

KEYWORD: Alcohol; Criminal Conduct; Financial

DIGEST: Applicant was arrested for alcohol-related driving offenses on three occasions from 1991 to 2002, and failed to file state income tax returns from 1999 to 2002. He successfully completed an intensive alcohol treatment and counseling program and three years supervised probation required as a result of his third arrest, and he has maintained sobriety since October 2002. He also resolved his tax difficulties successfully and has paid his other debts in full, thereby successfully mitigating security concerns arising from his alcohol consumption, criminal conduct and financial difficulties. Clearance is granted.

CASENO: 03-25089.h1

DATE: 12/22/2005

DATE: December 22, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25089

DECISION OF ADMINISTRATIVE JUDGE

DAVID S BRUCE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested for alcohol-related driving offenses on three occasions from 1991 to 2002, and failed to file state income tax returns from 1999 to 2002. He successfully completed an intensive alcohol treatment and counseling program and three years supervised probation required as a result of his third arrest, and he has maintained sobriety since October 2002. He also resolved his tax difficulties successfully and has paid his other debts in full, thereby successfully mitigating security concerns arising from his alcohol consumption, criminal conduct and financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On December 30, 2004, 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 Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline G - Alcohol Consumption, Guideline J - Criminal Conduct, and Guideline F - Financial Considerations. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer to the SOR executed January 29, 2005, Applicant admitted the allegations of subparagraphs 1.a. - 1.d. and 1.f., 2.a. - 2.d., and 3.a., 3.b. and 3.g. of the SOR, denied the remaining allegations, and requested a hearing before an administrative judge.

The case was assigned to me on October 3, 2005, and I conducted the hearing on October 25, 2005. The government submitted exhibits (GE) 1 through 7, and Applicant testified and offered exhibit (AE) A. All exhibits were admitted without objections. I left the record of the case open until November 21, 2005, to allow Applicant an opportunity to

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submit certain specified documents to support his position in the case. Applicant timely submitted three documents identified as Applicant's exhibits (AE) B through D, that have been admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on November 9, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 57 years old and has three adult children and a 12-year-old granddaughter.⁽²⁾ His daughter and granddaughter reside in his home and Applicant and his wife help support them.⁽³⁾ One of Applicant's adult sons, age 35, has been significantly handicapped due to a serious illness since he was about six months old, and he has resided in a state institution for about the last ten years.⁽⁴⁾

Applicant served in the U.S. Navy for 20 years, and was honorably discharged in July 1985, at paygrade E-6.⁽⁵⁾ He has been steadily employed by federal contractors since his discharge from the Navy.⁽⁶⁾ He has worked for his present contractor as a logistics technician since November 1994, and he previously held a clearance in 1992.⁽⁷⁾ He has not had any violations of his clearance in any of his civilian contractor positions.⁽⁸⁾

Applicant began drinking in 1965 when he was 17 years old.⁽⁹⁾ He drank consistently since then and while he was in the Navy until about three years ago. He readily admits he is an alcoholic, and awareness of his illness became apparent to him when he started having motor vehicle accidents.⁽¹⁰⁾ In April 1985, Applicant received counseling and treatment for alcohol dependence through a Navy alcohol rehabilitation center.⁽¹¹⁾ He was diagnosed as alcohol dependent, in remission, with a good prognosis.⁽¹²⁾

In June 1991, Applicant was charged and convicted of driving while intoxicated. He paid a fine and costs of \$406.00, and his driver's license was suspended for a period of six months.

In January 1998, Applicant was charged and convicted of driving under the influence of alcohol after being involved in a motor vehicle accident. He paid a fine of \$350.00 and court costs, and was directed to attend a 10-week alcohol abuse

awareness and safety action program which he successfully completed. His driver's license was restricted for work-related purposes for a period of six months.

