

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant is a 32-year-old employee of a defense contractor, seeking a security clearance. He had four misdemeanor convictions as a minor between 1987 and 1992 for possessing alcohol underage. He also had a misdemeanor conviction in September 2000 for reckless driving related to driving under the influence of alcohol. Considering the length of time since his offenses as a minor, his personal and professional accomplishments, the successful completion of his probation and required rehabilitative measures, and his acceptance of responsibility, Applicant has mitigated the security concerns arising from his previous excessive consumption of alcohol and criminal conduct. Clearance is granted.

CASENO: 03-10583.h1

DATE: 08/13/2004

DATE: August 13, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10583

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 32-year-old employee of a defense contractor, seeking a security clearance. He had four misdemeanor convictions as a minor between 1987 and 1992 for possessing alcohol underage. He also had a misdemeanor conviction in September 2000 for reckless driving related to driving under the influence of alcohol. Considering the length of time since his offenses as a minor, his personal and professional accomplishments, the successful completion of his probation and required rehabilitative measures, and his acceptance of responsibility, Applicant has mitigated the security concerns arising from his previous excessive consumption of alcohol and criminal conduct. Clearance is granted.

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 December 2, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on December 18, 2003. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 13, 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 January 28, 2004, but did not provide additional materials for consideration. The case was initially assigned to another administrative judge, but was transferred to me on August 9, 2004.

FINDINGS OF FACT

Applicant admitted some of the factual allegations concerning his criminal convictions related to the possession and consumption of alcohol. He admitted that while he was a minor he was arrested four times for possessing alcohol underage. He also admitted that he was arrested for driving under the influence of alcohol in September 2000, and pled guilty to the reduced charge of reckless driving. Item 3, Applicant's Answer to SOR, dated December 18, 2003, at 1-2. Those admissions are incorporated herein as findings of fact. Applicant denied that he consumed alcohol, at times to the point of excess, from 1987 to the present, other than the specific instances admitted above. *Id.* He denied that he has a history or pattern of criminal activity that creates doubt about his judgment, reliability, and trustworthiness. *Id.* After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 32 years old, and works as a researcher in security risk management for a defense contractor. Item 4, Security Clearance Application, dated November 7, 2000, at 1, 3. He seeks a security clearance.

Applicant was born and raised in a small town. He admitted that as a teenager he focused on "fishing, cruising and finding parties." Item 5, Statement of Applicant, dated June 13, 2002, at 2. Applicant was cited four times for being in possession of alcohol while a minor: about February 1987 (age 16); April 1989 (age 17); about July 1990 (age 18); and about August 1992 (age 20). Item 4, *supra*, at 9. On each occasion he was required to pay a fine. *Id.* Although the citations were for the possession of alcohol under the lawful age limit, Applicant admits that he consumed alcohol on these occasions. Item 3, *supra*, at 1.

After completing high school, Applicant worked in sales for an office furniture store and a hardware store. Item 4, *supra*, at 4. In 1990, he began taking college courses. *Id.* at 3. He enlisted in the U.S. Army in 1994 and completed his training as a vehicle repairer. *Id.* at 4. Applicant served overseas and in the United States, and was promoted to the grade of E-4. *Id.* Applicant left active duty in the U.S. Army in January 1997 and completed his inactive reserve obligation in arch 2002. *Id.* at 6.

In 1997, Applicant returned to his home town and again worked for the hardware store and the office furniture store, successively. *Id.* at 3. He enrolled in college again, and was awarded an Associate's degree in June 1998 and a Bachelor of Arts degree in December 1999. *Id.* In September 2000, he assumed his present position with a defense contractor. *Id.*

In September 2000, shortly after beginning work for the defense contractor, Applicant attended a baseball game with friends. Item 5, *supra*, at 2. He drank several beers before and during the game. *Id.* While driving out of the parking area after the game, Applicant was involved in a vehicle collision. *Id.* A police officer stopped to render assistance and tested

Applicant's sobriety. *Id.* The breath test administered at the scene indicated Applicant's blood alcohol content was .09%, over the .08% legal limit. *Id.* Applicant was arrested and charged with three misdemeanor offenses: driving under the influence of alcohol, driving with a blood alcohol content greater than .08%, and driving without a driver's license. Item 6, Superior Court Records, at 10. Subsequently, Applicant pled guilty to the lesser offense of reckless driving. *Id.* at 4. He was sentenced to 90 days confinement, suspended for 3 years, and fines totaling \$1,200.00, with \$150.00 of the fines suspended pending successful completion of probation. *Id.* The terms of his probation required Applicant not to drive with alcohol in his system, to submit to blood, breath, or urine tests when stopped by a police officer, and to obey all laws, for a period of three years. *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. Exec. Ord. 10865, § 7. 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, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Directive, ¶ E2.A7.1.1.

