

KEYWORD: Drugs; Criminal Conduct; Alcohol; Personal Conduct; Financial

DIGEST: Applicant has a long history of alcohol abuse, drug abuse, and criminal conduct. He also had a history of financial difficulties. Applicant deliberately omitted from his security clearance application information about his criminal conduct, alcohol/drug arrests, drug history, and financial condition. Applicant failed to mitigate drug involvement, criminal conduct, alcohol consumption, personal conduct, and financial considerations security concerns. Clearance is denied.

CASENO: 03-16988.h1

DATE: 08/05/2005

DATE: August 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16988

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history of alcohol abuse, drug abuse, and criminal conduct. He also had a history of financial difficulties. Applicant deliberately omitted from his security clearance application information about his criminal conduct, alcohol/drug arrests, drug history, and financial condition. Applicant failed to mitigate drug involvement, criminal conduct, alcohol consumption, personal conduct, and financial considerations security concerns. 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 11 August 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement), Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 8 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 April 2005. On 15 June 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. DOHA received the hearing transcript (Tr.) on 23 June 2005.

RULINGS ON PROCEDURE

The Government's motion to amend the citations in SOR ¶ 4.d(1) from 4.g and 4.h to 5.g and 5.h, respectively, was granted.

FINDINGS OF FACT

Applicant is a 43-year-old custodian for a defense contractor. He started work for the contractor in February 2000. Applicant is married. He and his third wife have one child. He also has one child by his second wife and two by his first wife. Ex. 2 at 3-4.

Applicant used marijuana one time as a teenager. He tried crack cocaine twice in the late 1980s. He used cocaine from the early 1980s until May of 2003. Ex. 2 at 5. His use was especially heavy from the mid to late 1980s. His use became more sporadic in the 1990s. From January-September 1997, he was completely drug free. He was a supervisor at a company that required supervisors to take drug tests. With the exception of the period from March 1999-February 2000, he continued to use cocaine sporadically. During his first three years with his current employer, including after he obtained an interim clearance in February 2001, Applicant used cocaine approximately 10 times. He also purchased cocaine four times during that period. Ex. 2 at 5; Answer at 2.

Applicant was arrested on 20 March 1988 and charged with driving on a suspended license and speeding. Answer at 2. When the officer stopped Applicant for the speeding offense, a check of his driving license revealed it had been suspended. Ex. 5 at 2.

In September 1988, he was arrested on nine counts of false statement to obtain benefits and one count of fraudulent schemes and practices, and one count of theft. Applicant pled guilty to one count of false statement to obtain benefits, a class 6 felony. He was placed on probation, and ordered to spend two weekends in jail and provide restitution of \$1,482.50. Answer; Ex. 6.

In February 1989, Applicant was arrested and cited for threats and intimidation. Applicant "went after" his niece's boyfriend. The boyfriend had beaten up the niece. The case was dismissed. Tr. 31; Ex. 7.

In 1991, claiming Applicant violated the terms of his probation on numerous occasions, the state petitioned the court to revoke Applicant's probation. Applicant admitted several violations including testing positive for cocaine on one occasion. The court terminated his probation. Ex. 6 at 9.

In January 1992, Applicant was arrested on an outstanding warrant from another jurisdiction for failing to pay child support. Ex. 8; Tr. 33.

In December 1994, he was arrested for theft, threats and intimidation/property damage-he had borrowed his employer's vehicle because the employer's son was using Applicant's vehicle. The charges were not referred for prosecution. Ex. 2 at 9; Ex. 9.

In December 1995, Applicant was arrested and charged with driving under the influence of alcohol (DUI), driving with a blood alcohol content in excess of the .10 limit, and making an improper left turn. Applicant pled guilty to DUI and was sentenced to one day in jail, six months of probation, and was fined. Answer at 3; Ex. 1 at 8; Ex. 10.

In January 1996, Applicant was arrested and charged with driving on a suspended licence and violation of a promise to appear. Although the charges were dismissed, Applicant admits driving on the suspended license and failing to appear. Tr. 36-37.

