

KEYWORD: Alcohol; Drugs

DIGEST: Applicant abused marijuana, cocaine, and alcohol to the point of clinically diagnosed dependence. Abstinent from all illegal drugs since 1984, he procured marijuana in 2001 for his spouse's medicinal purposes, but does not intend to use illegal drugs himself, thereby mitigating the drug involvement concerns. He failed to mitigate the alcohol consumption concerns because he relapsed into abusive drinking in 2001 after about 17 years of sobriety. Clearance is denied.

CASENO: 03-16518.h1

DATE: 11/23/2005

DATE: November 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16518

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant abused marijuana, cocaine, and alcohol to the point of clinically diagnosed dependence. Abstinent from all illegal drugs since 1984, he procured marijuana in 2001 for his spouse's medicinal purposes, but does not intend to use illegal drugs himself, thereby mitigating the drug involvement concerns. He failed to mitigate the alcohol consumption concerns because he relapsed into abusive drinking in 2001 after about 17 years of sobriety. Clearance is denied.

STATEMENT OF THE CASE

On November 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on alcohol consumption (Guideline G) and drug involvement (Guideline H).

Applicant responded to the SOR on December 13, 2004, and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 9, 2005, and I convened a hearing on June 1, 2005. Seven government exhibits were admitted and testimony was taken from Applicant and his supervisor, as reflected in a transcript received on June 13, 2005. The record was held open until June 15, 2005, for Applicant to submit documentation from his substance abuse counselor. This psychologist's summary of his contacts with Applicant was received on June 2, 2005. Department Counsel having filed no objection thereto by the due date of June 20, 2005, the document was marked and entered as Applicant exhibit A.

FINDINGS OF FACT

The government alleged under Guideline G that Applicant consumed alcohol at times to excess, up to a case of beer and fifth of liquor per day, from about 1971 to at least late February 2002; committed drunk driving offenses in December 1981, December 1983, April 1984, and May 2001; was treated for alcoholism in 1984; and consumes alcohol before work every day. Under Guideline H, Applicant was alleged to have used marijuana, cocaine and mescaline with varying frequency from 1982 to at least 1984; been treated in 1984 for cannabis dependence and cocaine dependence; purchased marijuana for his spouse; and been charged with illegal possession of marijuana as well as drunk driving in May 2001. It was also alleged that his treatment for diagnosed drug dependency in 1984 disqualifies him from having a security clearance granted or renewed under 10 U.S.C. § 986.

Applicant admitted the alcohol consumption allegations, with the exception of SOR ¶ 1.g., consuming alcohol before work every day. As for the drug involvement concerns, he contested only SOR ¶ 1.d., that he procures marijuana for his spouse, and the applicability of 10 U.S.C. § 986. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 46-year-old first class service engineer and heavy equipment repair mechanic who has been employed by a defense contractor since July 1981. He was granted a secret-level security clearance for his duties in 1985, which was administratively downgraded to confidential. He continues to hold that confidential clearance and seeks a secret-level security clearance for his duties.

Applicant began drinking alcohol at age 13, in about 1971. In February 1977, Applicant entered on active duty in the United States Marine Corps. He finished high school while in the service but began using illegal drugs.⁽²⁾ Following his discharge from the Marine Corps, Applicant went to work as a heavy equipment repair mechanic for his present employer in July 1981.

By late 1981, Applicant had become a heavy drinker and drug abuser. Following an automobile accident in December 1981, he was arrested by the state police for operating under the influence (OUI). He was ordered to attend an alcohol education course, which he eventually completed in February 1983. From early 1982 to April 1984, Applicant consumed about a case of beer plus a fifth of hard liquor daily. He refused overtime on occasion because he had been drinking, and received at least one written warning from his employer as a consequence. During this same time frame, Applicant also abused marijuana three to four times weekly, cocaine once monthly, and mescaline once every four to five months, "just having fun with the boys" (Tr. 63). In December 1983, he was again arrested for OUI after he drove his vehicle into a guardrail. An officer on routine patrol observed Applicant to be unsteady on his feet, with slurred speech and a strong odor of alcohol on his breath. Applicant failed field sobriety tests and was charged with OUI (blood alcohol content .222%), failure to drive right, and operating an unregistered motor vehicle. He was fined \$500 plus \$79 court costs for the OUI.

In mid-April 1984, Applicant caused a minor collision with another vehicle while attempting to pass. He had consumed a few drinks at a local steakhouse. He submitted to field sobriety tests, which he failed, but refused to submit to a chemical test, and was arrested for OUI. Applicant was found guilty and sentenced to two days in jail, \$500 fine plus \$78 costs, and his driver's license was suspended for two years.

