

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 44-year-old male who has worked for a defense contractor since January 1987. A self-described social drinker, his weekend drinking led to his arriving at work in 1997 smelling of alcohol and possessing a negligible, but existent, residual blood alcohol level, and to a 2003 charge of Driving Under the Influence with a .239 blood alcohol level. Both incidents led to employer-directed counseling and sanctions. In between the incidents, in 2001, Applicant answered "no" to the question on his security clearance application as to whether his use of alcohol had resulted in any alcohol-related treatment or counseling in the past seven years. Applicant has failed to mitigate security concerns. Clearance is denied.

CASENO: 03-18791.h1

DATE: 08/05/2005

DATE: August 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18791

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old male who has worked for a defense contractor since January 1987.

A self-described social drinker, his weekend drinking led to his arriving at work in 1997 smelling of alcohol and possessing a negligible, but existent, residual blood alcohol level, and to a 2003 charge of Driving Under the Influence with a .239 blood alcohol level. Both incidents led to employer-directed counseling and sanctions. In between the incidents, in 2001, Applicant answered "no" to the question on his security clearance application as to whether his use of alcohol had resulted in any alcohol-related treatment or counseling in the past seven years. Applicant has failed to mitigate security concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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). That SOR detailed why, pursuant to Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct), it could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In response, by letter of June 29, 2004, Applicant admitted to five of the six allegations brought under Guideline G and to one of the two allegations brought under Guideline E of the SOR. He also requested an administrative determination based on the record.

The Government's case was submitted on March 11, 2005, and a complete copy of the file of relevant material (FORM)

(1)

was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on arch 28, 2005, but declined to submit a response. I was assigned this case on May 18, 2005.

FINDINGS OF FACT

Applicant has admitted to five of the six allegations brought under Guideline G and to one of the two allegations brought under Guideline E of the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 44-year-old male who has worked for a defense contractor since January 1987 and is currently working as a senior support mechanic. After high school, he entered into the military in 1980 and was honorably discharged in 1984. Applicant was first married in 1985. He and his wife had two children, both of whom are now teenagers. Eventually the couple divorced, and Applicant remarried in 2003.

Applicant has been a self-described social drinker of alcohol for the past two decades. His consumption of alcohol was dependent on the weekend's activities. On Sunday, October 5, 1997, Applicant consumed several alcoholic beverages at a football game, then consumed several more alcoholic beverages at a birthday party prior to returning home around 1:00 a.m. The next day, on Monday, October 6, 1997, a coworker reported that Applicant smelled of alcohol. Applicant was given a breathalyzer test and tested positive for alcohol with a blood alcohol level of .002. As a result, he was temporarily suspended from his employer's Personnel Reliability Program and referred to the Employee Assistance Program (EAP). As part of his sanction, he agreed to submit to at least six random breath alcohol tests within the next year and to attend alcohol counseling. (2) The counseling consisted of twice-monthly sessions for six months.

On February 2, 2001, Applicant completed and signed a Security Clearance Application, Standard Form 86 (SF-86). He answered "no" to question 30, which inquired - *Your Use of Alcohol: In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as alcohol abuse or alcoholism)? Do not repeat information reported in module 21 on Form SF86 (Your Medical Record).*

Subsequently, on Saturday, February 22, 2003, Applicant attended a lengthy housewarming party and consumed about a dozen beers before proceeding to a local sports bar. At the bar, he consumed three shots of tequila within an hour and decided to go home. As he left the lighted parking lot, he realized his automobile lights were off and turned them on. He then made a U-turn to access the interstate. Having been observed by the police since leaving the bar parking lot, he was

pulled over and given a field sobriety test around 1:00 a.m. After showing some signs of impairment during a field sobriety test, and after testing positive on a preliminary breath test, he was taken to a substation where a breathalyzer test yielded a .239 blood alcohol level. Applicant then was arrested and charged with Driving Under the Influence (DUI).⁽³⁾