Applicant was arrested in November 1996 and charged with DUI.

He was arrested in December 1997 and charged with failing to appear for an unsafe driving (backing into another vehicle) citation issued in September 1997. The charge was dismissed. Answer. Applicant testified he was out of town on the appearance date. Tr. 42.

Applicant was arrested in March 1998 and charged with not having his vehicle registered and not having mandatory insurance. He pled guilty to driving an unregistered vehicle. Ex. 13;Tr. 42.

In April 1998, Applicant again drove a vehicle that did not have a current registration and did not have insurance coverage. He was arrested and pled guilty to not having a current registration. Ex. 13; Tr. 44.

In November 1998, Applicant was arrested for DUI, driving with a blood-alcohol content over the .10 % maximum, speeding, failing to show evidence of financial responsibility, and reckless driving. He had been in an accident after "dogging" a jeep containing fans of a rival football team. He pled guilty to reckless driving and the other charges were dismissed. He was sentenced to 90 days in jail and 12 months probation. Answer at 3; Ex. 14.

Applicant was arrested in March 1999 for driving an unregistered vehicle, driving on a suspended license, and failing to have insurance coverage on the vehicle. Applicant pled guilty to driving on a suspended license and was sentenced to jail for two days and fined. Answer at 3; Ex. 15.

In April 1999, Applicant was arrested for DUI and driving with a blood-alcohol content exceeding the state limit of .10%. Applicant admits the arrest and that the Breathalyzer result was greater than .10%. The charges were dismissed. Tr. 48-49; Answer at 3.

The following month, Applicant was arrested for DUI. He was convicted and sentenced to two days in jail and fined. Answer at 4.

In July 2000, Applicant was arrested and charged with a stop sign violation, failure to produce evidence of financial responsibility, driving with a suspended license, and not having a valid driver's license. He forfeited his bond by failing to appear for the hearing. Ex. 16; Answer at 4.

Applicant was arrested again in October 2000 and charged with driving with a suspended, revoked, or cancelled license and speeding. He failed to appear for a hearing and a warrant was issued for his arrest. He eventually pled responsible (guilty) to the offenses and was fined \$120. He has not paid the fine. Answer at 4; Tr. 17, Tr. 49-50.

In November 2001, as a result of a domestic dispute, Applicant was arrested for assault, criminal damage, disorderly conduct, threats, and contributing to the delinquency of a minor. He was found guilty of assault and criminal damage and sentenced to two days in jail, suspended, with 15 months of probation. The court also ordered him to attend anger management classes and Alcoholics Anonymous. Answer at 4; Ex. 18.

Applicant was arrested in October 2002 and charged with driving without a license and no proof of insurance coverage. Applicant did not have a driver's license then and still does not have one. He continues to drive to work without one. He won't be able to get one until he pays the fine of \$1,300. Once he pays the fine the case will be dismissed. Answer at 4; Tr. 52-54.

Applicant consumed alcohol to the point of intoxication from 1995 until at least May 2003. Although his second wife suggested he had an alcohol and drug problem, Applicant disagrees. Ex. 2 at 6. He attended an alcohol rehabilitation program. He says he completed the program and received a certificate, but he can't find it. Tr. 57. Applicant asserts he has not been intoxicated in the past two years. Tr. 58.

Applicant executed a security clearance application (SCA) on 2 February 2001 certifying his statements were "true, complete, and correct to the best of [his] knowledge and belief" and acknowledging that a knowing and willful false statement was punishable by fine and imprisonment under 18 U.S.C. § 1001. Ex. 1 at 10. Question 21 asked if he had ever been charged with or convicted of any felony offense. Question 27 asked if, in the previous seven years, Applicant had illegally used any controlled substance. Question 36 asked if, in the previous seven years, any lien had been placed against his property for failing to pay taxes or other debts. Applicant answered "no" to each of these questions.

