

KEYWORD: Criminal Conduct; Alcohol; Financial

DIGEST: Applicant, a self-employed consultant to defense companies, failed to mitigate criminal, alcohol, and financial security concerns since he was confined in prison for two years for burglary and drug charges between 1973 and 1975 and had multiple alcohol related driving offenses between 1978 and 2001. While he no longer uses drugs he continues to consume alcohol. His delinquent debts total almost \$30,000.00 with no evidence of significantly reducing them since the SOR was issued. Clearance is denied.

CASENO: 03-17924.h1

DATE: 02/28/2006

DATE: February 28, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17924

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a self-employed consultant to defense companies, failed to mitigate criminal, alcohol, and financial security concerns since he was confined in prison for two years for burglary and drug charges between 1973 and 1975 and had multiple alcohol related driving offenses between 1978 and 2001. While he no longer uses drugs he continues to consume alcohol. His delinquent debts total almost \$30,000.00 with no evidence of significantly reducing them since the SOR was issued. Clearance is denied.

**STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) dated September 8, 2004, 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. It was received by Applicant on September 14, 2004. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated October 7, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 14, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did so on October 22, 2005, and the case was assigned to me on November 28, 2005.

## FINDINGS OF FACT

Applicant admitted all the specific allegations in the SOR but offered explanatory information in his answer and response to the FORM. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 55-year-old self-employed consultant to defense contractors. He has held a security clearance since 1984. He applied for a renewal of his security clearance in April 2001. In November 1971, Applicant was charged with and convicted in a state court of two counts of felony drug violations and sentenced to six years confinement, suspended, with six years of supervised probation. In December, 1972, Applicant was arrested and charged with burglary, grand larceny, and handling stolen property. A month later in December 1972 Applicant was charged with a felony drug violation. He was found guilty in May 1973 of both sets of charges and sentenced to serve two years in prison to run concurrently with the 1971 drug charge. He was incarcerated until April 1975 and then spent two months in a work release program until he was placed on probation in June, 1975.

Applicant's problems with drugs ceased upon his release from prison. However, between 1978 and 2001, he had seven alcohol related driving and traffic charges resulting in convictions in three different states for which he paid fines as high as \$1,300.00. Five of these were DUI or DWI charges. He consumed alcohol to excess and sometimes to the point of intoxication between 1978 and 2002. He admits that he continues to drink beer and wine stating in his FORM response that he drinks "a few beers most every day" and "sometimes wine with dinner." He also notes in relation to his drinking that, because of his extensive business travels, "it is not easy being away from home."

Applicant had five delinquent debts totaling almost \$30,000.00 at the time of the SOR. Four of these ranged in amount from \$2,000.00 to \$11,000.00. Several have been written off according to his latest credit report appended to his FORM response. Applicant asserts that he has paid off one of the debts which were written off but does not identify which one or offer any proof. Applicant also asserted in his response that his father died in 2004 and this made it possible to pay his debts with his \$10,000.00 inheritance. However, he offered no proof that any debts had been resolved with the inherited funds.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and

maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's criminal conduct raises issues under Guideline J (E2.A10.1.1) involving a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness. An admission of criminal conduct (E2.A10.1.2.1.) and a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) are potentially disqualifying conditions that apply in this case. I conclude that the allegation is not mitigated by the fact that it was not recent

(E2.A10.1.3.1.), and these were not isolated incidents since they occurred over an extended period of time (E2.A10.1.3.2.) and he continues to use alcohol.

Absent a waiver from the Secretary of Defense, the Department of Defense may not grant or continue a security clearance to any applicant who, as a result of a conviction by any court in the U.S., has been sentenced to confinement for more than one year and served at least one year. 10 U.S.C. § 986 (2004). Applicant is subject to that provision as a result of serving more than a year in confinement for his conviction for burglary and drug charges. Thus, he is barred from holding a security clearance absent a waiver from the Secretary of Defense.

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption leading 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) The incidents involving alcohol clearly indicate a pattern of activity but other mitigating conditions that might be applicable include the fact that the last DUI occurred in 2001 with no other incidents since then (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

Applicant indicates he would be willing to totally abstain if he could keep his security clearance, but such a statement is not sufficient to warrant the grant of a clearance. While there have been some changes in his behavior, his present drinking habits preclude a finding in his favor considering the extent of time over which the offenses occurred, the number of alcohol-related offenses involving driving, and his concern about drinking while traveling on work assignments. No mitigating conditions are applicable.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Applicant's delinquent debts establish these disqualifying conditions. Mitigating conditions (MC) might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control (E2.A6.1.3.3.) Applicant has submitted no information that would lead to the conclusion that any mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has offered no evidence to counter the proof and admission of the conduct that disqualify him from holding a security clearance and that it is not clearly consistent with the national interest to grant a security clearance to him.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

#### **Paragraph 1. Guideline J: AGAINST APPLICANT**

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

### **DECISION**

After full consideration of all the facts and documents 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. Since I conclude against Applicant on other grounds, there is no need to consider the grant of a waiver to the provisions of 10 U.S.C. § 986. Clearance is denied.

Charles D. Ablard  
Administrative Judge