

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant falsified his security clearance application regarding his alcohol offenses, his use of marijuana, and the treatments he had received for alcohol dependence. While he mitigated security concerns about his alcohol-related conduct, he failed to mitigate concerns about his falsifications. Clearance is denied.

CASENO: 03-16066.h1

DATE: 09/30/2005

DATE: September 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16066

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant falsified his security clearance application regarding his alcohol offenses, his use of marijuana, and the treatments he had received for alcohol dependence. While he mitigated security concerns about his alcohol-related conduct, he failed to mitigate concerns about his falsifications. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 24, 2004, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on January 28, 2005 and elected to have a hearing before an administrative judge. On June 20, 2005, the case was assigned to me. On August 22, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, the Government submitted eleven exhibits (Ex.), which were identified as Ex. 1 through 11, and admitted to the record without objection. Applicant submitted six exhibits, which were identified as Ex. A through F, and they were admitted to the record without objection. On August 29, 2005, DOHA received the transcript (Tr.) of the proceeding.

**FINDINGS OF FACT**

The SOR contains three allegations of disqualifying conduct under Guideline E , Personal Conduct and eight allegations under Guideline G, Alcohol Consumption. Applicant admits all eleven allegations. His admissions are incorporated as findings of fact.

Applicant is 46 years old and recently married. (Tr. 9.) He has been employed by a defense contractor as a program analyst for 4 ½ years. He requires a security clearance to carry out the duties of his present job.

Applicant began to drink alcohol to excess and sometimes to the point of intoxication in approximately 1990, at the age of 31. He was arrested on July 14, 1990 and charged with two counts of driving under the influence of alcohol and one count of speeding. He was sentenced to participate in an accelerated rehabilitation disposition program for one year and ordered to pay fines and costs of \$553.50 and to serve 80 hours of community service. His driver's license was suspended for six months. Thereafter, Applicant stopped drinking alcohol for approximately one year and attended Alcoholics Anonymous meetings approximately once or twice a week. (Tr. 25-26.)

In the early 1990s Applicant moved to a beach resort. He lived there intermittently. In 1995 he took a job in a restaurant at the beach resort, where he worked as a manager, greeter, waiter, and bartender. (Tr. 23, 27; Ex. 1, 2.) On May 30, 1999, at approximately 2:20 am he was arrested and charged with driving while intoxicated. His blood alcohol content was .30. ( Ex. 7.) Applicant subsequently pled guilty and was sentenced to 60 days in jail, suspended, and 12 months probation. He was ordered to obtain a substance abuse assessment and to participate in treatment recommended as a result of the assessment. He was also ordered to pay fines and costs of \$236 and to complete 24 hours of community service.

Approximately 14 hours later, at 4:05 pm on May 30, 1999, Applicant was arrested again and charged with driving while intoxicated (Count 1) and driving while license revoked (Count 2). His blood alcohol content was .28. (Ex. 8.) He pled guilty to both counts. On Count 1, he was sentenced to 60 days in jail, suspended, and supervised probation for two years. He was ordered to pay fines and costs of \$723.50. On Count 2 he was sentenced to 14 days in jail, suspended, two years probation, and was ordered to pay \$186 in fines and costs.

In June 1999, Applicant received alcohol-related detoxification treatment at an unidentified facility. On July 15, 1999, at another facility, he received the substance abuse assessment ordered by the court. The assessment revealed substance abuse with alcohol and marijuana. Applicant was diagnosed as alcohol dependent by a certified substance abuse counselor who was also certified as a clinical supervisor. (Ex. 10.) Pursuant to the diagnosis, it was recommended that Applicant participate in six months of alcohol-related treatment. (Ex. 6.)

On September 15, 1999, Applicant's sister picked him up at the beach and drove him to another state, where was admitted to a hospital for emergency services related to alcohol detoxification. He remained in the hospital until September 21, 1999. (Exs. 3; 9.)

Applicant completed an intensive three-month alcohol safety education program on May 22, 2000. He also successfully completed a 40-hour out-patient substance abuse treatment program. He attended the program from April 5, 2000 until April 19, 2001. (Ex. 5.)

Applicant identifies himself as an alcoholic (Tr. 27) and attends Alcoholics Anonymous (AA) meetings frequently. He has an AA support group and an AA sponsor. (Tr. 35.) His most recent drink of alcohol, one beer, occurred approximately one year ago. (Tr. 37.) He says he has no plans to drink alcohol in the future. (Tr. 38.)

Applicant last drank to intoxication in 1999. His longest period of abstinence from alcohol was three years. (Tr. 39.)

Applicant began using marijuana in the early 1990s. He used it approximately once a week during that time. His last use of marijuana occurred approximately in May 1999. (Ex. 3; Tr.30-31.)