The day after his arrest, Applicant voluntarily admitted himself to a local substance abuse treatment facility where he was diagnosed with alcoholism and drug dependence, continuous (marijuana and cocaine). (3) After a routine and uneventful detoxification, Applicant actively participated in his treatment, which included a variety of Alcoholics Anonymous (AA) meetings. He was discharged after a 28-day inpatient stay, with his condition significantly improved and a good prognosis for recovery. Aftercare plans consisted of AA and individual counseling. He attended AA for about three months.

Applicant abstained from all illegal drug use after his discharge from the inpatient program, but continued to consume one or two beers on Fridays. On February 19, 1985, Applicant was interviewed by a Defense Security Service (DSS) special agent. Applicant related he had no intent to use any illegal drug in the future. He acknowledged that alcohol was a problem for him, but he felt it was under control.

In July 1988, Applicant married a woman who is 15 years his senior. During the late 1990s/early 2000s, she began to suffer from serious intestinal ailments that left her without an appetite. She began to smoke marijuana in the evenings before dinner to increase her appetite, obtaining the drug from friends. On rare occasions, Applicant obtained marijuana for her.

After 17 years of sobriety, Applicant decided to drink a beer at a picnic at his house in April 2001. After drinking that beer, he had several more. Eventually he relapsed into daily drinking, usually two ounces of rum with ginger ale before driving a commuter van to work, two 16-ounce beers in a bar outside of the gate just before reporting to work, and beer or the rum and ginger ale cocktails at home after work. This pattern of drinking continued to early May 2001, when he was arrested for OUI.

In early May 2001, Applicant drove his car into work after drinking at home. He stopped in a bar outside work where he met up with an old friend from whom he obtained some marijuana for his spouse. After drinking 16-ounce draft beers and some shots of whiskey for a couple of hours at the bar, Applicant decided he was too intoxicated to report for work so he elected to drive home. The state police pulled him over for weaving on the highway. Applicant failed field sobriety tests and was arrested for OUI (blood alcohol content .197%). During a search of Applicant incident to his arrest, the police found marijuana in his shirt pocket. A charge of illegal possession was added. Applicant pleaded guilty to the OUI and was sentenced to two days in jail, suspended on completion of 100 hours of community service, a \$500 fine, and alcohol evaluation. After about one year, Applicant was granted a conditional discharge. Applicant presented for a court-ordered evaluation with a clinical psychologist (Dr. X) in late September 2001. Applicant claims no treatment was recommended at that time.

Applicant resumed drinking after the OUI offense, although there is conflicting record evidence as to the extent of his abstinence. The psychologist who evaluated Applicant in September 2001 reported that Applicant on initial presentation was actively drinking since May 2001 after a long period of sobriety. (Ex.A) Applicant told a DSS agent on February 26, 2002, that he had no alcohol to drink after his arrest until sometime around his birthday in November 2001. (Ex. 7) From at least November 2001, if not before, Applicant consumed alcohol daily, drinking his rum and ginger ale cocktail at home before leaving for work. Most nights, he also stopped at a bar outside the gate and drank a 16-ounce beer or two before reporting for duty, to include the evening of February 25, 2002.

In the early morning hours of February 26, 2002, Applicant was interviewed during his shift by a DSS special agent. Applicant attributed his relapse into drinking in April and early May 2001, and again from about November 2001 to date, to the stress of dealing with his spouse's illness. He admitted drinking a rum and ginger ale cocktail at home and two 16-ounce beers at a bar outside the jobsite before his present shift, and expressed his intent to contact Dr. X for help or a referral in dealing with his alcohol problem:

I realize drinking is not good for me. Until tonight, I have had no real reason to stop. It seemed to me that the only way I could handle my wife's problems was by drinking. The drinking helps to relieve the stress I feel. I need to find another means to handle the stress. I think that I have just had my last drink. (Ex. 7)

Applicant denied any illegal drug use since his inpatient admission for rehabilitation in 1984, and explained that the marijuana in his possession at the time of his arrest in May 2001 was for his spouse. Applicant had obtained the marijuana from his acquaintance that night. He acknowledged procuring marijuana for her on rare occasions ("I try not to have any involvement with her marijuana but I have no objection to her using it as long as it seems to help her.").

Applicant received individual counseling from Dr. X from March 8, 2002 to May 1, 2003, initially weekly and then biweekly. During his treatment, he maintained abstinence from alcohol and realized he could no longer enable his spouse's use of marijuana. On the recommendation of Dr. X, he attended AA twice weekly during his year of counseling. Believing Applicant has been alcohol and drug free since his return to treatment, Dr. X sees no reason to lack confidence in Applicant's ability and appropriateness for a security clearance.

