

KEYWORD: Financial; Alcohol

DIGEST: Applicant seeks a trustworthiness and reliability determination. Applicant is 34 years old, divorced, and has two sons. He works as a manager in a government health care plan. Applicant filed Chapter 13 bankruptcy twice, dismissed the first petition, but made payments on the second plan for two years, when he filed a Chapter 7 bankruptcy. He was discharged under that bankruptcy. Applicant paid or is making payments on the three credit card debts alleged in the SOR, Applicant was arrested twice for DUI while undergoing his divorce. The latest DUI was in 1999, and Applicant was not diagnosed with any alcohol problem. The financial considerations and alcohol consumption trustworthiness concerns were mitigated. Trustworthiness and reliability are determined in favor of Applicant.

CASENO: 03-09338.h1

DATE: 09/24/2004

DATE: September 24, 2004

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-09338

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant seeks a trustworthiness and reliability determination. Applicant is 34 years old, divorced, and has two sons. He works as a manager in a government health care plan. Applicant filed Chapter 13 bankruptcy twice, dismissed the first petition, but made payments on the second plan for two years, when he filed a Chapter 7 bankruptcy. He was discharged under that bankruptcy. Applicant paid or is making payments on the three credit card debts alleged in the SOR, Applicant was arrested twice for DUI while undergoing his divorce. The latest DUI was in 1999, and Applicant was not diagnosed with any alcohol problem. The financial considerations and alcohol consumption trustworthiness concerns were mitigated. Trustworthiness and reliability are determined in favor of Applicant.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a trustworthiness determination for Applicant. On August 28, 2003, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing why it could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive position, Information Systems Position (ADP-II/III), under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of the Directive⁽²⁾.

Applicant answered the SOR in writing on September 18, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on January 27, 2004. The original Notice of Hearing was dated February 3, 2004. Applicant requested a continuance of the February 18, 2004, hearing, and the hearing was rescheduled. The Amended Notice of Hearing was issued on March 12, 2004, setting the hearing for April 6, 2004.

On April 6, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant eligibility for occupying an Information Systems position designated ADP-II/III for Applicant to support a contract with the Department of Defense. The Government and the Applicant submitted exhibits which were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 14, 2004.

PROCEDURAL MATTERS

During the hearing, the Government moved to amend Subparagraph 2.b. of the SOR to reflect an accurate date of 1999 for Applicant's second arrest for driving while under the influence of alcohol (DUI). Applicant had no objection, and the motion was granted.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations in Subparagraphs 1.b, 1.c., 2.a., and 2.b. are incorporated here as findings of fact. Applicant denied all other subparagraphs. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 34 years old, divorced, and has two sons, ages 12 and 9. He works as a manager of appointments for a government health care program. Applicant served in the Air Force from 1989 to 1998. He did not reenlist so he could take the manager's job he has presently. (Tr. 24, 25, 49)

Applicant petitioned for Chapter 13 bankruptcy in October 1995, but the petition was dismissed by the Bankruptcy Court. Applicant and his wife, the co-petitioner filed again in February 1996 under Chapter 13, and made payments until that action was dismissed by the Bankruptcy Court. Applicant and his wife filed the Chapter 7 bankruptcy in March 1998. The liability in the Chapter 7 petition was \$29,830, which was much less than the \$117,608 liability amount filed in the second Chapter 13 petition, showing Applicant reduced his indebtedness over a two year period of making payments on the Chapter 13 bankruptcy. Applicant was discharged in bankruptcy on July 20, 1998. (Exhibits 2, 3, and C; Tr. 21, 27)

Applicant is current on all of his debt payments. He has three credit cards, and payments are current on those debts. Regarding the delinquent debts alleged in subparagraphs 1.d. through 1.f. of the SOR, Applicant paid the indebtedness on one bank credit card through a settlement in 2001. The dining credit card has a balance of \$222, and will be paid in full in 2004. Applicant is making monthly payments of \$100 on that card. The other bank credit card Applicant had while married has a balance of \$1754 and Applicant is making monthly payments of \$53. Applicant may be able to pay it in full in 2004 if he receives a three-month severance package from his current employer. Applicant's current employer did not get the contract for the next contract period to manage this program, but Applicant has an agreement

for employment with the new contractor for the part of the work Applicant does. Applicant denied the allegation in subparagraph 1.g. that he has made little effort to resolve his indebtedness while having a monthly balance of \$948 after paying expenses. Applicant has paid his bills and is current with them. (Tr. 22 to 30, 42, 43, 46, 47, 49; Exhibits 2, 4 at 4 to 6, C at 3 to 5)