Applicant completed and certified a security clearance application (SF- 86) on May 30, 2001 (Ex. 1 and 2.) Question 24 on the SF-86 asks if an applicant has ever been charged with or convicted of any offense related to alcohol or drugs. In his response to Question 24, Applicant replied "yes" and listed one offense, which he identified as driving while intoxicated on May 30, 1999. He stated his license was suspended for the offense. (Ex. 1.) Applicant did not list his 1990 arrest for driving under the influence of alcohol, nor did he list his second arrest on May 30, 1999 for driving while intoxicated. On April 9, 2002, in a signed, sworn statement to a special agent of the Defense Security Service, Applicant admitted his failure to list two of his three alcohol-related arrests on his SF-86. (Ex. 3.) At his hearing, Applicant acknowledged the omissions and attributed them to his denial about his use of alcohol. (Tr. 41-42.)

Question 27 on the SF-86 reads as follows: "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?" In his response Applicant was instructed to list the duration and frequency of any illegal drug use. Applicant responded "no" to Question 27. In his signed, sworn statement, Applicant said he did not intend to falsify his answer to question 27. (Ex. 3, at 1.) At his hearing, Applicant stated: "I will say that I agree with all the Government's case and I truly deceived them in my first attempt to get a clearance." (Tr. 9.) Applicant also acknowledged his false answer to Question 27 was intentional, in order to protect himself from admitting illegal conduct. (Tr. 44.) He revealed his drug use when it was raised at his security interview by the Defense Security Service special agent. (Tr. 44.)

Question 30 on the SF-86 reads as follows: "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" Applicant answered "yes" and listed treatment he received from April 2000 to April 2001. He did not list two alcohol detoxification treatments he received in June 1999 and from September 15 to 21, 1999. In his signed sworn statement, Applicant admitted multiple alcohol-related treatments but denied he intended to mislead by failing to list all of them. (Ex. 3, at 3.) At his hearing, Applicant stated the treatment he listed on his SF-86 in response to Question 30 had been successful. He said he did not consider the detoxification treatments in June and September 1999 to be successful. He said his actions in not reporting the unsuccessful treatments were "deceiving and yet truthful in the sense that the real treatment" had been the one he listed on his SF-86. (Tr. 45.)

Applicant submitted copies of his performance appraisals for 2001, 2003, 2004, and 2005. (Ex. B, C, D, and E.) His manager noted on his 2005 performance appraisal that Applicant's "devotion to ensuring our tracking system for receipt of hardware and software in support of . . . system deliveries continues to be excellent." (Ex. B, at 4.) Applicant also submitted a copy of his resume (Ex. F.) and an e-mail, dated February 7, 2002, from a person at a government agency where he had worked as a contractor complimenting his work ethic and professional attitude. (Ex. A.)

## 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. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of

the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

## CONCLUSIONS

### **Guideline E, Personal Conduct**

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, by falsifying material facts in his responses to Questions 24, 27, and 30 on his SF-86. DOHA alleged that Applicant admitted and listed only one alcohol-related offense in his response to Question 24 when he knew he had been charged with two additional alcohol-related offenses which he did not list. (¶ 1.a.) DOHA also alleged Applicant falsified his response to Question 27 when he answered "no" to illegal drug use and failed to list his occasional use of marijuana until at least 1999. (¶ 1.b.) DOHA also alleged Applicant falsified his response to Question 30 by admitting and listing only one episode of alcohol-related treatment when he knew he had received alcohol-related treatment on two other occasions which he did not list. (¶ 1.c.) Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR , the Government has established its case. Applicant's failure to answer Questions 24, 27, and 30 completely, truthfully, and correctly raises a security concern under ¶ E2.A8.1.2.2. of Guideline E. At his hearing, Applicant attributed his failure to list two alcohol-related arrests in his response to Question 24 to his feelings of denial about his use of alcohol. He further stated he did not answer Question 27 truthfully because he did not want to admit illegal conduct. He averred he did not answer Question 30 truthfully because he did not consider two of his alcohol-related treatments to be successful and thus did not list them in response to Question 30. Applicant's concealment of information he considered embarrassing or which made him feel uncomfortable could make him vulnerable to coercion and blackmail. ¶ E2.A5.1.2.4. His conduct raises additional concerns under ¶ E2.A5.1.2.5 because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his past conduct suggests that, under some circumstances, he may put his interests before those of the Government. The ability to be truthful goes to the essence of an individual's security worthiness. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. Jul.10, 2000).

Mitigating condition E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsifications were isolated, not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied the correct information when questioned by a special agent of the Defense Investigative Service approximately eleven months after he completed his SF-86, the falsifications were not isolated incidents and they are recent. Accordingly, allegations in subparagraphs 1.a., 1.b., and 1.c. of the SOR are concluded against the Applicant.