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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence 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.

The Government's documentary matters and Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline G of the Directive. Specifically, Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if an Applicant is involved in "[a]lcohol-related incidents away from work, such as driving under the influence . . . or other criminal incidents related to alcohol use." Applicant was involved in five separate alcohol-related instances: four as a minor by illegally possessing alcohol, and one as an adult involving reckless driving related to driving under the influence of alcohol. These instances raise concerns about his judgment, reliability, and his ability to control his impulses, and are a security concern.

These security concerns can be mitigated where it is determined that the alcohol-related incidents do not indicate a pattern. Directive, ¶ E2.A7.1.3.1. Clearly, the four successive arrests for possessing alcohol underage show a pattern of unlawful involvement with alcohol between 1987 and 1992. The eight-year period following his last offense as a minor might have served as a break in the pattern, but for his arrest for drunk driving in September 2000. This potentially mitigating condition does not apply in this case.

It may be mitigating if the problem occurred a number of years ago and there is no indication of a recent problem. Directive, ¶ E2.A7.1.3.2. The underage drinking occurred quite a few years ago, however the incident of reckless driving in September 2000 indicates Applicant had a problem with excessive alcohol consumption at that time. The passage of years has mitigated to a large extent the seriousness of Applicant's four instances of possessing alcohol as a minor, but not the September 2000 drunk driving offense.

It may also be mitigating where an applicant demonstrates positive changes in behavior supportive of sobriety. Directive, ¶ E2.A7.1.3.3. The absence of alcohol-related incidents during eight-year period between 1992 and 2000, including the years when Applicant was in the relatively strict environment of the U.S. Army, suggests that Applicant made some positive behavioral changes. Applicant properly completed the classes, Alcoholics Anonymous meetings, and group therapy sessions mandated by the terms of his September 2000 sentence. These factors indicate favorable changes in Applicant's behavior that will make it less likely that he would have a problem with excessive alcohol consumption in the future.

Guideline J, Criminal Conduct.

Under ¶ E2.A10.1.2.2 of the Directive, the commission of multiple lesser offenses may be disqualifying. The government's documentary matters and the Applicant's admissions are substantial evidence of Applicant's commission of multiple lesser offenses, including four misdemeanor convictions while a minor and one misdemeanor conviction for reckless driving arising from driving under the influence of alcohol. Applicant's history of four convictions for possession of alcohol underage reflect a pattern of flouting lawful authority. His decision to drive in September 2000 after consuming several alcoholic beverages also suggests a lack of judgment.

Applicant's criminal offenses as a minor are mitigated because the conduct was not recent. Directive, ¶ E2.A10.1.3.1. Additionally, Applicant's completion of the alcohol abuse education classes, Alcoholics Anonymous meetings, and group therapy sessions, is some evidence of successful rehabilitation. Directive, ¶ E2.A10.1.3.6.

I considered all the circumstances in light of the "whole person" concept. Directive, ¶ E2.2.1. I note the offenses of possession of alcohol underage are not especially serious. Directive, ¶ E2.2.1.1. More significantly, most of the offenses occurred while Applicant was a minor, at a time when many people demonstrate a lack of judgment and maturity. Directive, ¶ E2.2.1.4. Since that time, Applicant completed an enlistment in the U.S. Army, obtained his college degree, and secured a position of responsibility with a defense contractor. Applicant's acceptance of responsibility and proper completion of rehabilitative requirements demonstrate positive behavioral changes. Directive, ¶ E2.2.1.6. I also note that, for a period of three years following his reckless driving conviction, driving with any amount of alcohol in his system, or the commission of any offense, would have violated the terms of his probation leading to severe consequences. Undoubtedly the strict terms of his probation and the harsh results that would follow any violation, had a positive impact on Applicant. It is clear that Applicant realizes that, even if he is granted a clearance on this occasion,

any future alcohol-related problems could seriously jeopardize his chances of maintaining a security clearance or any employment that requires such a clearance. Therefore the likelihood of a recurrence of this problem is greatly diminished. Directive, ¶ E2.2.1.9.

I conclude Applicant has mitigated the security concerns arising from his alcohol consumption and criminal conduct. For these reasons, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1. Guideline G: 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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: 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 or continue a security clearance for Applicant. Clearance is granted.

Michael J. Breslin

Administrative Judge