

KEYWORD: Alcohol; Financial; Criminal Conduct

DIGEST: Applicant is a 44-year-old employee of a defense contractor who has a history of excessive alcohol consumption, resulting in three convictions for alcohol-related offenses over the last 24 years. He also has a history of failing to meet his financial obligations. Even after his debts were discharged in bankruptcy in 2001, Applicant continued to mismanage his personal finances resulting in numerous delinquent debts. Applicant also has a record of criminal conduct, including five convictions for minor offenses since 1980. Applicant failed to mitigate the security concerns arising from his conduct. Clearance is denied.

CASENO: 03-04054.h1

DATE: 08/02/2004

DATE: August 2, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04054

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old employee of a defense contractor who has a history of excessive alcohol consumption, resulting in three convictions for alcohol-related offenses over the last 24 years. He also has a history of failing to meet his financial obligations. Even after his debts were discharged in bankruptcy in 2001, Applicant continued to mismanage his personal finances resulting in numerous delinquent debts. Applicant also has a record of criminal conduct, including five convictions for minor offenses since 1980. Applicant failed to mitigate the security concerns arising from his conduct. Clearance is denied.

STATEMENT OF THE CASE

Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 23, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct) of the Directive. Applicant provided an incomplete answer to the SOR on November 24, 2003. Applicant provided a complete answer to the SOR in writing on February 3, 2004, and admitted some but not all of the factual allegations. He elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 2, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 7, 2004, but did not provide additional materials for consideration. The case was assigned to me on July 28, 2004.

FINDINGS OF FACT

Applicant admitted the factual allegations contained in the SOR except the allegations in paragraphs 1.j, 1.k, 2.e, 2.f, and 2.i. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 44 years old and divorced. He is employed as a truck driver for a defense contractor. Item 6, Security Clearance Application, dated May 22, 2002, at 2. He seeks renewal of his security clearance.

Applicant began drinking alcohol while he was in high school in 1978. Item 3, Applicant's Initial Answer, dated November 24, 2003, at 2; Item 7, Statement of Subject, dated July 18, 2002, at 3. Between 1978 and 1988, Applicant drank alcohol about twice a month, and would consume six or more beers on each occasion. Item 7, *supra*, at 3.

In approximately 1980 or 1981, Applicant was arrested by the state police after a motor vehicle accident and was charged with driving while intoxicated and negligent driving. Item 5, Applicant's Answer to SOR, dated February 3, 2004, at 1; Item 7, *supra*, at 2. Applicant pled guilty to driving while intoxicated. Item 7, *supra*, at 2. He was placed in a program for first offenders and attended weekly counseling sessions for one year. *Id.* He was also required to pay a fine and court costs, and his license was suspended for one year. *Id.*

In April 1989, Applicant got married. Item 6, *supra*, at 3. Within a short time, the couple experienced financial problems due to irresponsible spending. Item 7, *supra*, at 3.

In December 1990, after consuming alcohol, Applicant struck his wife with his hand. Item 5, *supra*, at 2, 3. Applicant was arrested by the county police for this offense. *Id.*

In about January 1992, Applicant was involved in an argument with his wife over finances, which escalated to a physical altercation resulting in injury to her lip. Item 5, *supra*, at 2; Item 7, *supra*, at 1. Applicant admits that witnesses reported Applicant had consumed alcohol that day. Item 5; *supra*, at 2. At the same time, Applicant denies using alcohol that day. Item 7, *supra*, at 1. Thus, the only evidence that this incident was alcohol-related is Applicant's two statements. In the absence of any other evidence, the substantial evidence is insufficient to demonstrate that this was an alcohol-related incident. Applicant was charged with and pled guilty to offensive touching. Item 5, *supra*, at 2; Item 7, *supra*, at 1. He was placed on supervised probation for one year and took anger management classes. Item 7, *supra*, at 1. Applicant was divorced from his wife thereafter as a result of the incident. Item 6, *supra* at 3; Item 7, *supra*, at 1-2.

In July 1993, Applicant was involved in a physical altercation. Item 5, *supra*, at 3. As a result, he was charged with

misdemeanor assault. *Id.*

In July 2000, Applicant drove a motor vehicle after consuming about six or seven beers, fell asleep while driving, and had an accident. Item 5, *supra*, at 1; Item 7, *supra*, at 2. He was arrested by the state police and charged with driving while intoxicated. Item 7, *supra*, at 2. Applicant received probation before judgment, paid a fine and court costs, and was placed on one year supervised probation. *Id.* at 3. Additionally, he was required to attend Alcoholics Anonymous meetings and complete a one-year alcohol abuse treatment program. *Id.* During the course of the treatment program, Applicant's condition was diagnosed as "alcohol abuse." Item 5, *supra*, at 1.

Applicant continued to consume alcohol after completion of the alcohol abuse treatment program. Item 7, *supra*, at 3. In his statement dated July 18, 2002, Applicant indicated he used alcohol about twice a month, and drank to the point of intoxication about once a year. *Id.* In his Answer to the SOR dated November 24, 2003, Applicant indicated he no longer drank with that frequency. Item 3, *supra*, at 4. Applicant intends to use alcohol moderately in the future. Item 7, *supra*, at 3.

Applicant started his own automotive repair business, but it floundered due in part to Applicant's difficulties managing his finances. Item 7, *supra*, at 4. Applicant filed for bankruptcy under Chapter 7 in September 2001, and the debts were discharged in December 2001. Item 5, *supra*, at 2; Item 7, *supra*, at 4.

After the discharge in bankruptcy, Applicant continued to experience financial problems due to his mismanagement of his finances. Item 7, *supra*, at 4. Applicant admits the following overdue financial obligations: (1) A debt to a cable service provider for about \$347.00, referred for collection and unpaid as of May 28, 2002; (2) A debt to a financial services company for about \$346.00, referred for collection and unpaid as of May 28, 2002; (3) A civil judgment for about \$8,253.00 resulting from his default on an automobile loan and the subsequent repossession of the vehicle, unpaid as of May 28, 2002; (4) A civil court judgment to a car dealer for about \$2,445.00, unpaid as of July 18, 2002; (5) An arrearage of \$3,826.45 on child support payments as of June 30, 2002. Item 5, *supra*, at 2-3; Item 7, *supra* at 7. Applicant also had the following overdue financial obligations: (1) A delinquent debt to a tool supply company for about \$400.00 (Item 7, *supra*, at 7; Item 8, Statement of Subject, dated August 20, 2002, at 1); (2) A delinquent debt to an alcohol treatment facility for about \$201.00, unpaid between about November 2001 and February 2002 (Item 16, treatment facility letter, dated July 23, 2002; Item 8, *supra*, at 1).

Applicant is unable to pay his delinquent debts. Applicant submitted a personal financial statement itemizing his monthly income and expenses and listing his outstanding debts. Item 7, *supra*, at 7. After payment of normal monthly expenses, Applicant's remaining funds are insufficient to make scheduled payments on an overdue automobile loan. *Id.* Applicant's financial statement does not reflect any payments toward five listed delinquent accounts. *Id.*

POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline G - Alcohol Consumption: "Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, [and] failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Directive, ¶ E2.A7.1.1.

Guideline F - Financial Considerations: "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive, ¶ E2.A6.1.1.

Guideline J - Criminal Conduct: "A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness." Directive, ¶ E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider 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. *Id.* Initially, the Government must establish, by substantial evidence, conditions that disqualify or may disqualify the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline G, Alcohol Consumption.

Under Guideline G of the Directive, it is a potentially disqualifying condition if an applicant was involved in alcohol-related incidents away from work, such as driving under the influence, fighting, or spouse abuse. Directive, ¶ E2.A7.1.2.1. Applicant's admissions and the government's documentary matters constitute substantial evidence of three such incidents, specifically: drunk driving in approximately 1980 or 1981 (SOR, ¶ 1.d); assault on Applicant's spouse in about December 1990 (SOR, ¶ 1.g); and drunk driving in July 2000 (SOR, ¶ 1.a). These circumstances raise security concerns, because "(e)xcessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, [and] failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Directive, ¶ E2.A7.1.1.

It is possible to mitigate these security concerns. It may be mitigating if the alcohol-related incidents do not indicate a pattern. Directive, ¶ E2.A7.1.3.1. In this case, however, Applicant had two instances of drunk driving, and two instances of assault upon his spouse related to alcohol, demonstrating a pattern of conduct. It is also mitigating if the conduct occurred a number of years ago and there is no indication of a recent problem. Directive, ¶ E2.A7.1.3.2. While one of Applicant's drunken driving incidents occurred over 20 years ago, the second drunk driving incident was recent. An applicant's completion of rehabilitation may be a mitigating circumstance under ¶ E2.A7.1.3.4 of the Directive. It appears Applicant completed a rehabilitation program following his diagnosis of alcohol abuse. However, the evidence shows he has not abstained from alcohol for a period of at least 12 months. Furthermore, there is no evidence that he received a favorable prognosis by a credentialed medical professional, as required to fulfill the above mitigating condition. Considering all the facts and circumstances, I conclude Applicant has not mitigated the security concerns

arising from his alcohol-related incidents.

