

KEYWORD: Alcohol; Drugs; Financial; Personal Conduct

DIGEST: Applicant is an electronics technician for a defense contractor. He has been arrested and convicted twice for driving while intoxicated, completed two alcohol-safety programs, and completed an outpatient alcohol-treatment program. He continues to drink alcohol to the point of impairment a few times a month. Applicant used a control substance frequently and his last use was only a year ago. Applicant has delinquent debts that he made no effort to satisfy, but has been relieved of the debts through bankruptcy. Applicant deliberately provided a false answer on his security clearance application concerning the extent of his drug use. He provided the same false information to a security agent. Clearance is denied.

CASENO: 03-15273.h1

DATE: 04/07/2005

DATE: April 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15273

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an electronics technician for a defense contractor. He has been arrested and convicted twice for driving while intoxicated, completed two alcohol-safety programs, and completed an outpatient alcohol-treatment program. He continues to drink alcohol to the point of impairment a few times a month. Applicant used a control substance frequently and his last use was only a year ago. Applicant has delinquent debts that he made no effort to satisfy, but has been relieved of the debts through bankruptcy. Applicant deliberately provided a false answer on his security clearance application concerning the extent of his drug use. He provided the same false information to a security agent. Clearance is denied.

STATEMENT OF THE CASE

On May 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 2, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 7, 2004, and admitted all of the allegations under all of the guidelines and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 14, 2004. Department Counsel was prepared to proceed with the case on January 7, 2005, and the case was assigned to me on January 11, 2005. A notice of hearing was issued on February 16, 2005, and the hearing was convened on arch 8, 2005. Six government exhibits, and the testimony of the Applicant and one Applicant witness were received during the hearing. The record was held open for Applicant to present additional documentary evidence concerning his petition in bankruptcy. Additional documents were received from Applicant on arch 21, 2005, and admitted without objection from

Department Counsel. The transcript was received on March 16, 2005.

FINDINGS OF FACT

Applicant is a 26-year-old technical school graduate working as a telecommunications technician for a defense contractor. After completing technical school in 2001, Applicant worked as an electrician's helper for a defense contractor and submitted his first request for a security clearance in 2001. That security clearance application had not be processed before Applicant left that company in 2002. He found work with his present defense contractor employer and submitted a security clearance application in 2003.⁽¹⁾

Applicant consumed alcohol at times to the point of intoxication from 1995 to 2003. Applicant was apprehended in 1997 when he was 18 years old for drinking in public and being a minor in possession of alcohol. Applicant was apprehended with friends with an open container of an alcoholic beverage in a car. The charges were dismissed.⁽²⁾

Applicant, while still a minor, was apprehended, charged, and convicted of driving while intoxicated. He was sentenced to a suspended jail sentence, to pay a fine, to have his license suspended, and to attend an alcohol-safety program. Applicant completed the program.⁽³⁾

Applicant was arrested, charged, and convicted of driving while intoxicated in July 2002. Applicant received a short jail sentence, was fined, and his driver's license was restricted. He was ordered to place an ignition interlock device on his car and attend an alcohol-safety action program. The ignition interlocking device was placed on his car and Applicant failed the interlock test five times from October 2002 to March 2003. While attending the alcohol-safety program, Applicant was directed to attend a more intense alcohol-treatment program as an outpatient from July to October 2002. Applicant still drinks approximately eight or nine beers a few times a month, sometimes to the point of impairment.⁽⁴⁾

Applicant used a controlled substance from 1994 to 2002 more than 50 times. He continued to use the controlled substance even after submitting a security clearance application.⁽⁵⁾ Applicant tested positive for use of the controlled substance while in his intense alcohol-safety action program in 2002.⁽⁶⁾

Applicant has four delinquent debts totaling approximately \$21, 500. Debt 3.a in the SOR is a credit card debt for approximately \$3,000. Applicant agreed to a payment plan with the creditor but still could not make the required payments. Debt 3.b in the SOR is a small bill for medical treatment for an injury Applicant received on the job. Applicant believed the debt would be covered by workman's compensation, but he did not file a claim or make any other arrangements to have the debt paid. Debt 3.c in the SOR is another credit card debt for approximately \$5,727. Applicant initially attempted to work out a payment plan for this debt with a debt counseling agency. He did not like the arrangements so he did not participate in the plan. Debt 3.d is a student loan for approximately \$12,000 with the technical school Applicant attended. Applicant did not pay the loan and the

school garnished his wages. The garnishment did not satisfy the debt.⁽⁷⁾ Applicant filed a petition for Chapter 7 bankruptcy in December 2003. The petition was granted in January 2004 and all of the above debts were discharged in bankruptcy.⁽⁸⁾

