

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant is 42 years old, not currently married, and has two adult children. He works for a defense contractor as an electronics mechanic. Applicant had six alcohol-related offense between 1989 and 2000, including five driving while intoxicated offenses. Applicant only disclosed two of those offenses on his security clearance application. Applicant has two other criminal offenses involving assault and violation of a court protective order. Applicant did not mitigate the alcohol consumption, criminal conduct, or personal conduct security concerns. Clearance is denied.

CASENO: 03-18746.h1

DATE: 02/03/2005

DATE: February 3, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-18746

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 42 years old, not currently married, and has two adult children. He works for a defense contractor as an electronics mechanic. Applicant had six alcohol-related offenses between 1989 and 2000, including five driving while intoxicated offenses. Applicant only disclosed two of those offenses on his security clearance application. Applicant has two other criminal offenses involving assault and violation of a court protective order. Applicant did not mitigate the alcohol consumption, criminal conduct, or personal conduct 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 May 7, 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on June 2, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on August 11, 2004. On October 27, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government submitted exhibits that were admitted into evidence. Applicant did not submit any exhibits. DOHA received the hearing transcript (Tr.) on November 5, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 42 years old, not currently married, with two adult children. He works for a defense contractor as an electronics mechanic. His work performance is rated highly and he is well-respected by his supervisors. (Tr. 16, 46, 48 to 68; Exhibit 1)

Applicant had six alcohol-related arrests, February 1989, August 1989, June 1991, January 1995, October 1996, and October 2000. Five of the six arrests were for driving while intoxicated (DUI) and reckless driving. The first arrest was for alcohol intoxication after an incident in a bar. Applicant has five DUI convictions, for which he was fined various amounts and sentenced to jail sentences that were conditionally discharged for various periods of time. During the October 1996 and August 1989 arrests Applicant threatened the arresting officers with serious bodily injury. He attributes his actions to his taking of prescription medications simultaneously with ingesting alcohol, even though the drug label and his physician told him not to take alcohol with the medications. After the last arrest, his driving privileges were suspended for a year until 2001, and Applicant has regained those privileges. For the 1991 and 1995 convictions Applicant was ordered to attend alcohol education programs, which he did do, and may have attended as many as four DUI courses as a result of his DUI offenses. Applicant attended some Alcoholics Anonymous sessions in the past 12 months. Applicant has a history of alcohol intoxication between 1974 and April 2003, including being sent home from work once in 2003 after returning from lunch with alcohol on his breath. Applicant claims he is not drinking anymore. (Tr. 17 to 38, 41, 55 to 57, 70, 71; Exhibits 2 and 5)

Applicant was arrested in February 2001 for violating a court protective order. He was convicted of that offense and sentenced to 180 days in jail conditionally discharged. Later, in July 2002, Applicant was arrested for assault, intimidating a witness, criminal mischief, and terrorist threatening. The incident involved his live-in girlfriend who was injured with a telephone. In April 2003 Applicant pled guilty to aggravated assault and was fined, given a suspended 12 months in jail, five years probation, court costs and fees of \$5,850, and ordered to undergo treatment. Incorporated in that plea was a plea of guilty to criminal mischief, with concurrent sentences. The other charges were dismissed. (Tr. 23 to 32; Exhibits 3, 4, and 6)

Applicant completed his security clearance application on July 17, 2001. In response to Question 24 inquiring about alcohol and drug related offenses. Applicant answered "Yes" and disclosed the 2001 and 1996 arrests and convictions. He did not disclose the other four alcohol-related arrests and convictions because he claims he did not remember he had six alcohol-related offenses. He claims further that he disclosed what he could remember. (Tr. 9, 32, 43; Exhibits 1 to 6)

## **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 restricted eligibility for access to classified information to

United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **Guideline G - Alcohol Consumption**

*The Concern:* 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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work, such as driving while under the influence. E2.A7.1.2.1.
- (2) Alcohol-related offenses at work, such as reporting for work in an intoxicated or impaired condition. E2.A7.1.2.2.
- (5) Habitual consumption of alcohol to the point of impaired judgment. E2A7.1.1.5

Conditions that could mitigate security concerns include:

None

### **Guideline J - Criminal Conduct**

*The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and

trustworthiness. E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2.

Conditions that could mitigate security concerns include: E2.A10.1.3.

None

**Guideline E - Personal Conduct:**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2.

Conditions that could mitigate security concerns include:

None

## CONCLUSIONS

In the SOR, DOHA alleged Applicant had six alcohol-related offenses, five of which involve driving an automobile and drinking. Two of those five incidents also involved Applicant threatening police officers. Applicant also reported for work in 2003 after having drinks at lunch, and his supervisor sent him home. Applicant has consumed alcohol regularly and to intoxication since 1974 until at least 2003. Applicant has an alcohol problem, evidenced by the number of arrests, and has done nothing to ameliorate or control it. Disqualifying Conditions (DC) 1, DC 2, and DC 5 apply.

There are no Mitigating Conditions (MC) applicable here. Applicant's incidents span an 11 year period, and show a consistent pattern of behavior. If the 2003 work-related drinking incident is included, the incidents cover a 14 year period. Applicant attended at least two alcohol counseling sessions after his DUI arrests, but they did not prevent future DUI arrests or his continued consumption of alcohol. I conclude this alcohol consumption guideline against Applicant.

Regarding the criminal conduct guideline, Applicant's two arrests in 2002 and 2003 for violating a protective order and assault, among other offenses arising from these incidents, show he has a pattern of criminal violations. DC 1 and DC 2 apply.

There are no MC applicable. The incidents are recent and not isolated. They are serious offenses, particularly when his girlfriend is injured in the fracas. I conclude this guideline against Applicant.

Finally, the personal conduct guideline allegation involves Applicant's non-disclosure of four of his alcohol-related offenses on his SCA. He listed two, the two he claims he could remember. With his record, I do not believe he could only remember two offenses. DC 1 applies because I conclude Applicant deliberately falsified his answer to Question 24 of the SCA.

The evidence shows me no MC apply here. Applicant knew his record better than anyone because he committed the offenses. I conclude this guideline against Applicant.

## **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

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant



## DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to 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).