Question 24 on the SCA asked if he had ever been charged with or convicted of any offense related to drugs or alcohol. Applicant answered "yes," and listed his 1995 and 1998 DUI charges. Ex. 2 at 8. He failed to list the three other DUI incidents that occurred before he completed his SCA—offenses occurring in November 1996 (¶ 2.h), April 1999 (¶ 2.n), and May 1999 (¶ 2.o).

Applicant violated his probation in the early 1990s by using cocaine. Ex. 2 at 6. He had to attend drug counseling.

In the SOR, the Government alleged Applicant had delinquent eight unpaid debts totaling more than \$4,400. Applicant asserts they have all been paid off or were discharged in a Chapter 7 bankruptcy. Applicant presented no evidence to support a conclusion that any of the debts were either paid or discharged in bankruptcy.

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 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 necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline H-Drug Involvement

In the SOR, DOHA alleged Applicant used cocaine from the mid 1980s to at least February 2003 (¶ 1.a); purchased cocaine on at least four occasions between February 2000 and February 2003 (¶ 1.b), used crack cocaine two times in the late 1980s (¶ 1.c); tested positive in October 1991 for using cocaine (¶ 1.d); used cocaine after being granted an interim security clearance in February 2001 (¶ 1.e); would use cocaine in the future (¶ 1.f); used marijuana once as a teenager (¶ 1.g); and because of his use of cocaine until at least February 2003 and his intent to use in the future, he is disqualified from being granted a security clearance because of 10 U.S.C. § 986 (¶ 1.h). In his Answer, Applicant admitted each allegation, except those in ¶¶ 1.b, 1.f, and 1.h. The improper or illegal involvement with drugs raises questions regarding an applicant'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. Directive ¶ E2.A8.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline H. Applicant abused drugs by illegally using controlled substances to include cocaine and marijuana. DC E2.A8.1.2.1. He also purchased cocaine. DC E2.A8.1.2.2. Applicant's use of cocaine after he had been granted an interim security clearance is most troubling. It shows poor judgment and a disrespect for the rules and regulations.

Two of the listed mitigating conditions are arguably applicable to Applicant's case-the drug involvement was not recent (MC E2.A8.1.3.1) and a demonstrated intent not to abuse drugs in the future (MC E2.A8.1.3.3). I have determined neither of these apply.

More than two years have passed since Applicant's last admitted use of controlled substances. In his signed, sworn statement of 8 May 2003, Applicant stated as follows: "I last used cocaine in Feb 03. I try to stay away from drugs and I know it's not the right thing to do but I can not say I won't use cocaine in the future. If I am at a party or in a situation where cocaine is available, I would use it." Ex. 2 at 6. When asked about that statement at the hearing, Applicant said "I was trying to be as honest as I possibly could. . . . I should have, you know, used my words a little better than that but, you know, I was just trying to be honest." Tr. 26. He now believes he will not use controlled substances if presented the opportunity to do so. After considering Applicant's lengthy history of drug abuse, his continued abuse of controlled

substances after being ordered not to do so by a court as part of his probation and after being granted an interim security clearance knowing the importance the Government placed on drug abuse, I am not convinced sufficient time has passed to determine his drug abuse is not recent. Considering the uncertainty of his statements, I am also not convinced of the strength of his commitment not to use controlled substances in the future.

By federal statute, the Department of Defense is prohibited from granting or renewing a security clearance for a person who is "an unlawful user of, or is addicted to, a controlled substance." 10 U.S.C. § 986 (2004). The Appeal Board has determined that the statute only applies if the use or addiction is "current." ISCR Case No. 03-25009 at 3-4 (App. Bd. Jun. 28, 2005). It failed to explain to what date the drug use or addiction must be current—the date of the SCA, the date of interviews with agents investigating the applicant's security suitability, issuance of the SOR, or the date of the hearing. But in an earlier case, the Appeal Board held an administrative judge committed error by failing to explain a rationale for finding 10 U.S.C. § 986 applicable when the last drug use was approximately two years before the hearing. ISCR Case No. 01-20314 (App. Bd. Sep. 29, 2003). In that case, the applicant admitted to a Defense Security Service agent on 30 March 2001 that he was a current user of marijuana. Apparently as a result of the applicant's admission and other evidence, DOHA issued an SOR on 9 August 2002. The administrative judge scheduled a hearing for 28 January 2003 and, after granting the applicant a continuance, held the hearing on 11 March 2003. ISCR Case No. 01-20314 (Metz, A.J. Apr. 7, 2003).

Although the Appeal Board has not precisely defined the term "current," it appears the Board will not approve application of 10 U.S.C. § 986(c)(2) unless there is evidence sufficient to support a finding that (1) at the time of the hearing, the applicant uses drugs or intends to use them in the future, or (2) there is a very recent diagnosis the applicant is addicted to drugs. There was no evidence at the hearing that Applicant was then abusing drugs or had a diagnosis of drug addiction. So 10 U.S.C. § 986 does not apply unless there is evidence Applicant intends to use drugs in the future. Under all the facts and circumstances of this case, there is insufficient evidence Applicant intends to use drugs in the future. I find for Applicant.

Applicant's statement to the DSS agent and his testimony at the hearing are somewhat in conflict. Although his statements about his intentions to use drugs in the future are equivocal, Applicant testified he has not illegally used any controlled substances since 2003 and does not intend to do so in the future. Under the circumstances, Department Counsel failed to establish either prong of the Appeal Board's test. Therefore, I find for Applicant on ¶ 1.h.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested for and charged with speeding and driving on a suspended license in March 1988 (¶ 2.a); was convicted of making a false statement to obtain benefits (¶ 2.b); was arrested in February 1989 for making threats and intimidation (¶ 2.c); was arrested in 1992 because he was in arrears on his child support, and his probation was revoked because he failed to report to his probation officer as required and failed to avoid contact with cocaine (¶ 2.d); was arrested in December 1994 and charged with theft and property damage (¶ 2.e); was arrested in December 1995 and convicted of DUI (¶ 2.f); was arrested in January 1996 and charged with driving on a suspended license and violating a promise to appear (¶ 2.g); was arrested in November 1996 and charged with DUI (¶ 2.h); was

arrested in December 1997 and charged with failure to appear for an unsafe backing infraction issued in September 1997 (§ 2.i); was arrested in March 1998 and charged with not having either a current vehicle registration or mandatory insurance (§ 2.j); was arrested in April 1998 and charged with having neither a current vehicle registration nor insurance (§ 2.k); was arrested in November 1998 for DUI, but pled guilty to reckless driving (§ 2.l); was arrested in March 1999 and was eventually convicted of driving on a suspended license (§ 2.m); was arrested in April 1999 and charged with DUI (§ 2.n); was arrested in May 1999 for DUI and pled guilty to the offense (§ 2.o); was arrested in July 2000 and charged with a stop sign violation, failing to produce evidence of financial responsibility, driving with a suspended license, and not having a valid driver's license (§ 2.p); was arrested in October 2000 and charged with driving on a suspended, revoked, or canceled license and speeding (§ 2.q); was arrested in November 2001 and charged with assault, criminal damage, disorderly conduct, threats, and contributing to the delinquency of a minor (§ 2.r); was arrested in October 2002 and charged with driving without a license, not having proof of insurance (§ 2.s); and as of May 2003, was driving his vehicle while his license was suspended and without maintaining insurance coverage on the vehicle (§ 2.t).

In his Answer, Applicant admitted 16 of the 19 allegations in § 2 of the SOR. An admission of being arrested for a specific offense is substantial evidence Applicant committed the offense and shifts the burden to the applicant to establish he did not engage in criminal conduct. The Government produced evidence to establish the three remaining allegations by substantial evidence. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive § E2.A10.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline J. Applicant has admitted engaging in criminal conduct (DC E2.A10.1.2.1) involving a single serious offense (the felony for making false statements) and multiple lesser offenses (DC E2.A10.1.2.2).

