

KEYWORD: Drugs; Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 26-year-old security guard, failed to mitigate drug, alcohol, criminal conduct, and personal conduct allegations since he continues to use marijuana and alcohol after a diagnosis of alcohol and marijuana abuse. He also failed to report his treatment for abuse on his security clearance application. Clearance is denied.

CASENO: 03-15118.h1

DATE: 06/02/2005

DATE: June 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15118

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 26-year-old security guard, failed to mitigate drug, alcohol, criminal conduct, and personal conduct allegations since he continues to use marijuana and alcohol after a diagnosis of alcohol and marijuana abuse. He also failed to report his treatment for abuse on his security clearance application. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding 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) dated October 8, 2004, 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. It was received by Applicant on November 12, 2004. 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 written statement dated November 22, 2004, Applicant responded to the allegations set forth in the SOR, 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 December 1, 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 do so and the case was assigned to me on May 18, 2005.

FINDINGS OF FACT

Applicant admitted all the allegations in the SOR but offered some explanatory information in his response and interviews with the investigating officer. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor working as a security guard. He has purchased and used marijuana since 1997. He was arrested in April, 2000, for marijuana possession and ordered into a drug and alcohol program. He participated in the program for two months but was discharged for poor attendance. He was diagnosed by the program with continuous alcohol abuse and continuous marijuana abuse. He continues to use marijuana and consume alcohol and expressed his intent to continue.

Applicant failed to report the alcohol treatment and counseling at Question 20 on his Security Clearance Application (SF 86) dated December 30, 2002. Applicant denied that the omission was deliberate saying that he had forgotten about it and only remembered when the investigator brought it to his attention.

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:

The government has cited Disqualifying Condition (DC) 1 under Guideline H 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) Conditions that could raise a security concern and may be disqualifying include illegal drug possession, including purchase. (E2. A8.1.2.2.) No mitigating conditions are applicable in that the use continues with an intent to continue.

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption leading to exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. (E2.A7.1.1) Conditions that could raise a security concern and may be disqualifying include evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.2.4) No mitigating conditions are applicable in that Applicant continues to drink and intends to continue doing so. There is no positive changes in his behavior.

Applicant's arrest for criminal conduct raises issues under Guideline J (E2.A10.1.1) involving a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness. An admission of criminal conduct (E2.A10.1.2.1.) and a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) are potentially disqualifying conditions. I conclude that the allegation is not mitigated by the fact that it was not recent since he continues to use marijuana (E2.A10.1.3.1.), and it is not an isolated incident (E2.A10.1.3.2.) since the practice continues.

Under Guideline E, Applicant's failure to report his alcohol treatment on his SF 86 indicates 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.); deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination (E2.A5.1.2.3.); and a pattern of dishonesty or rule violations. (E2.A5.1.2.5.) His statement that he forgot about the treatment and evaluation is not credible.

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. After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has offered no evidence to counter the proof and admission of the conduct that disqualify him from holding a security clearance and that it is not clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: 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

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

Subparagraph 4.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge