

KEYWORD: Alcohol

DIGEST: Applicant is a 40-year-old engineer who works for a defense contractor. He has used alcohol since age 18 and has had four arrests and charges of Driving Under the Influence (DUI) in 1990, 1992, 1996, and 2001. Each was in a different state. He has been diagnosed by a psychologist who specializes in alcohol addiction as not an alcoholic and not dependent on alcohol. In October 2003 he was placed on medication for high blood pressure that strongly discourages use of alcohol and Applicant is following that instruction. Because of the age of the arrests and his change of conduct both because of his own desires and medical requirements, the security concern is mitigated. Clearance is granted.

CASENO: 03-01028.h1

DATE: 09/17/2004

DATE: September 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01028

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esq., Department Counsel

FOR APPLICANT

J. Hatcher Graham, Esq.

Fred Graham, Esq.

SYNOPSIS

Applicant is a 40-year-old engineer who works for a defense contractor. He has used alcohol since age 18 and has had four arrests and charges of Driving Under the Influence (DUI) in 1990, 1992, 1996, and 2001. Each was in a different state. He has been diagnosed by a psychologist who specializes in alcohol addiction as not an alcoholic and not dependent on alcohol. In October 2003 he was placed on medication for high blood pressure that strongly discourages use of alcohol and Applicant is following that instruction. Because of the age of the arrests and his change of conduct both because of his own desires and medical requirements, the security concern is mitigated. Clearance is granted.

STATEMENT OF CASE

On October 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.

On November 14, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned another judge, and after a motion to delay the hearing filed by counsel to Applicant, a notice of hearing was issued on July 30, 2004. The matter was assigned to me on August 10, 2004, and a hearing was held on August 24, 2004. The Government introduced seven exhibits and the Applicant introduced one exhibit. All of the exhibits were admitted into evidence. The Applicant and two others testified. The transcript was received on September 10, 2004.

FINDINGS OF FACT

Applicant admitted all of the specific allegations in the SOR relating to alcohol except that which alleged continuing use of alcohol and disagreed with all of the conclusions reached by those facts. 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 is a 40-year-old engineer who has worked for a defense contractor since May 2002. He has used alcohol since age 18 and has had four arrests and charges of Driving Under the Influence (DUI) in 1990, 1992, 1996, and 2001. Each was in a different state. The latest arrest was on the military base where Applicant works. The first two were arrests with no definitive information on disposition except that he spent one night in jail and paid a fine of \$250.00 after the first arrest. The third arrest was for a motorcycle accident that resulted in injuries to Applicant. The arrest resulted in a waiver of the charges in exchange for completing an accelerated rehabilitative disposition program under supervised probation, attending Alcoholics Anonymous, paying \$650.00 in costs, and undergoing alcohol evaluation and any required treatment. Because of three prior speeding violations, his driver's license was restricted.

The most recent arrest resulted in a charge of driving with a suspended license as well as DUI. In September 2001, Applicant pled guilty to a license violation because of the restricted license from the third arrest. He also pled guilty to Occupying a Seat While Intoxicated, an offense that does not require a finding of intoxication but is still alcohol-related. He was sentenced to perform community service, attend traffic school, and pay a fine of \$1,550.00 with 12 months confinement suspended.

Applicant is not addicted to alcohol and is not dependent on it. His problem with alcohol arises from social occasions when he has drunk to excess.

Applicant is married with one child. He was diagnosed with high blood pressure ten years ago and placed on medication in October 2003 that strongly discourages the consumption of alcohol. Since that date he has only consumed three or four glasses of wine on family occasions. He has an excellent employment record and his supervisor testified on his behalf.

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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The Government has cited a Disqualifying Conditions (DC) pursuant to the Directive concerning alcohol under Guideline G. This relates to excessive alcohol consumption. (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Possible mitigating factors include the fact that the problem occurred a number of years ago and there is no current problem. (E2.A7.1.3.2.) Also that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The record of Applicant's offenses, convictions, and sentences clearly establish the DC has been met. Mitigating Conditions are applicable in that the problems occurred a number of years ago and there is no indication of a recent problem since 2001 and there have been positive changes in behavior supportive of sobriety.

Applicant was diagnosed in November 2003 by a licensed psychologist who is certified to diagnose alcohol addiction and does so for the state government regarding DUI arrests. This was one month after he received the SOR and he was referred to the psychologist by his lawyer. The psychologist testified at the hearing and his report was admitted into evidence. (Exh. A) He had spent almost five hours with Applicant testing and evaluating him. He concluded that he did not need treatment since he was not addicted or dependent on alcohol. The arrest in 2001 and the issuance of the SOR reinforced Applicant's intent to abstain or limit his consumption of alcohol. The ensuing treatment for high blood pressure with the strong admonition and advice from his doctor about use of alcohol was conclusive for his determination to abstain.

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.

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 is a trustworthy and reliable person whose record of conduct and employment justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

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

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

Subparagraph 1.e.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge