

KEYWORD: Alcohol; Drugs; Criminal Conduct; Personal Conduct

DIGEST: As of July 2002, Applicant was becoming intoxicated once a month even after his July 1998 and April 2002 Driving Under the Influence (DUI) arrests and convictions. There is no evidence the rate at which he becomes intoxicated has changed since 2002. He was also charged and convicted of possession of cannabis in April 2002. Between 1997 and 2002, he was arrested and convicted five times. In February 2002, Applicant completed a security clearance questionnaire and lied about his illegal drug usage. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his conduct. Clearance is denied.

CASENO: 03-00145.h1

DATE: 02/14/2006

DATE: February 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00145

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As of July 2002, Applicant was becoming intoxicated once a month even after his July 1998 and April 2002 Driving Under the Influence (DUI) arrests and convictions. There is no evidence the rate at which he becomes intoxicated has changed since 2002. He was also charged and convicted of possession of cannabis in April 2002. Between 1997 and 2002, he was arrested and convicted five times. In February 2002, Applicant completed a security clearance questionnaire and lied about his illegal drug usage. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 17, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On September 23, 2005, Applicant received a complete copy of the government's file of relevant material (FORM) dated September 7, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On October 23, 2005, Applicant's response to the FORM was due. No response has been received. On November 7, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns under the Guidelines for Alcohol Consumption, Drug Involvement, Criminal Conduct, and Personal Conduct. Applicant admits to the following: He consumed alcohol at times to excess and the point of intoxication from 1996 to at least June 2002. He was arrested in April 2002, pleaded *nolo contendere*, and was found guilty of Driving Under the Influence (DUI) of Intoxicating Beverages and possession of cannabis. He was arrested in July 1998 for DUI and was sentenced to six month probation and ordered to complete 50 hours of community service. He admits using marijuana once or twice a month from 1996 until July 1998. He was arrested in September 1997 for possession of cannabis and was found guilty. In December 1999 and January 2000, he used his mother's prescription for Xanax. In July 2002, he was charged with having an open house party, pleaded *nolo contendere*, and paid a fine. In January 2000, he was arrested for attempting to elude a police officer. After pleading guilty, adjudication was withheld. He received six months probation and was ordered to complete advanced defensive driving school. He admits falsifying his Security Clearance Application, Standard Form (SF) 86, in failing to disclose the true frequency and time span he used marijuana and failing to list his use of Xanax without a prescription.

These admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 25 years old, has worked for a defense contractor as a labor helper since December 2000, and is seeking to obtain a security clearance.

From the Summer of 1996 through July 1998, he used marijuana one or twice a month with friends. Three times in December 1999 and January 2000, Applicant took one or two Xanax pills with beer. He got the pills from his mother's pill bottle. When arrested in January 2000, he had seven pills, which he told the police were Panax. (Item 9)

In April 1997, Applicant and a friend were driving around smoking marijuana when arrested. After his conviction, he had to complete 35 hours of community service and attend six or eight behavioral health classes.

In July 1998, Applicant consumed seven beers and smoked two bowls of marijuana with a friend before going to a club. After leaving the club and attempting to drive away, he was stopped and charged with DUI. He spent two days in jail. He had to complete 50 hours of community service, pay costs in excess of \$500, and was sentenced to six months probation.

In January 2000, he was charged with fleeing and eluding a sheriff's officer. He went through a stop sign without stopping. He was seen by the police. When the police turned on their lights, Applicant accelerated to 50 mph in a 25-mph residential zone. He kept on driving, hoping the police would not stop and ticket him. He was wrong. During a search of his car seven Xanax pills were discovered. He was found guilty of fleeing and eluding, sentenced to six months probation, and had to pay costs.

As of July 2002, when he completed a sworn statement, Applicant estimated he was getting drunk about once a month. Starting in September 2001, Applicant began drinking every weekend usually having six beers in a four-hour period. Every few weeks he will take a few shots of schnapps when he drinks. He was using drinking as a reward for going to work. (Item 8)

In his July 2002 sworn statement, Applicant stated he did not currently use any illegal drugs and intended to abstain from all use of illegal drugs usage in the future. (Item 8)

In February 2002, Applicant completed his SF 86. In response to Question 27 which asked about his illegal drug use, he listed he had used marijuana four times between March 1997 and April 1997. He said he used marijuana four times because that sounded like a good number. He states he did not list his Xanax use because it was not a "well known" drug.

The FORM states Item 4 is a security clearance application dated May 2005. It is not. It is dated February 2002.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of an applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. An applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline G, Alcohol Consumption. A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. 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.) The record evidence raises a security concern under this guideline.

