

KEYWORD: Alcohol; Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a 42-year-old clerk for a defense contractor who has been a user and sometime abuser of alcohol who has had alcohol-related traffic offenses and made threatening phone calls after consuming alcohol. He continues to consume alcohol in quantities from 5-10 beers in an evening.

He was the subject of a complaint about domestic violence, violation of a restraining order, and making harassing telephone calls. Applicant filed for Chapter 7 bankruptcy. Half of his liabilities were for gambling debts. Applicant continues to gamble after the bankruptcy discharge. Applicant omitted relevant information on his SF 86 relating to treatment and criminal complaints. Clearance is denied.

CASENO: 02-33326.h1

DATE: 08/12/2004

DATE: August 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33326

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old clerk for a defense contractor who has been a user and sometime abuser of alcohol who has had alcohol-related traffic offenses and made threatening phone calls after consuming alcohol. He continues to consume alcohol in quantities from 5-10 beers in an evening.

He was the subject of a complaint about domestic violence, violation of a restraining order, and making harassing telephone calls. Applicant filed for Chapter 7 bankruptcy. Half of his liabilities were for gambling debts. Applicant continues to gamble after the bankruptcy discharge. Applicant omitted relevant information on his SF 86 relating to treatment and criminal complaints. Clearance is denied.

STATEMENT OF CASE

On December 22, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated January 20, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 10, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded with additional information on March 28, 2004, to which the government objected on May 11, 2004. The case was assigned to me on May 19, 2004. Applicant asked to withdraw the additional information on August 5, 2004. The request was granted.

FINDINGS OF FACT

Applicant is a 42-year-old mail room clerk for a defense contractor who admitted some of the allegations in the SOR, denied others, but disagreed with the conclusions reached. After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

Applicant has been a user and sometime abuser of alcohol who has had alcohol-related traffic offenses in 1991 and 1998 and made threatening phone calls after consuming alcohol in 2000 and 2001. He was terminated from his prior employment because of the phone calls. He continues to consume alcohol in quantities from 5-10 beers in an evening.

Applicant was the subject of a complaint by a former girl-friend resulting in criminal charges of domestic violence, violation of a restraining order, and making harassing telephone calls. He was ordered to undergo domestic violence counseling.

Applicant filed a petition in bankruptcy under Chapter 7 in 2001 that was discharged in January 2002. Half his liabilities were for gambling debts. Applicant continues to gamble after the bankruptcy discharge.

Applicant omitted information on his SF 86 relating to treatment by a mental health professional (Question 19), civil court actions (Question 20), and the arrests and charges arising from complaints by his former girl-friend (Question 26).

Applicant also denied he had received mental health counseling when interviewed by an agent of the Defense Security Service. He also lied to a police officer regarding the threatening phone call in 2001.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

The first allegation concerns Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) raises the issue of alcohol related incidents away from

work such as driving while under the influence or other criminal incidents related to alcohol use and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.). The record of Applicant's

two offenses, convictions, and sentences clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G. Mitigating conditions are not applicable in that Applicant has not shown that the problems with abuse of alcohol have ended and that there is no indication of a recent problem. (E2.A7.1.3.2.) No evidence was submitted of positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

Applicant's bankruptcy and continued gambling prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.), evidence of inability or unwillingness to satisfy debts (E2.A6.1.2.3.), or financial problems that are linked to gambling. (E2.A6.1.2.5.) Mitigating Conditions (MC) could include the fact that the person has initiated a good faith effort to resolve debts. (E2.A6.1.3.6.) Applicant has not successfully mitigated this issue since gambling was a major contributing cause leading to his bankruptcy and he continues to gamble. While he blamed the investigator for coercing the admission of continued gambling, no evidence was produced to justify the claim.

Allegations of criminal conduct raise a number of Disqualifying Conditions (DC) under Guideline J relating to a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) and allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.). No mitigating conditions are applicable.

Also alleged is Applicant's failure to report certain of the offenses under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant offered as an explanation for his failure to acknowledge the issues on his SF 86 that he mis-interpreted the question. I conclude that the omissions were deliberate as required in the guideline since he stated that he was embarrassed to admit and report his conduct.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has shown by his testimony and appearance at the hearing as well as his supporting statements from supervisors and colleagues, that he has changed his conduct in the last four years and is a reliable, trustworthy, and credible person.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has not mitigated the allegations in the SOR and that it is not clearly consistent with the national interest to grant a security clearance to the Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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 F AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline J AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Paragraph 3. Guideline E 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.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge