

KEYWORD: Personal Conduct

DIGEST: Applicant has mitigated a security concern with a pattern of rule violations. Applicant has been forthright regarding his limited, experimental use of marijuana over a 14 month period, his underage consumption of alcohol, and an isolated arrest for public drunkenness. Applicant has not used marijuana for over two and a half years and has no intention of using it or any other illegal drug again. Although Applicant continues to consume alcohol, he is now of legal age to do so and drinks more responsibly. Both his experimental use of marijuana and alcohol consumption were undoubtedly influenced by his college environment. Graduating from college and entering full time employment in the defense industry have positively motivated Applicant to put an end to such practices and achieve a successful career. Clearance is granted.

CASENO: 03-01577.h1

DATE: 10/08/2004

DATE: October 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01577

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated a security concern with a pattern of rule violations. Applicant has been forthright regarding his limited, experimental use of marijuana over a 14 month period, his underage consumption of alcohol, and an isolated arrest for public drunkenness. Applicant has not used marijuana for over two and a half years and has no intention of using it or any other illegal drug again. Although Applicant continues to consume alcohol, he is now of legal age to do so and drinks more responsibly. Both his experimental use of marijuana and alcohol consumption were undoubtedly influenced by his college environment. Graduating from college and entering full time employment in the defense industry have positively motivated Applicant to put an end to such practices and achieve a successful career. Clearance is granted.

STATEMENT OF THE CASE

On November 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On December 17, 2003, DOHA received Applicant's answer to the SOR in which he requested a hearing. The case was assigned to me on February 3, 2004. A notice of hearing was issued on February 27, 2004 and the hearing was held on March 24, 2004. During the hearing, three Government exhibits (Govt Ex), three Applicant exhibits (Ap Ex), and the testimony of three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on April 5, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to the SOR ¶ 1.a-c, I make the following findings of fact:

Applicant is a 22-year-old information technology intern employed by a defense contractor. He is a senior at a prestigious state university and is studying for a degree in systems engineering. Applicant has a cumulative grade point average of 3.173.

On November 13, 1999, Applicant, while a high school senior, consumed beer at a party he attended at a university. He was arrested by campus police for public drunkenness after he left the party with a cup of beer.

Between February 2001 and April 2002, Applicant used marijuana not more than 10 times. In each case, he accepted the marijuana offered to him by another student.

On June 17, 2002, Applicant submitted a security clearance application (SF 86). He admitted his marijuana use and his conviction for public drunkenness.

On October 4, 2002, Applicant provided a sworn statement to a DSS investigator. He admitted he began to drink alcohol "with modest regularity" following his senior year in high school in 1999. Applicant acknowledged his regular consumption of alcohol with friends in social situations for the prior two years. He stated that he drinks about twice a week, consuming one or two beers on one of these occasions and four or five on the other. Applicant acknowledged that he becomes intoxicated about once every two weeks by consuming 10 to 12 beers.

Applicant has significantly reduced his consumption of alcohol. He normally only drinks on weekends and rarely becomes intoxicated.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to

rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline E: Personal Conduct

The concern under Guideline E is conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.5 (Disqualifying Condition 5). Disqualifying Condition 5 addresses a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

CONCLUSIONS

Applicant's underage consumption of alcohol, including one alcohol-related arrest, and his illegal use of marijuana reflect a pattern of rule violations. This raises Disqualifying Condition 5.

In his security clearance application, Applicant was forthcoming regarding his use of marijuana over a 14 month period and his alcohol-related arrest. He candidly discussed these matters and his underage drinking with a DSS investigator. If anything, Applicant appears to have over estimated his use of marijuana out of concern for not understating it. Consistent with these demonstrations of his honesty, I find Applicant a credible witness.

Applicant ended his limited, experimental use of marijuana nearly two and a half years ago and has no intention of using it or any other illegal drugs again. The record indicates that he is not alcohol dependent or that there are alcohol-related incidents other than an isolated arrest for public drunkenness. Although Applicant continues to consume alcohol, he is now of legal age to do so and drinks more responsibly. Both his experimental use of marijuana and alcohol consumption were undoubtedly influenced by his college environment. Graduating from college and entering full time employment in the defense industry have positively motivated Applicant to put an end to such practices and achieve a successful career.

The record reflects that security concerns, significantly attributable to Applicant's age and immaturity at the time, have been mitigated. Therefore, I find in favor of Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

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

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.