Applicant was arrested twice for DUI, the first time in November 1996 and the second time in December 1999. The first arrest occurred during his divorce and was after a party when he ran out of gas in front of two state troopers, who detected an alcohol odor when they came over to determine if he were alright. Applicant completed the intervention program and ceased drinking for seven months. The second arrest occurred also after a party when Applicant was driving home, and was stopped by a police officer. Applicant cooperated with the police and successfully completed the intervention program, including consulting with two alcohol counselors who determined Applicant did not have an alcohol problem, and his two arrests were isolated incidents. Applicant's current use of alcohol is beer at sports events socially once a week. He has his desire to keep his employment and be able to take care of his two sons helping him maintain a responsible lifestyle. (Tr. 37 to 42)

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. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a trustworthiness and reliability determination is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable trustworthiness and reliability risk. Appendix 8 of DoD Regulation 5200.2-R (Regulation) sets forth personnel trustworthiness and reliability guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in Appendix 8 of the Regulation. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines (Regulation, Appendix 8) most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations:

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicable conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. .
- (3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

- (3) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).
- (4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G - Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work, such as driving while under the influence.

Conditions that could mitigate security concerns include:

- (2) The problem occurred a number of years ago and there is no indication of a recent problem.
- (3) Positive changes in behavior supportive of sobriety.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had filed Chapter 13 bankruptcy twice and Chapter 7 bankruptcy once. The SOR also alleged Applicant had three delinquent debts. The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations, so Disqualifying Condition (DC) 1 applies. Applicant was unable or unwilling to satisfy his debts, so DC 3 applies.

Applicant filed bankruptcy under Chapter 13 to attempt to pay his debts, but the burden of payments was too great and he dismissed the first petition for that reason. The next Chapter 13 petition was filed in February 1996, and Applicant made payments under that plan until he filed a Chapter 7 bankruptcy in March 1998. He reduced his debts substantially between February 1996 and March 1998. The three credit card debts alleged as unpaid in the SOR have been paid, or are being paid according to a monthly plan. Applicant has acted in good-faith with a reasonable use of federal bankruptcy procedures and his own initiative to pay his debts and manage his money responsibly. Mitigating Conditions (MC) 3 (his divorce caused some of his initial financial problems), MC 4 (Applicant received legal assistance in filing bankruptcy and resolving his debts, and not incurring any more debts he cannot pay off responsibly), and MC 6 (Applicant initiated good-faith efforts to pay his debts or otherwise resolve them) apply to this case, and the last MC is the strongest one in this case. I conclude for Applicant on this financial considerations trustworthiness guideline.

Regarding the alcohol consumption trustworthiness concerns, Applicant has two DUIs over a three year period. The Government clearly established by its evidence and Applicant's admissions the validity of these allegations. DC 1 applies.

Applicant's DUIs occurred eight and five years ago, so they are not recent. Applicant does not have an alcohol problem, and two counselors determined he had only two isolated alcohol incidents. Applicant drinks only socially, and his job and taking care of his two sons keep him focused on not drinking and driving. C 3 applies because of his positive steps in supporting his sobriety. Applicant dramatically reduced his drinking as he matured, recognizes he is a role model for his two young sons and does not want them to see him as a DUI driver, and Applicant needs his employment to provide for his family and help raise his sons. After his divorce, he viewed himself as single again and started to attend parties. Now he owns a home and has responsibilities, so he is acting responsibly by not drinking and driving. I conclude for Applicant on this guideline.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b.: 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 a trustworthiness and reliability determination for Applicant. Eligibility is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and DoD Regulation 5200.2-R, Chapter 8, dated January 1987.
2. Pursuant to DoD Regulation 5200.2-R, Paragraph C3.6.15, Chapter 8, and Appendices 8 and 10; and DoD Directive 5220.6, paragraph 2.4, dated January 2, 1992.