

DATE: June 28, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-10077

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Lynette Andreson, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of alcohol abuse is not mitigated where it was punctuated by two alcohol-related incidents between November 1999 and October 2001, and where Applicant continues to drink. Falsification of his clearance application in April 2000 suggests he cannot be relied upon to disclose the truth if it conflicts with his personal interests. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 22 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) [\(1\)](#) recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 31 December 2003 and 21 January 2004. He responded to the Government's File of Relevant Material (FORM), issued 29 April 2004; the record in this case closed 17 June 2004, the day Department Counsel indicated no objection to the response. The case was assigned to me on 18 June 2004 to decide if clearance should be granted, continued, denied, or revoked.

**FINDINGS OF FACT**

Applicant admitted the DWI arrests in subparagraphs 1.a. and 1.b., but otherwise denied the allegations of the SOR. Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 43-year-old engineer for a defense contractor--seeks to retain the access to classified information he has held since approximately 1985.

Applicant has a history of alcohol abuse punctuated by two alcohol-related incidents. He continues to consume alcohol.

Applicant describes his alcohol consumption as moderate, but he has had two convictions for DWI. In November 1999, he was stopped for DWI after being observed swerving between traffic lanes. He failed a field sobriety test and was

cited for violating his state's implied consent law.<sup>(2)</sup> He later pled guilty to DWI on the advice of retained counsel. In October 2001, Applicant was again stopped for DWI after being observed swerving between traffic lanes. He again pled guilty to DWI.

Applicant is also alleged to have had a third alcohol-related arrest in August 1995. However, the record contains no local agency records describing the incident, and Applicant has given two conflicting explanations for the event, neither one of which establishes that Applicant was operating a vehicle under the influence of alcohol.<sup>(3)</sup>

On 6 August 2002, Applicant disclosed his October 2001 DWI, but failed to disclose his November 1999 DWI and his August 1995 summons.<sup>(4)</sup> Applicant denied falsifying his clearance application, claiming he got bad advice from his lawyer regarding the November 1999 charge. However, the court records from the 1999 arrest demonstrate the providency of his guilty pleas made with the advice of counsel.

Applicant's senior manager considers him an excellent worker who should have his clearance. He has neither observed nor received reports of any faulty workmanship that could be attributed to alcohol abuse.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

#### **ALCOHOL CONSUMPTION (GUIDELINE G)**

E2.A7.1.1. 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.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

#### **CRIMINAL CONDUCT (GUIDELINE J)**

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: 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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The Government has established its case under Guideline G. Applicant's two DWI convictions in 1999 and 2001 establish a history of alcohol abuse--without considering the August 1995 incident--that shifts the burden of persuasion to Applicant to demonstrate that he does not have a problem with alcohol. His evidence falls short of meeting that burden. Consequently, I conclude Guideline G against Applicant.

Although Applicant's DWI convictions denote criminal involvement, thus establishing the Government case under Guideline J, the security significance of the incidents lies in demonstrating Applicant's substance abuse issues. I conclude Guideline J for Applicant.

The Government has established its case under Guideline E. Applicant certainly knew he had more than the one alcohol-related arrest he reported on his clearance application. His willingness to withhold that information from the Government suggests he may be willing to put his personal interests ahead of those of the Government. I conclude Guideline E against the Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Paragraph 2. Guideline J: FOR THE APPLICANT

Subparagraph a: For the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

### **DECISION**

In light of all 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. Although Applicant agreed to provide a breath sample, he was unable to produce one.
3. Applicant's March 2003 sworn statement describes his going through a sobriety checkpoint and having a summons issued (despite testing below the legal alcohol limit) that was later dropped. Without some independent evidence of the local agency charges or disposition, or even the local agency report that gave rise to the charges, I am unable to determine whether Applicant was under the influence of alcohol or not when stopped at the sobriety checkpoint.
4. Which he was required to report regardless of the ultimate disposition of the alcohol-related charge.