Applicant denies any use of illegal drugs since 1984 or of consumption of alcohol since his interview with the DSS agent in late February 2002, and there is no evidence to the contrary. Applicant has no intent to drink alcohol or use any controlled dangerous substance in the future. He is still under the same stress that led him to relapse into alcohol abuse, but realizes he cannot drink if he wants to retain his job. Applicant has told his spouse that he does not want to know if she is using marijuana. Applicant has not been involved in AA since his counseling with Dr. X, in part because he does not have time for the meetings. Over the 2004/05 time frame, he worked 12 and 16 hour shifts routinely. He earned \$115,000, triple his base pay, in 2004. Applicant feels he can remain sober without AA.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) 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 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.

After considering the evidence of record, the following adjudicative guidelines are pertinent to an evaluation of Applicant's security suitability:

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. (¶ E2.A7.1.1)

Drug Involvement. 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. (¶ E2.A8.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the government established its case with respect to Guideline G, alcohol consumption, and Guideline H, drug involvement.

Applicant has a history of alcohol use and illegal drug use (marijuana and cocaine) to the point of diagnosed dependence. Under the alcohol consumption guideline, several disqualifying conditions apply: ¶ E2.A7.1.2.1. *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*; ¶ E2.A7.1.2.4. *Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*; and ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*. Applicant's habit of drinking before work is especially troubling. A coworker who has known Applicant since 1981 testified to having daily in-person contact with Applicant, the time and extent of their contact varying depending on the shifts worked. He has not seen or known of Applicant to report to work impaired by alcohol, and considers Applicant's work to be of the highest quality. However, he has not always seen Applicant at the start of Applicant's work shift when Applicant would have reported directly after consuming two 16-ounce beers at a bar outside the gate. There is no dispute that alcohol has affected Applicant's attendance at work on occasion over the years, including in early May 2001, when he chose not to report for duty after drinking to intoxication at the bar. There is a basis to apply E2.A7.1.2.2. *Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . .*, even in the absence of any objective evidence of impairment on the job. Although Applicant relapsed into abusive drinking after successfully completing an inpatient alcohol treatment program for diagnosed alcohol dependence, E2.A7.1.2.6. *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*, does not squarely apply where there is no evidence the diagnosis was rendered or ratified by a credentialed medical professional, which is defined under the adjudicative guidelines as a physician, clinical psychologist, or psychiatrist.

Applicant has been abstinent from alcohol since late February 2002, which is a demonstrated change in behavior supportive of sobriety (*see* ¶ E3.A7.1.3.3.). However, more is required to guarantee against future abuse where Applicant relapsed into abusive drinking in April 2001 after about 17 years of sobriety, committed another OUI in May 2001, and consumed excessive amounts of alcohol before reporting to work each day for months from Fall 2001 through February 2002. Under the Directive, mitigating condition E2.A7.1.3.4. provides: *Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*. Applicant's individual counseling sessions with Dr. X fulfill the requirement of outpatient treatment. This clinician expressed confidence in Applicant's ability and appropriateness for the clearance at issue, which is taken as a favorable prognosis. Yet, this prognosis appears not in a contemporaneous discharge summary, but in a very abbreviated summary of his contacts with Applicant authored two years after his counseling ended. Dr. X's summary report sheds little light on Applicant's insight into his alcohol problem. Moreover, Applicant cannot satisfy ¶ E2.A7.1.3.4 where he is not actively participating in AA or a similar support group. While his work schedule makes attendance difficult, Applicant claims to not need AA to remain sober. It is noted Applicant went to AA meetings twice weekly while he was in counseling with Dr. X on the recommendation of the psychologist. In his summary of his contacts with Applicant, Dr. X did not indicate in his summary report whether he recommended Applicant continue in AA or aftercare counseling. When asked at his hearing whether Dr. X advised him to continue with AA, Applicant responded, "He understood my position about it, with the work and everything. If I needed, I know what the program is about."

The stress of coping with his spouse's illness, which was a significant factor in his relapse, still exists (*see* Tr. 57). For assurances that he will not slip into alcohol abuse in the future, Applicant points to his job, where he puts in substantial overtime hours. Applicant exhibited good judgment in seeking counseling from Dr. X in 2002, but absent evidence of a strong support network, I am unable to conclude that he will not again become complacent and pick up a beer as he did in April 2001, with relapse into abusive drinking a likely consequence by history. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.h. are resolved against him. SOR ¶ 1.g. is found in his favor, as although the evidence proves Applicant was drinking alcohol before work daily to as recently as February 25, 2002, there is no evidence he was continuing to consume alcohol before work as of the issuance of the SOR in November 2004. ⁽⁴⁾

While the drug abuse concerns are significant, they do not now warrant revocation of Applicant's security clearance. Under the drug involvement guideline, several disqualifying conditions (DC) apply: ¶ E2.A8.1.2.1. *Any drug abuse*; ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*; ¶ E2.A8.1.2.4. *Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*. In his favor, there is no evidence Applicant has used any illegal drug in the last 20 years. His history of illicit substance abuse cannot be assessed separately from his more recent possession of marijuana on the occasion of his arrest in May 2001, but the government did not establish Applicant has used any of the marijuana he obtained for his spouse since her illness. The government's contention that Applicant is statutorily disqualified from having his clearance granted or renewed under 10 U.S.C. § 986 is not well taken.

Section 1071 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, also known as the Smith Amendment, amended Title 10 of the United States Code to prohibit the Department of Defense (DoD) and the subordinate military departments from granting or renewing a security clearance to covered persons, including officers or employees of a contractor of the Department of Defense, who fall under any of four statutory categories. The statutory category at issue here is § 986(c)(2), which provides as follows: "The person is an unlawful user of, or is addicted to, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))." The statute also provides that the Secretary of Defense and the secretary of the relevant military department may, in a meritorious case, authorize an exception to the statutory prohibition for persons in two of the four statutory categories; namely, paragraphs (1) and (4) of § 986(c). An exception is not authorized for persons falling under paragraph (2) of § 986(c), the category at issue here.

The Deputy Secretary of Defense issued a June 7, 2001, memorandum implementing the Smith Amendment. Attachment 1 to that memorandum is official policy guidance designed to assist the DoD and military departments in implementing the statutory prohibitions. Concerning users of illegal drugs, the policy guidance is that the Smith Amendment did not change the substance of the Guideline H, the adjudicative guideline for drug involvement. In particular, the official policy guidance is as follows: "Anyone who *is currently* an unlawful user of, or addicted to, a controlled substance is not considered eligible for a security clearance." Accordingly, the prohibition contained in paragraph (2) of § 986(c) is inapplicable here because the available information does not establish that Applicant is currently using or is currently addicted to, controlled substances. He was not even a current user of marijuana as of the issuance of the SOR in November 2004. Even if I was to infer that he was using marijuana from the fact of his possession of the drug in 2001 and his continued association at that time with persons known by him to be drug users, it was more than three years ago.

Although Applicant is therefore not statutorily barred from having his clearance granted or renewed, he bears a heavy burden of demonstrating that his drug abuse is not likely to recur, given his diagnosed dependency, albeit some 20 years ago, and the absence of any indication that his spouse has given up her use of marijuana. In contrast to his alcohol involvement, the 1984 inpatient rehabilitation program was successful in bringing about a cessation of his illegal drug use. After his February 2002 DSS interview, Applicant voluntarily underwent counseling for one year with Dr. X, who reports that Applicant not only maintained abstinence, but decided to no longer enable his spouse's use of marijuana. Applicant testified credibly, and his history of drinking and OUI offenses (only the last involving any illegal drug) corroborates that his primary problem has always been alcohol. He has informed his spouse that he wants no part of her drug involvement to the point where he hasn't even asked her whether she is still using marijuana because he does not want to know. Mitigating conditions ¶ E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future*, and ¶ E2.A8.1.3.4. *Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse and a favorable prognosis by a credentialed medical professional*, apply. SOR ¶¶ 2.a., 2.b., 2.c., 2.d., 2.e., 2.f., and 2.g. are concluded in Applicant's favor.

FORMAL FINDINGS

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2.Guideline H: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Subparagraph 2.g.: For the 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 a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Applicant told a Defense Security Service (DSS) special agent in February 1985 that he used marijuana three to four times weekly, cocaine about once a month, and mescaline about once every four to five months, from early 1982 until 1984. (Ex. 5) The government did not press Applicant about the circumstances of his illegal drug abuse, to include why he started using drugs or the circumstances of the abuse. Documentation submitted by Applicant post-hearing indicates Applicant's drug use started even earlier than alleged. The clinician who counseled Applicant from March 2002 to May 2003 reported in his recent treatment summary, "[Applicant] has maintained he stopped using drugs 19 years ago, having 'really got into it' while serving in the United States Marine Corps 1977 to 1981."
3. The discharge summary (Ex. 4) reflecting the diagnoses was signed by a certified alcohol counselor and by the clinical director, an academy certified social worker (ACSW).
4. Applicant's consumption of alcohol before work to as recently as February 2002 is covered in ¶¶ 1.a. and 1.h.

