

KEYWORD: Financial; Alcohol; Criminal Conduct

DIGEST: Applicant has a history of delinquent debts he accumulated during periods of low earning jobs and a stress contributing divorce. His delinquent debts have not been addressed for the most part, despite available resources to do so with the net monthly income available to him since at least June 2002. Besides accumulated debt delinquencies, Applicant has experienced three alcohol-related arrests over a nine-year period spanning 1993 and 2002 that resulted in convictions, probation and diagnosed alcohol abuse. His reduced alcohol consumption, while encouraging, is insufficient to enable safe predictive assessments about his ability to avoid recurrent alcohol-related arrests in the foreseeable future. Clearance is denied.

CASENO: 03-16008.h1

DATE: 02/07/2005

DATE: February 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16008

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Ronald Seastrunk, Esq.

SYNOPSIS

Applicant has a history of delinquent debts he accumulated during periods of low earning jobs and a stress contributing divorce. His delinquent debts have not been addressed for the most part, despite available resources to do so with the net monthly income available to him since at least June 2002. Besides accumulated debt delinquencies, Applicant has experienced three alcohol-related arrests over a nine-year period spanning 1993 and 2002 that resulted in convictions, probation and diagnosed alcohol abuse. His reduced alcohol consumption, while encouraging, is insufficient to enable safe predictive assessments about his ability to avoid recurrent alcohol-related arrests in the foreseeable future. Clearance is denied.

STATEMENT OF CASE

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 11, 2004, and requested a hearing. The case was assigned to me on August 10, 2004, and was scheduled for hearing on September 15, 2004. A hearing was convened on September 15, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of 10 exhibits; Applicant relied on one witness (himself) and 11 exhibits. The transcript (R.T.) of the proceedings was received on September 22, 2004.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have accumulated delinquent debts with five creditors, totaling over \$36,000.00, nine in all, which total over \$18,000.00. Under Guideline G, Applicant is alleged to have (a) been involved in three alcohol-related incidents over a ten year period, two of which resulted in guilty findings and ordered punishment and (b) attended an alcohol and drug abuse program in February 1997, where he was diagnosed as an alcohol abuser and recommended for enrollment in an outpatient treatment center, Alcoholics Anonymous (AA) attendance, and abstention from alcohol. Applicant's alleged alcohol-related arrests are incorporated under Guideline J.

For his response to the SOR, Applicant admitted most of his debts while disputing his creditor 1.e repossession debt and denying any debt to creditor 1.f (claiming to have paid the creditor). Applicant admitted each of the allegations covering alcohol-related conduct but failed to respond to the incorporated allegations in Guideline J (covering criminal conduct).

PROCEDURAL ISSUES

Before the close of the record, Government requested leave to amend the SOR to incorporate subparagraphs 2.a, 2.b and 2.c in paragraph 3, which Applicant failed to respond to. For good cause shown, the Government's request was granted. Applicant, in turn, admitted each of the incorporated allegations.

FINDINGS OF FACT

Applicant is a 44-year-old intel writer, who seeks to retain his security clearance. The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Following his graduation from college (where he participated in Reserve Officers Training Corps (ROTC)), Applicant was commissioned by the US Army and entered active duty, where he served for eight years before retiring in 1994 with the rank of Captain. During his military tour of duty, Applicant received numerous service awards. Since retiring from active military service, he held variety of jobs before joining his current defense contractor in June 2002.

Between June 1993 and September 2002, Applicant was involved in three alcohol-related incidents. In the first incident, he refused a Breathalyzer and was arrested for DuI by military police. He later accepted an official reprimand for his actions and was ordered to undergo alcohol evaluation. Complying with his reprimand conditions, Applicant entered an Army alcohol and drug prevention and control program (ADAPT) and participated in the program between June and December 1993: The program included group counseling and Alcoholics Anonymous (AA) meetings, which he attended (R.T., at 113).

While enrolled in this program, he was diagnosed by a certified substance abuse counselor as an alcohol abuser. After successfully completing the Army's alcohol/drug prevention program, his program counselors recommended enrollment in an outpatient treatment program, continued participation in AA and abstention from alcohol (*see ex. 10*). His prognosis was rated good so long as he continued with his AA meetings and abstention from alcohol. Applicant neither enrolled in an outpatient treatment program following his completion of his ADAPT program nor continued with his AA meetings (R.T., at 113). While he did abstain from drinking for over three years, he resumed his drinking in 1996 under the stress of his ongoing divorce.

Several months after resuming drinking (in February 1997), Applicant was arrested for his second alcohol-related offense. After pleading guilty to operating a vehicle under the influence, he was fined \$135.00 and placed on 12 months of supervised probation. His probation conditions consisted of 32 hours of community service, avoidance of excessive use of alcohol, participation in a substance abuse program as directed by his substance abuse officer, and completion of a driver improvement class. Because he was considered by the court to pose a low risk of substance abuse recurrence, the court suspended the drug testing condition (*see ex. 8*). Applicant's assurances he was not directed to complete a substance abuse program (R.T., at 62, 110-111), uncontroverted, are accepted. Applicant is credited with successfully completing all of his probation conditions. Applicant's second alcohol-related incident (like the first one) occurred while he held a security clearance (R.T., at 115).