It is also a potentially disqualifying condition if an applicant receives a diagnosis of alcohol abuse from a credentialed medical professional, such as a physician, clinical psychologist, psychiatrist, or a licensed social worker. Directive, ¶¶ E2.A7.1.2.3, E2.A7.1.2.4. Applicant admitted receiving a diagnosis of alcohol abuse while in an alcohol treatment center. (Item 5, *supra*, at 1. However, the SOR does not allege, Applicant does not admit, and the documentary evidence does not show that the diagnosis was made by a properly credentialed medical professional. Therefore, the substantial evidence is insufficient to demonstrate this disqualifying condition.

If an applicant engages in habitual or binge consumption of alcohol to the point of impaired judgment, that may constitute a disqualifying condition. Directive, ¶ E2.A7.1.2.5. There is evidence that Applicant has regularly consumed alcohol since he was in high school in 1978 until the present time. While that fact is part of Applicant's personal history of alcohol consumption, and may be relevant to mitigating factors, it is not potentially disqualifying. The fact that an applicant consumes alcohol does not, by itself, create security concerns. ISCR Case No. 96-0869, 1997 DOHA LEXIS 665 * 10 (App. Bd. Sep. 11, 1997).

Similarly, there is evidence Applicant occasionally consumed alcohol to the point of intoxication. In his statement dated 18 July 2002, Applicant wrote, "I drink to the point of intoxication once per year, when I drink 12 beers." Item 7, *supra* at 3. In his Answer to the SOR on 24 November 2003, Applicant indicated that was no longer accurate. I accept both of Applicant's statements at face value, and conclude Applicant consumed alcohol to the point of intoxication about once a year for some period, but no longer did so by about November 2003. In the absence of evidence of how often the confessed drinking to intoxication actually occurred, the substantial evidence is insufficient to show "habitual consumption of alcohol to the point of impaired judgment" under ¶ E2.A7.1.2.5 of the Directive.

Guideline F, Financial Considerations.

Applicant's admissions and the government's documentary matters constitute substantial evidence of two potentially disqualifying conditions under Guideline F of the Directive, specifically ¶ E2.A6.1.2.1, a history of not meeting financial obligations, and ¶ E2.A6.1.2.3, inability to satisfy debts. These conditions raise security concerns because a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

I carefully considered any circumstances that could mitigate security concerns. It is potentially mitigating if the behavior that caused financial problems was not recent. Directive, ¶ E2.A6.1.3.1. This does not apply. Although some of Applicant's difficulties arose many years ago, many continue until the present time. It is potentially mitigating if the conditions that caused the financial problems were largely beyond a person's control. Some of Applicant's financial problems were exacerbated by his divorce and the loss of his business, culminating in his bankruptcy. Nonetheless, the

substantial evidence demonstrates Applicant mismanaged his finances before his divorce and after his bankruptcy. Applicant admitted this. (Item 7, *supra* at 3, 4.) It is also mitigating if an individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6. Applicant declared he intends to work as much overtime as possible and take on side jobs to satisfy his debts. However, there is no substantial evidence of a viable plan to accomplish this goal. I conclude Applicant has not mitigated the security concerns arising from his financial difficulties.

Guideline J, Criminal Conduct.

Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline J of the Directive, specifically, ¶ E2.A10.1.2.1, multiple lesser offenses. This history of criminal activity creates doubt about Applicant's judgment, reliability, and trustworthiness. Directive, ¶ E2.A10.1.1.

I conclude none of the mitigating circumstances apply. At least one of the offenses was recent (¶ E2.A10.1.3.1), these were not isolated incidents (¶ E2.A10.1.3.2), the offenses were not coerced or involuntary (¶¶ E2.A10.1.3.3, E2.A10.1.3.4), and there is no clear evidence of successful rehabilitation (¶ E2.A10.1.3.6).

For these reasons, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Subparagraph 3.e: 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 continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge