); was arrested for public intoxication in September 2000 (¶ 1.c); and was arrested for DWI in November 2001 (¶ 1.d). Applicant admitted each of the stated allegations. Answer. 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.

Applicant's three alcohol-related incidents away from work within a three-year period raise security concerns and may be disqualifying. DC E2.A7.1.2. On the other hand, the problem occurred a number of years ago-her last arrest was over three years ago-and she has made positive changes in her behavior supportive of sobriety. MC E2.A7.1.3.2 and E2.A7.1.3.3. She has not had a drink in three years. Applicant clearly understands the consumption of alcohol represents a threat to her eligibility for a security clearance and is unlikely to repeat her previous conduct. Under all the circumstances of this case, I find for Applicant on ¶ 1.

Guideline E--Personal Conduct

DOHA alleged Applicant lied to police officers in September 2000 by denying she had driven her vehicle into a fire hydrant (¶ 2.a). Applicant admitted 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.

Applicant' lying to police officers demonstrates a lack of candor and is potentially disqualifying. *See* DC E2.A5.1.2.1. Applicant was intoxicated at the time. Although intoxication is not a defense, it does inhibit good judgment and is the

reason abusing alcohol is a security concern. Applicant freely admitted her conduct to the Defense Security Service agent who interviewed her. Based on her admissions to the DWI offenses, the age of the offense (almost five years old), and the unlikelihood of any recurrence, especially as she has stopped drinking alcohol, I find for Applicant on ¶ 2.

FORMAL FINDINGS

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

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

James A. Young

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).