Following his release on bond, he informed his employer of the incident. Management requested that he again consult its EAP; the EAP recommended that he seek counseling. Feeling that it "was the right thing to do for (his) job, security clearance, and Personnel Reliability Program eligibility," he enrolled in alcohol counseling at the same center at which he had previously received counseling in 1997.⁽⁴⁾

There, he attended eight sessions with a licensed clinical social worker (LCSW) from about March 2003 to July 2003. At the conclusion of the sessions, the LCSW sent a letter to Applicant's employer in which it was noted that Applicant was mentally stable and aware of the mistakes he had made in the past. Applicant's employer, however, found this assessment too vague. Despite Applicant's request for a more elucidating assessment from the LCSW, it was only after his employer formally requested a more thorough assessment that the LCSW offered to do more. To that end, the LCSW then administered a test which indicated Applicant was neither alcohol nor drug dependent and sent those results to Applicant's employer. Subsequently, Applicant realized that the EAP had also recommended 12 mandatory sessions for alcohol education along with two weekly sessions of mandatory Alcoholic's Anonymous attendance during the treatment period.⁽⁵⁾

As of June 2004, Applicant's case was still pending. Barring this pending charge, Applicant has a clean driving record and his license includes a "safe driver endorsement." At work, he has maintained an excellent safety record and consistently received outstanding performance reviews. With regard to his current drinking habits, Applicant, following the 2003 incident, expressed the intent to reduce his alcohol consumption to what he terms a "moderate" level.⁽⁶⁾ He has not, however, offered any indication of what he deems to be moderate consumption or what changes he has made in his drinking habits.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the

circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽⁷⁾

and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

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.⁽⁹⁾

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.⁽¹⁰⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with regards to the allegations set forth in the SOR:

With respect to Guideline G (Alcohol Consumption), the Government has established its case. Applicant admits to the allegations contained in the SOR that he was arrested for DUI in 2003, that he tested positive for alcohol on the job and was consequentially both suspended from work and referred for counseling in 1997, and that he continues to consume alcohol. Such a history raises a genuine security concern with regard to Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*[a]lcohol related incidents away from work, such as driving while under the influence...*) and AC DC E2.A7.1.2.2 (*[a]lcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*). Further, given the existence of residual alcohol in Applicant's system the morning after his 1997 drinking incident, and the blood alcohol level of .239 involved in his 2003 DUI, AC DC E2.A7.1.2.5 (*[h]abitual or binge consumption of alcohol to the point of impaired judgment*) seems equally applicable.

With respect to Guideline E (Personal Conduct), the Government has similarly established its case. Specifically, Applicant's failure to disclose his 1997 alcohol counseling on his SF-86 application raises a genuine security concern with regard to Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*[t]he 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*) and PC DC E2.A5.1.2.4 (*[p]ersonal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*).

With disqualifying conditions thus established, the burden shifts to Applicant to mitigate the security concerns raised. Although only two incidents in which his drinking became a public concern are cited, there is no evidence indicating whether these alcohol-related incidents reveal common weekend consumption or isolated bouts of excess. Therefore, mitigation cannot be found under Alcohol Consumption Mitigating Condition E2.A7.1.3.1 (*[t]he alcohol related incidents do not indicate a pattern*). Additionally, the last incident occurred as recently as 2003, obviating the applicability of AC MC E2.A7.1.3.2 (*[t]he problem occurred a number of years ago and there is no indication of a recent problem*). Moreover, because the Applicant's only reference to any change in his alcohol consumption since his DUI is a bare, unsubstantiated, 2003 statement that he intended to consume alcohol in moderation in the future, mitigation cannot be applied under AC MC E2.A7.1.3.3 (*[p]ositive changes in behavior supportive of sobriety*).

Furthermore, although Applicant received counseling following these incidents, there is no indication that he received the formal diagnosis and additional support that are required to invoke AC MC E2.A7.1.3.4 (*[f]ollowing diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*). Consequentially, none of the mitigating conditions available under Guideline G apply.