In October 2002, Applicant was charged with a third alcohol-related driving offense, again involving a motor vehicle accident. He pled guilty to the offense and was ordered to pay a fine of \$1,200.00 and spend two weekends in jail. He was further placed on probation for three years. His driver's license was suspended for a year, and then restricted for an additional two years.⁽¹³⁾ As a part of his probation, Applicant was required to maintain sobriety and attend and complete individual and group therapy for alcohol abuse as directed.⁽¹⁴⁾ Applicant successfully completed all aspects of the required therapy in April 2003,⁽¹⁵⁾ and had his full driver's license privilege restored in October 2005, following successful completion of all requirements of the three year probation period imposed by the court.⁽¹⁶⁾ Applicant presently attends four to five AA meetings per month voluntarily to support his continuing sobriety.⁽¹⁷⁾

Applicant did not file state income taxes for calendar years 1999 - 2002, in clear violation of the law in his state. The total amount originally assessed for all the years appears to have been about \$5,000.00. He entered into payment arrangements with his state's tax collection agency and he has paid back all of the 1999, 2000 and 2001 delinquencies.⁽¹⁸⁾ He is currently paying his 2002 assessment in monthly installments and estimates his remaining balance under the agreement to be about \$400.00.⁽¹⁹⁾ Applicant properly filed his 2003 and 2004 tax returns.⁽²⁰⁾

Applicant was indebted as follows when the SOR was issued:

1. Delinquent state income taxes - \$964.00.
2. Emergency paramedics services - \$104.20.
3. Indebtedness to state court for fines and costs - 4 motor vehicle citations - \$1,416.02.
4. Medical services bill - \$2,168.00.

The delinquencies alleged total \$4,652.22.

Applicant has reduced the amount due for tax deficiencies to about \$400.00 pursuant to the monthly payment arrangement he negotiated with his state's tax collection agency.⁽²¹⁾ Applicant paid the paramedics bill in full, along with the amounts due in No. 3 above.⁽²²⁾ The unpaid medical bill listed as No. 4 is also fully satisfied.⁽²³⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well- informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. ⁽²⁴⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. ⁽²⁵⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. ⁽²⁶⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence. ⁽²⁷⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest ⁽²⁸⁾

to grant or continue the applicant's clearance.

The following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline G - Alcohol Consumption is a security risk because 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.

Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline F - A security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guidelines G, J, and F.

Based on all the evidence, 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.A7.1.2.4. (*Evaluation of alcohol abuse or alcohol dependence by a licenced clinical social worker who is a staff member of a recognized alcohol treatment program*), apply in this case.

Applicant admits conduct that constitutes alcohol-related incidents away from work. He was arrested three times for alcohol-related driving offenses over the eleven year period from June 1991 to October 2002. He was found guilty of all

three offenses, and he was sentenced to two days in jail for the last case. His driver's license was suspended and restricted for three years following the last incident, and such sanctions serve to heighten Applicant's multiple offender status and the seriousness of his case. Applicant's conduct during the time period constituted a blatant disregard and lack of respect for the serious responsibilities associated with his driving privilege. He also failed to take advantage of the professional intervention that was made available to him as a part of his second arrest in 1998, by continuing to drink to the extent of getting arrested the third time four years later. Applicant's extensive involvement with alcohol during this time period raises serious concerns about his judgment and reliability. The government's evidence and Applicant's admissions constitute substantial evidence of disqualifying conditions under Guideline G.

I have considered all the Alcohol Consumption Mitigating Conditions (AC MC), and specifically AC MC E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), AC MC E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*), and AC MC E2.A7.1.3.4. (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of 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*). I conclude they all apply.

Applicant's initial drunk driving charge occurred in 1991, and his second offense occurred in 1998. Both matters were totally resolved within a reasonable time after each occurred. Applicant's third conviction occurred in October 2002, over three years ago. While under some circumstances the last conviction three years ago might be considered recent, I find in this matter all three incidents are not recent. The disposition of the third case was not deferred, and Applicant successfully completed all aspects of his court imposed three year probation period to include completion of an extensive individual and group therapy program in the six month period following the offense, and a three year period of suspension/restriction of his driver's license without incident. There have been no recurring alcohol or other criminal incidents of any kind since 2002. Perhaps most importantly, Applicant has shown positive changes in his behavior indicating ostensible sobriety, after he made the decision to stop drinking more than three years ago after the third offense.

