

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant has a long history of abusing alcohol. He was convicted of aggravated driving while under the influence of alcohol for offenses occurring in 1996 and 2000. On one occasion he appeared at work smelling of alcohol. Despite alcohol treatment programs, Applicant relapsed on several occasions. Although he has been abstinent for 15 months, an insufficient period of time has elapsed to determine if Applicant has made the long-term commitment to sobriety necessary to mitigate the alcohol security concerns. Clearance is denied.

CASENO: 03-18496.h1

DATE: 06/03/2005

DATE: June 3, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18496

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history of abusing alcohol. He was convicted of aggravated driving while under the influence of alcohol for offenses occurring in 1996 and 2000. On one occasion he appeared at work smelling of alcohol. Despite alcohol treatment programs, Applicant relapsed on several occasions. Although he has been abstinent for 15 months, an insufficient period of time has elapsed to determine if Applicant has made the long-term commitment to sobriety necessary to mitigate the alcohol 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 7 July 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 30 July 2004 and elected to have a hearing before an administrative judge. The case was assigned to another judge and reassigned to me on 10 March 2005. On 11 April 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 28 April 2005.

FINDINGS OF FACT

Applicant is a 42-year-old electrical engineer for a defense contractor. Ex. 1 at 1, 2. He has been married to his second wife for three years, and they are raising her three children. His supervisors and fellow employees consider him an intelligent, trustworthy, and dependable coworker.

Applicant began consuming alcohol when he was 12 or 13 years old, by stealing it from his father's liquor supply. By the time he was in high school, he was drinking beer with his friends. They would wait outside liquor stores for someone who would be willing to buy them beer. By the end of high school, Applicant was able to consume as much as a 12-pack of beer on the weekends. By the time Applicant was 22 years old, he started drinking hard liquor more frequently. For many years, he drank a pint of bourbon and soda and several beers until he fell asleep. He continued this pattern until he was arrested for aggravated driving while intoxicated (ADWI)-driving with a blood alcohol level of .16% or greater-in early December 1996. Applicant had been drinking beer and hard liquor while driving, passed out, and came to on the opposite side of the highway. After his arrest, Applicant enrolled himself in a 28-day in-patient alcohol treatment program. Ex. 2 at 1-2; Answer. Applicant pled guilty to the offense and was sentenced to a fine and imprisonment for 90 days-both were suspended contingent upon his successful completion of the alcohol treatment program and his following the recommendations of the program. Ex. 7.

Applicant was sober for 18 months after his arrest. But he stopped going to Alcoholics Anonymous (AA) and Narcotics Anonymous⁽²⁾ (NA) and started drinking alcohol again. Within six months, he was drinking heavily again.

In November 1999, Applicant started seeing a psychiatrist who diagnosed him as having major depressive disorder, recurrent, in remission and alcohol abuse and dependence, in remission. Ex. 4 at 1. The psychiatrist referred him to a licensed clinical social worker for treatment of his psychological problems. In January 2000, Applicant consumed alcohol while he drove between cities. He was stopped for speeding and arrested for DWI when the police officer discovered the alcoholic beverages in the vehicle. His blood alcohol level was .16% or greater. On 17 March 2001, Applicant pled guilty to ADWI and was sentenced to 364 days in jail (357 suspended) fined, and placed on unsupervised probation for 364 days. As terms of his probation, the court ordered several special conditions, including that he complete a "Drug Court Program" and not consume alcoholic beverages. Ex. 6 at 1-2. Applicant appears to have convinced the judge that since he was in counseling he did not need the "Drug Court Program." Despite the court order not to do so, Applicant started drinking within a month or six weeks. It began with a few beers on the weekends and "gradually turned into every day and then liquor with soda and beers during the week in the evening until [he] went to bed." Ex. 2 at 3.

In July 2001, when he began to work for his current employer, Applicant completed a security clearance application (SCA) in which he revealed his alcohol-related arrests. In 2002, a co-worker reported to Applicant's supervisor that Applicant smelled of alcohol. The project manager counseled Applicant about coming to work smelling of alcohol. Tr. 21-23. Applicant continued to consume alcoholic beverages until January 2003. In May 2003, he completed a signed, sworn statement to a Defense Security Service agent detailing his problems with alcohol. Applicant relapsed and consumed alcohol between 24 December 2003 and 1 January 2004. Ex. 3 at 2. He has not consumed alcohol since then. The psychiatrist who has treated Applicant since 1999 and the licensed clinical social worker-psychotherapist who has been working with him for three years give him a favorable prognosis.

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 G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol at times to the point of intoxication from about 1976 until January 2004 (¶ 1.a), was diagnosed as being alcohol dependent in February 2004(¶ 1.b), was arrested in January 2000 and convicted of aggravated DWI (¶ 1.c), was diagnosed and treated for alcohol dependence from 1996-97 (¶ 1.d), and was arrested in December 1996 and convicted of DWI (¶ 1.e). Applicant admitted each of these allegations. 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 had alcohol-related incidents away from work-his two ADWIs. DC E2.A7.1.2.1. He also had an alcohol-related incident at work-going to work smelling of alcohol. DC E2.A7.1.2.2. Applicant was diagnosed by a credentialed medical professional with alcohol abuse and alcohol dependence. DC E2.A7.1.2.3. He engaged in habitual and binge consumption of alcohol by drinking several beers and a pint of bourbon daily for a number of years. DC E2.A7.1.2.5. He continued to consume alcohol subsequent to a diagnosis of alcohol dependence and alcohol abuse by a medical professional and following completion of an alcohol rehabilitation program. DC E2.A7.1.2.6.

On the other hand, Applicant insists he has made positive changes in his behavior supportive of sobriety (MC E2.A7.1.3.3) and that he has abstained from alcohol for more than 12 months and has a favorable prognosis from a credentialed medical professional and a licensed clinical social worker. MC E2.A7.1.3.4. There is no doubt Applicant is making substantial efforts to control his alcohol dependence and abuse. But this is not the first time Applicant has tried. Even knowing the Government's concern about his drinking from answering the questions in his SCA, and while working with both a psychiatrist and a psychotherapist, Applicant was unable to abstain from drinking. Although he has been sober for 15 months, his record of treatment and relapse is long and continuing. Furthermore, I find unpersuasive Applicant's contention that the incident at his place of employment-smelling of alcohol-resulted from his having three or four beers the previous evening. After considering all of the circumstances of this case, and the adjudicative process factors (Directive ¶ E2.2.1), I find against Applicant. With Applicant's history, abstinence for 15 months is not sufficient to convince me of Applicant's determination and ability to stay sober.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant had two DWI convictions (¶¶ 2.a-2.b). Applicant admitted the two convictions. 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 substantial evidence of potentially disqualifying conditions under Guideline J. Applicant's two ADWIs represent multiple criminal offenses. DC E2.A10.1.2.2. But the criminal behavior was not recent-his last criminal offense occurred five years ago. C E2.A10.1.3.1. Considering all of the evidence, I find for Applicant as to the criminal conduct allegations.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: 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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For 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).

2. Although Applicant had used marijuana and cocaine as a young man, he went to NA because he thought he got more out of the meetings than he did at the AA meetings. The AA and NA programs are similar in that they involve the same 12-step program.