With regard to his personal conduct under Guideline E, and the denial on his 2001 security clearance application that he had received alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism) in the past 7 years, Applicant fails to address factors that could raise any of the mitigating conditions under that Guideline. Instead, he argues that he has never been treated for alcoholism and that any counseling received was, to his knowledge, not specifically for alcohol abuse. Indeed, he goes further by stating that the majority of all counseling attended did not focus on the use of alcohol. I find his argument unpersuasive.

Specifically, Applicant's argument introduces the question of whether the counseling he received in 2003, and which initially was determined to be too vague for his managers, was, indeed, alcohol counseling, rather than personal counseling. The SF-86 at issue, however, was signed in 2001. Therefore, the real issue is whether his use of alcoholic beverages resulted in any alcohol-related treatment or counseling in the 7 years *prior* to that security clearance application. The evidence clearly shows that the 1997 incident did result in alcohol counseling. Moreover, given that it was made a part of a sanction that included an agreement to submit to random blood alcohol tests in the future, and followed his arrival at work smelling of alcohol and possessing a residual blood alcohol level, the motivating intent for the counseling seems apparent. With no additional argument or evidence to the contrary, and in the absence of some indication that any of the mitigating conditions found under Guideline E apply, I conclude that Applicant's answer on his SF-86 was false, and that he has failed to mitigate the security concerns this untrue answer raises.

I have considered both the record evidence and the Applicant using the "whole person" concept. Applicant is a husband, a father, and a well regarded employee who is in his prime and in a responsible, professional position. After the 1997 incident, he was issued a warning by his superiors as to what repercussions further incidents might raise. Regardless, in 2003, he chose not only to imbibe beer and tequila to the point that his blood alcohol was nearly three times the legal limit, but to drive a motor vehicle on the public roads in an advanced state of intoxication. This is precisely the type of questionable judgment that lays at the core of both Guideline G and Guideline E. Furthermore, because Applicant has failed to elaborate on any subsequent ameliorative adjustments to his alcohol consumption, he has failed to mitigate the security concerns raised by these past actions. Based on the evidence and on Applicant's failure to mitigate the security concerns raised by the Government's case, I find all the allegations against the Applicant and in the Government's favor.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: 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

Paragraph 2, Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to deny a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr

Administrative Judge

1. ⁰ The government submitted 18 items in support of its case.

2. *See* Item 16 (Communications Document regarding 1997 alcohol related incident, dated October 16, 1997), at 1, and Item 10, (Applicant Statement to the Defense Security Service, dated July 11, 2003), at 2, respectively. Item 16 also includes a warning as to noncompliance with the referral, a reminder as to Applicant's responsibilities, and an incentive to regain excellence in performance *Contrast*, Item 2 (Applicant Response to the SOR, dated June 29, 2004), at 1. ("However, the counseling did not center around substance abuse and was not the focus of our sessions.")

3. Item 11 (FBI Criminal Record for Applicant with report, dated April 22, 2003), at 2.

4. Item 9 (Applicant Statement to the Defense Security Service, dated June 4, 2003), at 2-3. *Contrast* Item 2 (Applicant Response to the SOR, dated June 29, 2004), at 1 ("I attended counseling on a *voluntary* basis following the above (2003) incident, but it was never specified this was 'alcohol' counseling. The majority of the sessions centered around my divorce and current girlfriend (who has since become my wife). The counselor was aware of the DUI recently received and how it could possibly effect my work situation.") (Emphasis in the original).

5. Item 2, *supra* note 4, at 4.

6. Item 9, *supra* note 4, at 2.

7. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

8. ⁰ *Id.*, at 531.

9. Directive, Enclosure 2, Attachment 7, Guideline G, ¶ E2.A7.1.1.

10. Directive, Enclosure 2, Attachment 5, Guideline E, ¶ E2.A5.1.1.