

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant is a 26-year-old employee of a defense contractor who has a history of alcohol-related criminal offenses from 1996 until 2001. He has consumed alcohol since the age of 13 until October 2002. He continued to consume alcohol to the point of intoxication since completing a court ordered alcohol safety school. He failed to list his alcohol offenses and his use of alcohol that resulted in treatment during the past seven years on his security clearance application (SF 86). He also failed to list some items of his police record during the past seven years. Clearance is denied.

CASENO: 03-05151.h1

DATE: 08/06/2004

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05151

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old employee of a defense contractor who has a history of alcohol-related criminal offenses from 1996 until 2001. He has consumed alcohol since the age of 13 until October 2002. He continued to consume alcohol to the point of intoxication since completing a court ordered alcohol safety school. He failed to list his alcohol offenses and his use of alcohol that resulted in treatment during the past seven years on his security clearance application (SF 86). He also failed to list some items of his police record during the past seven years. Clearance is denied.

STATEMENT OF CASE

On November 20, 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.

In a sworn signed undated statement Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 7, 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on May 20, 2004.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following findings of fact.

Applicant is a 26-year-old employee of a defense contractor who has a history of alcohol-related criminal offenses from 1996 until 2001. He has consumed alcohol since the age of 13 until October 2002. He continued to consume alcohol to the point of intoxication since completing a court ordered Alcohol Safety School.

Applicant admitted all of the allegations in the SOR and offered no evidence on his own behalf. He failed to list on his SF 86 dated September 2002, his alcohol offenses and his treatment and counseling relating to alcohol during the last seven years. He also failed to list some of his police record during the past seven years.

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.

Allegations of criminal conduct raise a number of Disqualifying Conditions (DC) under Guideline J relating to a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) and allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.). No mitigating conditions are applicable.

Allegation concerning 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 offenses, convictions, and sentences clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G.

Also alleged under Guideline E is Applicant's falsification of his SF 86 by failing to disclose certain of the offenses 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.)

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b. Against Applicant

Subparagraph 3.c. 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