

KEYWORD: Drugs; Alcohol; Personal Conduct

DIGEST: Applicant is a 46-year-old employee of a defense contractor who operates heavy equipment in a shipyard. He has used alcohol to excess for over 20 years and most recently in October 2003. He has used drugs while holding a security clearance but denied doing so in response to a question on his application for a security clearance (SF 86). The earlier offenses have been mitigated by the passing of time but the security clearance omission and recent excessive use of alcohol results in a finding against Applicant. Clearance is denied.

CASENO: 03-04740.h1

DATE: 07/22/2004

DATE: July 22, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04740

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq. , Department Counsel

## **FOR APPLICANT**

David P. Price, Esq.

### **SYNOPSIS**

Applicant is a 46-year-old employee of a defense contractor who operates heavy equipment in a shipyard. He has used alcohol to excess for over 20 years and most recently in October 2003. He has used drugs while holding a security clearance but denied doing so in response to a question on his application for a security clearance (SF 86). The earlier offenses have been mitigated by the passing of time but the security clearance omission and recent excessive use of alcohol results in a finding against Applicant. Clearance is denied.

### **STATEMENT OF CASE**

On December 30, 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 January 29, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on March 22, 2004. A notice of hearing was issued on May 6, 2004. A hearing was held on May 19, 2004. The Government introduced three exhibits and the Applicant introduced twelve. All exhibits were admitted into evidence. The Applicant and his wife testified. The transcript was received on ay 28, 2004.

## **FINDINGS OF FACT**

Applicant is a 46-year-old employee of a defense contractor who operates heavy equipment in a shipyard. He has worked at the same company since 1983. He admitted all of the allegations in the SOR relating to alcohol (Guideline G) and drugs (Guideline H), but denied the allegation relating to personal conduct (Guideline E) for omission of information on his application for a security clearance (SF 86). He disagreed with the conclusions reached by the government. 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 and drugs. He used cocaine at various times and degrees of intensity from 1988 to 1993 and used marijuana on approximately 20 occasions during a 20 year period from 1970 until 1990. He was arrested for possession of marijuana in 1989 but the charge was dismissed. During some of the time of he used drugs he held a security clearance.

In 1980 the Applicant was arrested and charged with drunk in public, found guilty, and fined \$30.00. He drank alcohol to the point of intoxication nearly every day from 1971 until 1993. He continued to drink, sometimes until intoxicated, through October 2003.

He falsified his answer to Question 28 on his SF 86, dated June 11, 2002, when he answered "No" to the question of whether he had never used drugs while holding a security clearance.

Applicant stopped using drugs in 1993 and now drinks beer at social events. He was married in 1999 to a stable woman and is not involved with persons of bad character. He has reduced his drinking since his marriage. He and his wife have custody of his 14-year-old son. His employer, fellow workers, and friends have high regard for his character and good work habits (Exhs. A-L).

## **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 government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug . . ." (E2.A8.1.1.3) Applicant has not used drugs for ten years. Mitigating Conditions are applicable since there is a demonstrated intent not to abuse any drugs in the future (E2.A8.1.3.3.), and the drug involvement was not recent. (E2.A8.1.3.1.)

The second 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, clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G. Possible mitigating conditions could be that

Applicant has shown that the problems with abuse of alcohol were not recent and that there is no indication of a recent problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

All of the specific drug and alcohol offenses charged in the SOR occurred before 1993 except for the fact that he still continued to drink, sometimes to the point of intoxication until October 2003. I find that all allegations except that most recent one have been mitigated.

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 use of drugs while holding a security clearance on his SF 86, that he was rushed to complete the form and thus was confused about it. Evidence was offered regarding his mental capacity and his ability to fill out forms accurately. I find his explanations unpersuasive in light of the many years of drug use. No mitigating factors are applicable under Guideline E.

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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that while the Applicant has changed his habits recently not enough time has elapsed since his last heavy drinking in 2003 to justify finding in his favor on that allegation. The failure to provide a true answer to the question regarding drug use while holding a security clearance was a serious matter and warrants a finding against the granting of a security clearance.

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline H FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline G AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline E AGAINST APPLICANT

Subparagraph 3.a.: 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