## **Guideline G, Alcohol Consumption**

In the SOR, DOHA alleged under Guideline G that Applicant consumed alcohol, at times to excess and to intoxication from at least 1990 to 1999 (¶ 2.a.); that he was arrested July 14, 1990, and charged with two counts of driving under the influence of alcohol and one count of speeding, which resulted in the suspension of his driver's license for six months, his placement in an accelerated rehabilitation disposition program for one year, and an order for him to pay fines, costs, and serve 80 hours of community service (¶ 2.b.); that he was arrested on May 30, 1999 at 2:20 am and charged with driving while intoxicated; that he pled guilty to the charge, resulting in a sentence of 60 days in jail, suspended, 12 months probation, an order to obtain a substance abuse assessment, to participate in any recommended treatment, and to pay fines, court costs, and complete 24 hours of community service (¶ 2.c.); that he was arrested on May 30, 1999 at approximately 4:05 pm and charged with one count of driving while intoxicated (DWI) and one count of driving while license revoked, to which he pled guilty and was sentenced to 60 days in jail, suspended, supervised probation for two years, and ordered to pay fines and costs on the DWI count, and was further sentenced to 14 days in jail, suspended, two years probation, and ordered to pay fines and costs on the driving while license revoked count (¶ 2.d.); that he received alcohol related detoxification treatment in June 1999, at an unknown facility (¶ 2.e.); that he received a substance abuse assessment in July 1999 and was diagnosed with alcohol dependence, resulting in the recommendation that he attend six months of alcohol-related treatment (¶ 2.f.); that he was hospitalized and received alcohol-related detoxification treatment from September 15 to September 21, 1999 (¶ 2.g.); and that he received alcohol-related treatment from April 2000 to April 2001 from a community substance abuse services facility (¶ 2.h.).

Applicant admitted all the allegations of disqualifying conduct under Guideline G. A security concern under ¶¶ E2.A7.1.2.1 and E2.A7.1.2.5. is raised by Applicant's admissions that he has consumed alcohol to excess and by three alcohol related incidents away from his workplace in 1990 and 1999. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness.

As the result of his two alcohol-related arrests on May 30, 1999, Applicant was ordered to obtain a substance abuse assessment. His substance abuse assessment was rendered on a form which indicates he was diagnosed in July 1999 as alcohol dependent by a person identified as a therapist at a mental health center. <sup>(3)</sup> The documents submitted by the Government establish the diagnosing therapist as a state-certified substance abuse counselor and a clinical supervisor but do not establish that he was "a credentialed medical professional (*e.g.* physician, clinical psychologist, or

psychiatrist)" and therefore qualified to render a diagnosis of alcohol dependence as required by ¶ E2.A7.1.2.3. of Guideline G. Additionally, the therapist's credentials fail to establish that he was a licensed clinical social worker who was a staff member of a recognized alcohol treatment program, as required for rendering an evaluation of alcohol abuse or alcohol dependence under ¶ E2.A7.1.2.4. of the guideline. Thus, the Government's evidence fails to establish that security concerns in this case are raised under ¶¶ E2.A7.1.2.3 and E2.A7.1.2.4. of Guideline G.

Applicant identified himself as an alcoholic and admitted to undergoing two alcohol-related detoxification treatments in July and September 1999. He received alcohol-related treatment from April 5, 2000 to April 19, 2001, and his counselor reported he had successfully completed the treatment. He attends AA meetings at least once a week and often more frequently. He has an AA support group and an AA sponsor. His most recent drink of alcohol, one beer, occurred approximately one year ago. He has not drunk to intoxication since 1999.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (¶ E2.A7.1.3.1), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (¶ E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (¶ E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of A A or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. (¶ E2.A7.1.3.4.)

On three occasions, one in 1990 and two in 1999, Applicant was arrested for driving while intoxicated. The two arrests in 1999 occurred on the same day, suggesting perhaps a crisis rather than a pattern in Applicant's life. Applicant's alcohol-related conduct occurred six years ago and has not been repeated. Applicant recognizes he has a problem with drinking alcohol, and he has successfully completed substance abuse treatment and attends AA meetings frequently. His present conduct demonstrates that if a pattern of negative behavior existed in the past, it does not exist now. Thus, I conclude mitigating factors E2.A7.1.3.1. and E2. A7.1.3.2 apply to Applicant's case.

Applicant has stated he has a strong desire to live a productive and alcohol-free life. To his credit, Applicant has taken positive steps to change his behavior and has chosen sobriety as his goal, demonstrating that mitigating factor E2.A7.1.3.3 is applicable.

Applicant has successfully completed outpatient rehabilitation and participates frequently in AA meetings. He has abstained from alcohol for a period of approximately one year. He is committed to sobriety. While nothing in the record indicates Applicant has received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program, his conduct since 1999 suggests he has taken charge of his problem and intends to remain sober. Because the record suggests that a credentialed medical professional did not render Applicant's diagnosis of alcohol dependence and apparently has not supplied a follow-up prognosis, I conclude I cannot apply mitigating factor E2.A7.1.3.4. to the facts of this case.



In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the Guideline G allegations in the SOR and the record as a whole. I have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude that under the whole person concept, Applicant has successfully mitigated the security concerns alleged under Guideline G of the Directive. Allegations 2.a. through 2.h. of the SOR are concluded for the Applicant.

However, because he failed to mitigate the security concerns raised under Guideline E of the Directive, Applicant has not successfully overcome the Government's case opposing his request for a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2. h.: For Applicant

### **DECISION**

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The mental health center document specifies a diagnosis and not an evaluation or an assessment. (Ex. 6.)