Applicant was arrested in September 2002 and charged with DuI following his refusal to submit to a Breathalyzer, and just months after he completed his SF-86 for his current employer (*see ex. 3*; R.T., at 63, 116). While the state determined not to prosecute him, his Breathalyzer refusal cannot be reconciled with his claims he had not abused alcohol before he was arrested. Despite the lack of prosecution, the incident must still be characterized as alcohol-related under all the circumstances presented. Applicant continues to consume alcohol on a light to moderate basis following his diabetes diagnosis and has avoided any alcohol-related incidents since his September 2002 incident. However, he has neither sought any form of alcohol counseling or network support (such as AA) nor obtained an updated evaluation from a medical doctor or certified substance abuse counselor since his last arrest.

Following his separation from his second spouse in 1995 (divorce finalized in 1996) and imposed child support burdens, Applicant encountered difficulties keeping up with his debts with the small income we was earning. His debt with creditor 1.d was charged off in 1995 in the amount of \$6,020.00 (*see exs. 2*) and has not been paid or resolved. Two charge accounts he had with creditor 1.a-b (opened in 1990 and 1985, respectively) were charged off in May and March 1990, respectively. From the best that can be determined from the judgment record (covered in *ex. 7*), these same accounts were sued upon by the creditor and taken to judgment in August 2000, following Applicant's failure to appear. The principal on these two accounts recited in the incorporated petition totals \$2,782.70 and \$3,052.82, respectively, with interest running at 21 per cent per annum on each of them from December 1997, for a total of \$5,835.52, as of that date (*see ex. 7*).

In 1996, Applicant's car was repossessed by the same creditor (creditor 1.e) that he had purchased the car months earlier for approximately \$15,000.00 (*see ex. 2*). Told by the creditor that the car was sold at auction for around \$7,500.00, Applicant has been unable to obtain any documentation from the creditor of the sale proceeds, despite apparent attempts to do so (R.T., at 103). Besides his accrued consumer debts, Applicant became subject to a state tax lien (filed in February 1999) in the amount of \$1,705.00 (*see ex.. 6*). The lien represented unpaid taxes for tax year 1994.

Applicant's repayment problems with his debts were hampered for a while by two surgical procedures on his back in 1997, which resulted in his receiving a medical disability through Social Security. With his disability, he was limited to his covered disability benefits for almost three years, before he was certified to return to work (R.T., at 89-90). Since returning to work, Applicant has made some progress in addressing his old creditors. He has satisfied his state tax lien in full (*see ex. E; R.T., at 96*) and has reduced the amount owing on one of the accounts included in the judgment taken against him by creditor 1.c to \$3,178.38 (*see exs. G and H; R.T., at 100-01*). However, Applicant has made little further progress on resolving his debts. For instance, he has not made any further payments on his creditor 1.d account, despite promises made to the interviewing agent from the Defense Security Service (DSS) in August 2002 that he would. A \$2,856.00 settlement offer made to Applicant by creditor 1.d in August 2004 was never acted upon by Applicant (*see ex. D*). Further, Applicant hasn't obtained documentation from creditor 1.e on the net amount he owes them after crediting proceeds from the car's sale in 1996 (R.T., at 103). After telling the DSS agent who interviewed him in August 2002 that he would contact creditor 1.e and start a payment plan with them on the deficiency, he failed to follow up on his promises in any way that he can document, despite a reported net monthly remainder at that time of \$859.00 a month and savings of \$15,000.00 (*see ex. 2; R.T., at 105*).

Applicant currently earns about \$4,000.00 a month from his defense employer, where he has worked since 2002. He has no other sources of income (R.T., at 92). He is fully caught up with his back child support and other debts listed in his credit report that are not included in the SOR. Still, he has not been able to make any headway with his other remaining debts with the \$273.00 monthly remainder he reports in his interrogatory response (*see ex. 3*). His reluctance to pay his repossession creditor the full purchase price without any information regarding the creditor's sales generated from its auction sale is understandable. That he is unable to document or detail any of his inquiries of the creditor in the eight years that have elapsed since the repossession cannot be reconciled with his claims of creditor bad faith. Moreover, he provides no comprehensive plan for addressing his other debts, or evidence of his seeking either debt consolidation or financial counseling to address his delinquent debts.

Applicant receives considerable praise from his character references. Local public officials characterize Applicant as

trustworthy, honest, and reliable, and a leader in his community (*see ex. J*). Applicant is credited with being very active in local civic affairs. His direct supervisor describes Applicant as a dedicated ,and motivated professional who can be counted on to complete every task in an outstanding way (*ex. J*). Both his daily attendance and performance evaluations have been excellent (*see exs. J and K*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

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.

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is an intel writer for a defense contractor with many years of meritorious military service, during which he held a security clearance for most of his career. Issues raising security concerns comprise his accumulated delinquent debts dating to 1995 and his three alcohol-related incidents interspersed over a nine-year period reflecting recurrent alcohol abuse by Applicant.

Applicant's finances

Applicant accrued considerable delinquent debt between 1995 and 1997 following his divorce and emergence from low paying jobs, which he has only minimally addressed despite promises made to contact his old creditors and establish payment with them in a 2002 DSS interview. Applicant's listed delinquent debts (six in all) include an entered judgment in behalf of one of his major creditors and currently total over \$26,000, which have for the most part (with the exception of his state tax lien) been charged off or taken to judgment, with no manifest intention to address or follow up on within the past eight years.

Based on Applicant's considerable accumulation of delinquent debt, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: DC E2.A6.1.2.1 (*A history of not meeting financial obligations*) and DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). While his accrued debts are accompanied by some extenuating circumstances (*viz.*, short periods of unemployment), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to him since at least June 2002 (his start-up date with his current employer).

Applicant's earlier unemployment experiences, while problematic, do not appear to have hampered his ability to address his debts once he obtained gainful employment with his current employer. Significant delinquent debt attributable to an applicant that is neither extenuated nor mitigated by good-faith resolution raises implicit security risks over the potential for needed funds and recurrent judgment lapses. The government does not have to wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *Cf. Adams v. Laird*, 420 F.2d 230, 238-39 (DC Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).

Resolution of Applicant's delinquent debts continues to be a work in progress with him. Based on his previous financial circumstances and his lack of concerted repayment efforts after he had gained fruitful employment with his current employer, Applicant fails to extenuate or mitigate his debts sufficiently to enable him to invoke MC E2.A6.1.3.1 (*The behavior was not recent*), MC

E2.A6.1.3.3 (*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)*) or MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) of the Guideline.

Where (as here) there is insufficient evidence of repayment efforts after the conditions that contributed to an applicant's delinquent debts have passed, the Appeal Board has cautioned against crediting the applicant with either non-recent financial difficulties or excusing him from addressing his delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

Taking into account all of the circumstances surrounding Applicant's extenuating circumstances during the 1995 to 1997 time period and claimed difficulties in obtaining a net delinquency figure from creditor i.e, the absence of sufficient attention he has shown with his debts in the past, and his repeated failure to act expeditiously on his repayment promises, Applicant fails to mitigate the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.e of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Applicant's tax lien (covered by subparagraph 1.f), which has since been released, is mitigated.

Applicant's alcohol issues

Applicant's history of alcohol-related incidents (three in all) and abuse diagnosis reflect a recent pattern of alcohol abuse that is security significant. On the strength of the evidence presented, several disqualifying conditions of the Guidelines for alcohol consumption may be applied: DC E2.A7.1.2.2 (*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*), DC E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional*), and DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*).

Despite a history of untreated alcohol abuse and a third alcohol-related incident in 2002, Applicant continues to drink, albeit at light to moderate levels. His renewed commitment to controlled drinking is encouraging and reflective of positive changes in his drinking patterns. For his stated intentions to avoid drinking and driving Applicant, he is to be commended. Favorable views of his work habits from work colleagues and community leaders who know him are helpful, too, in gauging the strength of his commitment to avoidance of alcohol abuse.

In light of Applicant's latest alcohol-related incident and still pertinent 1993 abuse diagnosis and accompanying AA/abstinence recommendations, his continued drinking without any record of counseling or AA participation in over 10 years raises lingering concerns over the likelihood of recurrence. Without an updated positive prognosis from a credentialed medical professional or licensed substance abuse counselor, it is too soon to make safe predictive judgments about Applicant's avoiding alcohol-related incidents in the future. All in all, Applicant's mitigation efforts to date reflect too little commitment to past counseling recommendations (especially AA participation and self-imposed abstinence) to conclude he is no longer at risk to recurrent alcohol abuse. His efforts to date are not sufficient to enable him to claim any of the mitigation benefits of the Guidelines for alcohol.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses associated with alcohol-related incidents to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by subparagraphs 2.a through 1.d of Guideline G.

While Applicant's three alcohol-related offenses and dispositions (covered by allegations 2.a 2.b and 2.d) are neither isolated nor aged when considered as a pattern, they require separate consideration under the Adjudicative Guidelines covering criminal conduct. The arrests reflect mistakes of judgment (even if they didn't all result in convictions) which are security significant. The Appeal Board has repeatedly stated that the Government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Two disqualifying conditions of the Guidelines covering criminal behavior apply: DC E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and DC E2 A10.1.2.2 (*A single serious crime or multiple lesser offenses*).

Applicant's restorative efforts are not of sufficient probative value at this time to enable him to mitigate concerns associated with his judgment lapses that mark his three criminally-linked incidents. It is still too soon to make safe predictive judgments that he can avoid alcohol-related offenses in the future. Applicant, accordingly, may not claim the benefit of any of the pertinent mitigating conditions of the Guidelines. Unfavorable conclusions warrant with respect to sub-paragraph 3.a of Guideline J.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: FOR APPLICANT

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge