

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct; Drugs

DIGEST: The Applicant's extensive history of alcohol related arrests, non-alcohol related arrests, alcohol abuse problem, drug history and falsification of a Government questionnaire, has not been overcome by a showing of reform or rehabilitation. Clearance is denied.

CASENO: 03-18601.h1

DATE: 06/02/2005

DATE: June 2, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18601

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant's extensive history of alcohol related arrests, non-alcohol related arrests, alcohol abuse problem, drug history and falsification of a Government questionnaire, has not been overcome by a showing of reform or rehabilitation. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 6, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 1, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 25, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on August 30, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on October 13, 2004.

### **FINDINGS OF FACT**

The Applicant is 44 and single. He is employed by a defense contractor as a Material Handler, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline G - Alcohol involvement). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess. The Applicant admitted subparagraphs 1.a. and 1.c. through 1.i. Those admissions are deemed findings of fact. The Applicant denied the part of subparagraph 1.b. which referred to an arrest for a Controlled Substance Possession violation. The record does not support that particular part of subparagraph 1.b.

The Applicant has had a drinking problem for many years. By his own admission, he has abused alcohol for most of his adult life. It was only in 2002 that the Applicant admitted that he had a drinking problem. However, even in this sworn statement, he stated that he would not stop drinking until some time in the future, after he attended an alcohol awareness class. (Government Exhibit 5 at 6.) In his Answer the Applicant states that he is attending Alcoholics Anonymous.

The Applicant states, "Drinking never caused me any real problems other than the DWI arrests." (Government Exhibit 5 at 6.) The Applicant further admits that he has been arrested for Driving While Intoxicated eight times between 1984 and 2001 (1984, 1988, 1994, 1997, 1998, 1999, February 2001 and April 2001). (Government Exhibit 5 at 1 through 6; and Government Exhibits 7, 8 and 9.) This includes the Driving While Intoxicated part of subparagraph 1.b. The last two arrests occurred after the Applicant filled out a Security Clearance Application which specifically asked the Applicant about alcohol-related arrests. Accordingly, he was on notice that the Government was concerned about such incidents.

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On February 1, 2001, the Applicant completed an official DoD questionnaire in which he stated that he had never been charged with a felony offense. (Government Exhibit 4, question 21.) This statement was a false answer, since the Applicant had been charged with a felony drug offense in 1985 (SOR 3.a.). (Government Exhibit 10.)

On the same questionnaire, the Applicant was asked whether he had ever been charged with or convicted of alcohol or drug related offenses? (Government Exhibit 4, question 24.) The Applicant admitted to a single alcohol related arrest in

1999 (SOR 1.f.) This statement was also a false answer, since the Applicant had five other alcohol related arrests as of the time he filled out the questionnaire (SOR 1.b. through 1.e.) and one drug related arrest (SOR 3.a.).

The same questionnaire asked the Applicant whether he had any other arrests, charges or convictions, within the seven years prior to filling out the form, that were not discussed elsewhere on the form? (Government Exhibit 4, question 26.) The Applicant answered "No," to this question. This answer was false as the Applicant had been arrested five times between 1996 and 1998 (SOR 3.d. through 3.h.).

Regarding admitting these arrests, the Applicant stated that he made a mistake because, "I was told by [my] attorney that I did not have to tell my employer about arrests if I was found not guilty. He also said he had taken some arrests off my record. I understand that the government form which I filled out (Government Exhibit 4), asked for all felony arrests regardless to whether the charges were dismissed or expunged but, I thought that since this was going to my employer, they did not have to be listed." (Government Exhibit 5 at 1.)

Question 27 of Government Exhibit 4 asks the Applicant whether, from February 1994 to February 2001, he had used illegal drugs, including marijuana or cocaine. The Applicant answered, "No." This was a false answer as the Applicant used cocaine ten times between 1988 and 2000. The allegation also states the Applicant should have admitted he used marijuana in that time period as well. The Applicant admitted using marijuana in 1978 and 1979, plus one use in 2002. These marijuana uses are outside of the time scope of this question. Accordingly, only his admitted cocaine use will be considered under this subparagraph.

Finally, question 35 of Government Exhibit 4 asks the Applicant whether, within the last seven years, he had any property repossessed. The Applicant answered "No." The Applicant's house had been repossessed, but the record is unclear whether this repossession occurred during the period of 1994 to 2001. (Government Exhibit 5 at 8, Government Exhibit 6 at 3.) The Applicant denied this allegation and accordingly, given the state of the record, this allegation is found for the Applicant.

Paragraph 3 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

In addition to his arrests over the years for Driving While Intoxicated, the record shows, and the Applicant admits, that he has been arrested at least eight other times between 1985 and 1998 (SOR 3.a. through 3.h.).

As stated above, the Applicant was arrested for felony drug possession in 1985 (SOR 3.a.). As a result of this arrest he

received five years probation and a suspended sentence. (Government Exhibit 10.)

The Applicant's other arrests specifically described under this paragraph (SOR 3.b. through 3.h.) consist of arrests for Failure to Appear or on Fugitive Warrants. In at least 1996 (SOR 3.e.) and 1998 (SOR 3.h.) he was fined. (Government Exhibit 5 at 1-6.)

The information set forth under Paragraph 1, above, will also be considered under this paragraph.

As found above under Paragraph 2, the Applicant knowingly and willfully provided false material information to DoD during the clearance screening process. In so doing the Applicant violated the felony criminal provisions of 18 USC 1001. (SOR 3.j.)

Paragraph 4 (Guideline H - Drug involvement). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant used marijuana two to three times a week during 1978 and 1979, while in high school. He used it again at a party one time in 2002.

The Applicant used cocaine about ten times during the period 1985 to 2000. He stated, "I did purchase cocaine and may have sold it to obtain more cocaine, but this was years ago." (Government Exhibit 5 at 7.) He denied this allegation (SOR 4.d.) in his answer. Based on his statement, however, I find that it is more likely than not that he did sell cocaine at some time in the past.

In his sworn statement, the Applicant states he used speed, an illegal drug, during 1979 and 1980 (SOR 4.e.). (Government Exhibit 5 at 7.) In his answer, the Applicant states, "I took over-the-counter caffeine pills." (Government Exhibit 3 at 7.) In either event, this 25 year old drug use has no current security significance and this subparagraph (SOR 3.e.) is found for the Applicant.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth in detail under "Conclusions," below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
  
- b. The circumstances surrounding the conduct, to include knowledgeable participation
  
- c. The frequency and recency of the conduct
  
- d. The individual's age and maturity at the time of the conduct
  
- e. The voluntariness of participation
  
- f. The presence or absence of rehabilitation and other pertinent behavior changes
  
- g. The motivation for the conduct

h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of criminal conduct, drug and alcohol abuse, and falsification of security forms, that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has used illegal drugs (Guideline H); that he abuses alcohol and has had several alcohol related arrests (Guideline G); that he has an extensive criminal record (Guideline J); and that he intentionally made false material statements to DoD, in violation of a felony criminal statute (Guidelines E and J).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Regarding Paragraph 2 (Guideline E): subparagraph 2.e. is found for the Applicant due to a lack of evidence. Under Paragraph 4 (Guideline H), subparagraph 4.e. is found for the Applicant due to the span of time since the specific drug usage.

As set forth at length above, the Applicant has abused alcohol for many years. This excessive usage has resulted in a number of arrests for Driving While Intoxicated. It appears that only recently has the Applicant begun to attend Alcoholics Anonymous meetings, but the evidence as to that is sparse. Given the extent of his alcohol use, and the number of arrests, Disqualifying Condition E2.A7.1.2.1. applies (*Alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*). Given the extent of his usage, and his failure to correct the problem for many years, Disqualifying Condition E2.A7.1.2.5. also applies (*Habitual or binge consumption of alcohol to the point of impaired judgment*). There is little or no evidence that the Applicant understands the impact of his alcohol abuse, or that he is controlling it. Accordingly, none of the Mitigating Conditions apply to this case. Paragraph 1 is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. The Applicant's argument that he relied upon legal advice in not answering the questions correctly is rejected. He had knowledge of his extensive criminal and drug history and intentionally kept that from the Government. Disqualifying Condition E2.A5.1.2.2. applies to the facts of this case (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). None of the Mitigating Conditions apply. Paragraph 2 and subparagraph 3.j. are found against the Applicant.

The Applicant has a more than 15 year history of being arrested 16 times. Disqualifying Condition E2.A10.1.2.2. clearly applies (*A single serious crime or multiple lesser offenses*). There is no evidence that the Applicant has been arrested since 2001. Mitigating Condition E2.A10.1.3.1. is applicable (*The criminal behavior was not recent*). However, the record does not contain compelling evidence that the Applicant has successfully rehabilitated himself. The record is not extensive, but based on his statements it appears that the Applicant has a rather cavalier attitude towards his criminal record. I do not believe that he has overcome the allegations of this paragraph and, therefore, Paragraph 3 is found against the Applicant.



Applicant's cocaine and marijuana use ended in 2000 and 2002, respectively. Disqualifying Condition E3.A8.1.2.1. applies (*Any drug abuse*). His sale of cocaine brings in Disqualifying Condition E3.A8.1.2.2. (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). Given that he used cocaine in 2000 and marijuana in 2002, I find that under the circumstances of this case his drug involvement was recent, was not isolated, and that he has not demonstrated an intent not to abuse drugs in the future. Paragraph 4 is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 2, 3 and 4 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: Against the Applicant.

Subparagraph 3.c.: Against the Applicant.

Subparagraph 3.d.: Against the Applicant.

Subparagraph 3.e.: Against the Applicant.

Subparagraph 3.f.: Against the Applicant.

Subparagraph 3.g.: Against the Applicant.

Subparagraph 3.h.: Against the Applicant.

Subparagraph 3.i.: Against the Applicant.

Subparagraph 3.j.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subparagraph 4.a.: Against the Applicant.

Subparagraph 4.b.: Against the Applicant.

Subparagraph 4.c.: Against the Applicant.

Subparagraph 4.d.: Against the Applicant.

Subparagraph 4.e.: For the Applicant.

Subparagraph 4.f.: Against 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 the Applicant.

Wilford H. Ross

Administrative Judge