Applicant submitted a security clearance application in 2001 when he went to work for a defense contractor. There were two applications submitted a few days apart.⁽⁹⁾

Applicant did not like working for this defense contractor. He walked off the job in August 2002 before any action on his security clearance application.⁽¹⁰⁾ Applicant went to work for another defense contractor and submitted a third security clearance application.⁽¹¹⁾

Applicant answered "NO" to question 20 of the third security clearance applications asking if the applicant in the last 10 years had ever been fired from a job, quit a job after being told he would be fired, left a job by mutual agreement after allegations of misconduct, unsatisfactory performance, or under unfavorable circumstances. Applicant's first employer considered that Applicant had been fired in 2001 since he did not return to the job. Applicant considered he had just walked away from the employment and had not been fired.⁽¹²⁾

On his first two security clearance applications, Applicant answered he used a controlled substance 50 times in response to question 27 of the security clearance application asking if in the last 7 years or since the age of 16 the applicant used any controlled substance. On the third security clearance application, Applicant did not list the use of a controlled substance from 1995 to 2002. Applicant was told by friends he should downplay his use of controlled substances. In subsequent statements to a security agent, Applicant stated he only used the control substance eight times.⁽¹³⁾

On the third security clearance application, Applicant answered "NO" to question 30 asking if the applicant's use of alcoholic beverages in the last 7 years resulted in alcohol treatment or counseling. Applicant did not list his alcohol counseling because he believed it was covered by his response to question 24 concerning his arrests for driving while intoxicated.⁽¹⁴⁾

Applicant is a good employee who has grown in his position in the last few years. His employer has steadily promoted him and now uses him to supervise others on the job. Applicant has moved up from a technician 1 to a technician 3 which permits him to undertake many mor functions for the defense contractor.⁽¹⁵⁾

POLICIES

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."⁽¹⁶⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁷⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁸⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹⁹⁾

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 necessarily a determination as to the loyalty of the applicant.⁽²⁰⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽²¹⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²²⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²³⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽²⁴⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁵⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline G - Alcohol Consumption: A security concern exists because 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.

Guideline H- Drug Involvement: A security concern exists the improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

The government has established its case under Guideline G. Applicant's alcohol-related incidents brings the matter within Alcohol Consumption Disqualifying Conditions Directive ¶ E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use*); and Directive ¶ E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant has been arrested

and convicted twice in the last 5 years for driving under the influence. He was required to place an ignition interlock device on his car and he failed the test to start his car a number of times. He was required to attend alcohol-safety programs and an outpatient alcohol-treatment program. He habitually continues to consume alcohol to the extent he is impaired a few times a month. I conclude the aforementioned Alcohol Consumption Disqualifying Conditions have been established.

The Alcohol Consumption Mitigating Conditions to consider for Applicant are Directive ¶ E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*); Directive ¶ E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); Directive ¶ E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). There have been no alcohol-related incidents in almost two years. He continues to drink alcohol a few times a month to the point of impairment, so two years of no alcohol-related incidents is not a sufficient time to determine Applicant has positive changes in behavior on a clear path to sobriety. He continues a pattern of alcohol use that previously resulted in alcohol-related incidents raising security concerns. I conclude Applicant has not mitigated the security concerns of Alcohol Consumption.

The government has established its case under Guideline H. Applicant's use of a controlled substance brings the matter within Drug Involvement Disqualifying Condition Directive ¶ E2.A8.1.2.1 (*any drug abuse*). Applicant admitted using a controlled substance over 50 times from 1994 to December 2003. He stopped using the controlled substance in January 2004 because his employer established a drug testing program. I conclude Applicant's use of a controlled substance establishes the aforementioned Drug Involvement Disqualifying Condition.

The Drug Involvement Mitigating Conditions to consider in Applicant's case are Directive ¶ E2.A8.1.3.3 (*the drug involvement was not recent*); Directive ¶ E2.A8.1.3.3 (*a demonstrated intent not to abuse any drugs in the future*). Applicant admitted to last using drugs in late 2003, approximately 15 months ago. His drug involvement was recent. He stopped using drugs not because of an intent not to abuse drugs in the future but because his company established a system of drug testing. I conclude Applicant has not mitigated security concerns for his Drug Involvement.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has delinquent debt totaling over \$21,000. Applicant has a history of not meeting his financial obligations. His debts were incurred three to four years ago and Applicant has made little effort to not only inquire about them but also to satisfy them. He filed a petition for bankruptcy to resolve his financial problems and his debts have been resolved in the recent discharge in bankruptcy. Bankruptcy is a legal and permissible means of resolving debts. Applicant's discharge in bankruptcy relieved him of the debts, but does not preclude considerations of the security significance of the actions leading to the delinquent debts. ⁽²⁶⁾ Applicant's failure to inquire about some of his delinquent debts and failure to make payments where agreed shows both an unwillingness and an inability to resolve debts. I conclude the aforementioned Financial Considerations Disqualifying Conditions have been established.

Applicant relies on his discharge in bankruptcy to establish a Financial Consideration Mitigating Condition directive ¶ E2.A6.1.3.6 (*the individual*

initiated a good-faith effort to repay overdue creditors or other wise resolve debts). While the bankruptcy relieved him of debt responsibility, it did not establish a good-faith effort to repay overdue creditors or resolve the debts. He made no attempts to make arrangements with some of the creditors. Where he did make arrangements, he did not fulfill his part of the arrangements by making payments. Instead of trying to pay his indebtedness, Applicant waited until confronted with a large debt for student loans before turning to bankruptcy to resolve his indebtedness. I conclude Applicant has not mitigated the security concerns for Financial Considerations.

The government has established its case under Guideline E as to allegations 4. b. and 4. d. only. Applicant's incorrect answers to questions on the security clearance application and to the security agent brings the matter within Directive ¶ 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. . . determine security clearance eligibility or trustworthiness. . .*); and Directive E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matter to an investigator, security official. . . in connection with a personnel security or trustworthiness determination*). When Applicant answered "no" to question 20 concerning being fired from his job, he believed he had not been fired. He did not return to work for his company since he did not like the company or the job. He did not realize his failure to return to the job was considered by the company as a reason to terminate him. Also, in responding "no" to question 30 concerning his use of alcohol leading to treatment or counseling, Applicant believed his response that listing his driving while intoxicated offenses was sufficient to raise the issue of his treatment for alcohol abuse. His responses to these two questions was not a deliberate attempt to omit, conceal or falsify his responses. In responding to question 27 concerning his drug abuse and his response to the questions of the security agent on his drug abuse, Applicant deliberately downplayed his drug involvement on the advise of some friends. His intent was to deliberately respond with false information with the intent to deceive. The mere fact he had responded correctly to the question on the first two security clearance applications does not relieve him of the responsibility to respond truthfully on subsequent applications.⁽²⁷⁾ I conclude the aforementioned Disqualifying Conditions have been established as to the allegation concerning the deliberate false response to question 27, and to the false information provided the security agent.

The mitigating conditions to consider for Applicant are Personal Conduct Mitigating conditions Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Applicant provided false information concerning the extent of his drug involvement twice, first in January 2003 when completing his security clearance application, and then in March 2003 when questioned by the security agent. He provided the correct information consistent with his first security clearance application, only after questioning by Department Counsel at the hearing. He did not correct the information voluntarily or before being confronted with the facts. I conclude Applicant has not mitigated the security concerns for his false answers concerning his drug use.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: 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 H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3, Guideline F: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Paragraph 4, Guideline E: AGAINST APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: Against Applicant

Subparagraph 4.c.: For Applicant

DECISION

In light of all of the circumstances presented in 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.

Thomas M. Crean

Administrative Judge

1. Tr. 20-22.
2. Tr. 25-26; Government exhibit 5 (Applicant's statement, dated Mar. 28, 2003) at 4.
3. Tr. 27-31; Government exhibit 5 (Applicant's statement, dated Mar. 28, 2003) at 4.
4. Tr. 32-40; Government exhibit 5 (Applicant's statement, dated Mar. 28, 2003) at 5; Government exhibit 6 (Applicant's additional statement, dated Mar. 28, 2003) at 4.
5. Tr. 41.
6. Tr. 35.
7. Tr. 50-54.
8. Applicant exhibit A (Bankruptcy documents, dated Dec. 2003)
9. Government exhibit 1 (Security clearance application, dated Sep. 24, 2001); Government exhibit 2 (Security clearance application, dated Oct. 1, 2001).
10. Tr. 48-49.
11. Government exhibit 3 (Security clearance application, dated Feb. 05, 2003).
12. Tr. 48-49.

13. Tr. 44-47; Government exhibit 6 (Applicant's second statement, dated Mar. 28, 2003) at 4.
14. Tr. 47-48.
15. Tr. 61-68.
16. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
17. Directive ¶ E2.2.1.
18. *Id.*
19. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
20. *See* Exec. Or. 10865 § 7.
21. Directive ¶ E3.1.14.
22. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
23. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
24. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
25. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
26. ISCR Case No. 01-26675 (App. Bd. Jun. 13, 2003) at 3. *See* ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).
27. ISCR Case. No. 98-0583 (App; Bd. Nov. 18, 1999).