Two of the mitigating conditions listed under the guideline arguably apply to Applicant's case-the criminal behavior was not recent (MC E2.A10.1.3.1) and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6). By his own admission, Applicant is still committing criminal offenses-despite several arrests, court appearances, and fines, he is still driving while his license is suspended or revoked. Thus, his history of criminal conduct continues. He has not shown he has been rehabilitated. Under the circumstances, Applicant's conduct creates doubt about his judgment, reliability, and trustworthiness. I find against Applicant on § 2.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from 1995 until at least May 2003 (§ 3.a) and was involved in alcohol-related incidents as alleged in §§ 2.f, 2.h, 2.l, 2.n, 2.o, and 2.r (§ 3.b). In his Answer, Applicant admitted the allegation in § 2.a and did not answer the allegation in § 2.b. 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. Directive § E2.A7.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline G. Applicant has a lengthy history of alcohol-related incidents away from work-six incidents of driving under the influence of alcohol or driving with a blood-alcohol level in excess of the state maximum. DC E2.A7.1.2.1. Although some of the offenses were dismissed, the evidence of his arrests for these offenses was sufficient to establish the allegation by substantial evidence. Applicant failed to provide sufficient evidence to rebut that evidence or show any of the mitigating conditions apply. I find against Applicant on ¶ 3.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified material facts in response to question 21 on his SCA by denying he had ever been charged with a felony offense(¶ 4.a); in response to question 24 by failing to list all his alcohol related arrests(¶ 4.b); in response to question 27 by failing to list that he had used cocaine in the last seven years(¶ 4.c); and by failing to admit in response to question 36 that tax liens had been placed against his property in the previous seven years (¶ 4.d). In his Answer, Applicant denied each of the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant testified he did not realize that his conviction for making false statements to obtain unemployment benefits was a felony. Tr. 59. I found his testimony on this point to be credible. I find for Applicant on ¶ 4.a.

Applicant also denied he deliberately omitted information from his SCA about his alcohol charges, his illegal use of controlled substances in the previous seven years, and his tax liens. Applicant failed to provide any reasonable explanation for his failure to do so. After considering his testimony, demeanor, and the evidence as a whole, I conclude Applicant deliberately omitted this information from his SCA.

It is a potentially disqualifying condition for an applicant to deliberate omit relevant and material information from an SCA. DC E2.A5.1.2.2. An applicant's criminal record, history of drug abuse, and his financial condition are all relevant and material to a determination of his security worthiness. None of the mitigating conditions apply. Under the circumstances, I find against Applicant on ¶¶ 4.b, 4.c, and 4.d.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had five delinquent debts totaling more than \$4,300 that had been charged off (¶¶

5.a-5.e); is indebted to a county court for \$64 that has been placed for collection (¶ 5.f); had a lien filed against his property for a debt to the state of \$464 (¶ 5.g); and had a lien filed against his property for a debt to the state for \$686 (¶ 5h). In his Answer, Applicant admitted only the allegations in ¶¶ 5.f and 5.g. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and an inability or unwillingness to satisfy debts (DC E2.A6.1.2.3). Although Applicant claims the debts were either paid or discharged in bankruptcy, he presented no corroboration of that claim. None of the mitigating conditions apply. I find against Applicant on ¶ 5.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: Against Applicant

Subparagraph 2.k: Against Applicant

Subparagraph 2.l: Against Applicant

Subparagraph 2.m: Against Applicant

Subparagraph 2.n Against Applicant

Subparagraph 2.o Against Applicant

Subparagraph 2.p Against Applicant

Subparagraph 2.q: Against Applicant

Subparagraph 2.r: Against Applicant

Subparagraph 2.s: Against Applicant

Subparagraph 2.t: For Applicant

Paragraph 3. Guideline G: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a: For Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: Against Applicant

Subparagraph 4.d: Against Applicant

Paragraph 5. Guideline F: AGAINST APPLICANT

Subparagraph 5.a: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).