In July 1998 he was arrested for DUI and had to complete community service and six-month probation. In April 2002, he was arrested for DUI and marijuana possession. As of July 2002, even after his arrests he was getting drunk once a month although he was thinking about reducing his drinking. There is nothing in the record showing his alcohol consumption has changed since July 2002. Disqualifying conditions (DC) 1 (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 DC 5 (E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

None of the Mitigating Conditions (MC) apply. MC 1 (E2.A7.1.3.1. *The alcohol related incidents do not indicate a pattern*) does not apply because he was getting drunk once a month. MC 2 (E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem*) does not apply because there is indication of a recent problem. The record fails to establish MC 3 (E2.A7.1.3.3. *Positive changes in behavior supportive of sobriety*) applies.

Applicant failed to show any change or reduction in his alcohol consumption. Applicant's conduct was serious, recent, frequent, and establishes a pattern. He has not introduced persuasive evidence in rebuttal, explanation or mitigation sufficient to overcome the Government's case against him. There is no showing of positive changes in behavior supportive of sobriety, nor efforts to reform his behavior, change his friends, or lifestyle. He says he was thinking about cutting back on his drinking, but without more, his statement of possible reduction in consumption is insufficient for a favorable determination. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, the alcohol consumption is resolved against the Applicant.

The Government has satisfied its initial burden of proof under Guideline H, Drug Involvement. Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. The improper or illegal involvement with drugs raises questions regarding an applicant's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Directive E.2.A.8.1.1.

From the Summer of 1996 until July 1998, Applicant was using marijuana once or twice a month. He continued to use marijuana even after his September 1997 arrest and conviction for possession of cannabis. He possessed marijuana as recently as his April 2002 arrest and conviction for DUI and possession of cannabis. Disqualifying Condition (DC) 1 (E2.A8.1.2.1. *Any drug abuse*) applies.

With his April 2002 arrest and conviction for marijuana possession, none of the mitigating condition (MC) apply. MC 1 (E2.A8.1.3.1. *The drug involvement was not recent*) does not apply because his last arrest was less than three years ago. MC2 (E2.A8.1.3.2. *The drug involvement was an isolated or aberrational event*) does not apply because he was using marijuana once or twice a month so it was not an isolated event. MC4 (E2.A8.1.3.4. *Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) does not apply.

In his July 2002 sworn statement, Applicant states he was not currently using any illegal drugs and intended to abstain from all use of illegal drugs usage in the future. However, he failed to indicate in the interview he had been arrested for

possession of cannabis three months earlier. I am not persuaded by his stated intent to refrain from future use. I find against Applicant as to Drug Involvement.

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break the rules.

Applicant was arrested five times in 1997 for possession of cannabis, in July 1998 for DUI, in January 2000 for attempting to elude a police officer, in April 2002 for DUI and possession of cannabis, and in July 2002 for having an open house party. All arrests lead to community service, probation, and/or fines. Because of these incidents, DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2 (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*) apply.

None of the mitigating conditions (MC) apply. MC 1 (*The criminal behavior is not recent*) does not apply because his most recent arrest occurred in April 2002, which is recent criminal behavior. MC 2 (*The crime was an isolated incident*) does not apply because there were five related arrests, his criminal behavior was not an isolated incident. MC 3 (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) and 4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) do not apply because the Applicant's conduct was not the result of pressure, coercion, or an involuntary act. There was no acquittal, so MC 5 (*Acquittal*) is inapplicable. MC 6 (*There is clear evidence of successful rehabilitation*) does not apply because the record does not establish clear evidence of successful rehabilitation. In fact even after his April 2002 DUI arrest Applicant was still getting intoxicated once a month. I find against the Applicant as to criminal conduct.

The Government has satisfied its initial burden of proof under Guideline E, Personal Conduct. Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information on his February 2002 SF 86 poses a serious potential risk to the nation's security precautions.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. Applicant under-reported his marijuana usage. Even though he had used marijuana at times once or twice a month, he put down he used it four times because four sounded like a good number. He wrongfully used Xanax , but failed to list it because he thought it was not a commonly abused drug.

None of the mitigating conditions apply to his false answer. His illegal drug usage was pertinent to a determination of judgment, trustworthiness, or reliability. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. In fact he was offered the opportunity to correct his SF 86 before his July 2002 interview. There is no indication his omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct.

The government asserts Item 4 is a security clearance application, SF 86, dated May 9, 2005. It is not. Item 4, as presented in the record, is an SF 86 dated February 2002. The government alleges he lied about an April 2002 arrest on that February 2002 form. This is impossible. I find for Applicant as to SOR paragraph 4.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant 's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant 's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Alcohol Consumption: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2 Drug Involvement: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Paragraph 3 Criminal Conduct: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Paragraph 4 Personal Conduct: AGAINST APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: Against 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 Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15