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations of admissions of criminal conduct, regardless of whether the person was formally charged*), applies in this case. Applicant was arrested, charged with, and convicted of three alcohol-related driving offenses from 1991 through 2002. He also failed to file state income tax returns from 1999 through 2002, and offered no justification for not doing so. This conduct raises the potentially disqualifying conditions under Guideline J.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.10.1.2.1. (*The conduct was not recent*), and CC MC E2.10.1.2.6. (*There is clear evidence of successful rehabilitation*), and conclude both apply. Applicant's first drunk driving offense occurred in 1991, and his second in 1998, over seven years ago. Applicant's third conviction for drunk driving and other related motor vehicle violations occurred in 2002, over three years ago, and could be considered recent. However, for the reasons set forth above as to Guideline G, and, particularly, because Applicant successfully completed a three year period of supervised probation and an intensive alcohol treatment program a short time after the incident, I find all three offenses not recent under Guideline J.

Applicant was never criminally charged for failure to file state income tax returns from 1999-2002. Moreover, he has now paid all but about \$400.00 of his tax deficiencies, together with applicable interest and penalties, through a monthly payment agreement he initiated several years ago. His lengthy on-going payments have required considerable self-discipline. He has also filed all subsequent state and federal tax returns due since the last overdue assessment was made in 2002. Accordingly, I find Applicant has successfully mitigated the criminal conduct raised by his failure to file his required tax returns.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. I have further considered all the Financial Considerations Mitigating Conditions (FC MC), and especially FC MC E2.A6.1.3.6. (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*), and conclude it applies. The total amount of Applicant's debts related to the obligations referenced in the SOR allegations originally exceeded \$8,500.00. Applicant reduced the indebtedness on his own before the SOR was filed to less than \$4,700.00. At the time of the hearing, all debt referenced in the SOR had been paid in full, except for about \$400.00 remaining on his monthly tax repayment plan.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. Applicant is a mature individual who successfully held positions of responsibility for many years. He has held a security clearance since 1992. He had an admirable record for 20 years in the U. S. Navy, and Applicant's loyalty to the United States is not in question. Although he encountered serious difficulties with respect to his alcohol consumption and income tax problems primarily from 1998 to 2002, Applicant completed a lengthy alcohol rehabilitation program, and has maintained his sobriety since 2002, highlighted by a favorable prognosis from his counselor. He has also shown a genuine commitment to repay all his deficient tax obligations and other debts. I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has met the strict guidelines established by the Department of Defense for issuance of a clearance, and he has successfully mitigated the security concerns raised by his use of alcohol, criminal conduct, and financial difficulties. Accordingly, Guidelines G, J, and F are decided in favor of Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Alcohol Consumption (Guideline G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant Subparagraph 1 b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Paragraph 2. Criminal Conduct (Guideline J) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Paragraph 3. Financial Considerations (Guideline F) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

DECISION

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

David S. Bruce

Administrative Judge

1. Tr. at 72-75.
2. GE 1 (Applicant's Security Clearance Application dated August 21 2002), at 2-3.
3. Tr. at 39.
4. *Id.* at 40-42.
5. GE 1, *supra* note 2, at 3. See also Tr. at 43-44.
6. Tr. 44-46.
7. GE 1, *supra* note 2, at 1 and 6. See also Tr. at 46.
8. Tr. at 45-46.
9. GE 2 (Applicant's statement dated April 17, 2003), at 3-4.
10. Tr. at 17.
11. GE 3 (Rehabilitation center narrative discharge summary dated April 17, 1985), at 1-2.
12. *Id.*
13. GE 2, *supra* note 10, at 1-3.

14. Tr. at 20-22.
15. GE 4 (Therapy discharge summary letter dated April 5, 2003).
16. AE D (Driver's License records), at 1-2. See also Tr. at 20.
17. Tr. at 64.
18. AE A (Department of Taxation assessment notices and payment arrangements), at 1-12. See also Tr. at 24-28.
19. Tr. at 27.
20. *Id.* at 28 and 48.
21. AE A, *supra* note 16. See also Tr. at 29.
22. Tr. at 29, and AE D, *supra* note 16.
23. AE B (Payment receipt dated November 17, 2005).
24. Directive, Enclosure 2, Para. E2.2.2.
25. Executive Order 10865 § 7.
26. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
27. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
28. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.