

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant mitigated security concerns relating to alcohol consumption, criminal conduct, and personal conduct. The first two of three alcohol offenses occurred while he was a minor and all while he was in college. They were relatively minor in nature. The third and most recent was three years ago and he has received counseling for alcohol with a finding that the intervention was sufficient and no treatment was required. While he failed to report the first two arrests when he was a juvenile on his SF 86, he reported the third and final one, a DUI. Clearance is granted.

CASENO: 05-07294.h1

DATE: 05/25/2006

DATE: May 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07294

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns relating to alcohol consumption, criminal conduct, and personal conduct. The first two of three alcohol offenses occurred while he was a minor and all while he was in college. They were relatively minor in nature. The third and most recent was three years ago and he has received counseling for alcohol with a finding that the intervention was sufficient and no treatment was required. While he failed to report the first two arrests when he was a juvenile on his SF 86, he reported the third and final one, a DUI. Clearance is granted.

STATEMENT OF CASE

On November 4, 2005, 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) 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 22, 2005, Applicant responded to the allegations submitted two documents as evidence, and requested a hearing. The matter was assigned to me on January 30, 2006. A notice of hearing was issued on February 24, 2006, and a hearing was held on March 15, 2006. Two government exhibits and five Applicant exhibits were admitted into evidence. The Applicant testified. The record was left open for 30 days for submission of additional material and three documents were received from Applicant and, without objection, admitted in evidence. The transcript was received on March 23, 2006.

FINDINGS OF FACT

With explanatory comment, Applicant admitted two of the three allegations relating to alcohol consumption, denied the allegation relating to criminal activity, and admitted the personal conduct allegation. After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 24-year-old employee of a major defense contractor who works as a lab technician. He is a recent college graduate with a B.S. degree in electronic systems technologies. He has worked for the company for two years since graduation from college.

Applicant has had three arrests for alcohol related activities while he was in college. The first was in 2000 when he was 18-years-old when he was charged with possession by a minor of a six pack of beer in his car. Judgment was withheld pending six month supervision and a \$75.00 fine.

The second arrest was in 2002 when he was 19-years-old when he was charged with possession/consumption of liquor by a minor and he was fined \$110.00. He was in a car with a friend who was driving. They had been drinking and tested positive on a breathalyser. He spent one hour in jail.

The third arrest was in 2003 when he was 20-years-old and was charged with DUI and spent a night in jail. Judgment was again withheld pending completion of 12 month supervision, payment of a \$916.00 fine, and completion of alcohol education. He completed the supervision for both the last two offenses and paid the fines. The final supervision was completed in February 2005. The last fine was paid in December 2005.

An issue was raised in SOR Par. 1.d. relating to a warrant issued for failure to pay the last fine which was quashed in December 2005 upon payment of the fine (Exh. F). Applicant sent money orders to pay the fine when it was due in 2004 but they were not received by the court. Because of a change of address after graduation when he took his present job, Applicant did not receive the warrant so assumed the funds had been used to pay the fine. He learned that it had not been paid when he received the SOR and then paid the fine in cash a few days later. He applied for and received refunds from the issuer of the money orders (Exh. G).

On Applicant's SF 86 he omitted the 2000 and 2002 arrests and charges in his answer to Question 24 relating to his police record for alcohol/drug offenses. He did list the most recent arrest in 2003 for DUI which was the most serious of the three and resulted in heaviest fine.

After the last offense Applicant completed 12 hours of intervention for moderate risk classification with an alcohol counseling organization. During that time he received education on a variety of alcohol related subjects, was attentive to the program, and acknowledged his past problems. He was assessed as needing intervention only and not formal treatment. No problem drinking was identified (Exh. B). Applicant has had no further problems with alcohol-related incidents since the 2003 arrest. At the time of his security interview in February 2005 he stated that he consumed two six packs of beer on weekends but did not get drunk. Since that time he has lessened his consumption and now drinks one six pack of beer on weekends. He does not drink and drive (Tr. 25).

His supervisor evaluates Applicant in glowing terms as to the quality of his work, his dedication and willingness to perform extra tasks (Exh. C). The supervisor rates him as exceeding expectations in half the rated categories and meeting expectations in the other half (Exhs. D and E).

Applicant is single and owns his own home.

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption

(E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Possible mitigating conditions (MC) might include the fact that several events occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.) Those mitigating factors are applicable. All of the offenses occurred while Applicant was a college student. The first two offenses were while he was a minor and appear to have been treated by the authorities as typical first offenses of a minor. The third and most recent was the most serious and the only offense to involve driving a vehicle. While Applicant should have learned from the first two and avoided the situation that occurred in the third, he has shown that now he has learned from the experience. The evaluation from the alcohol treatment center shows no conduct or patterns that should give concern in a security clearance analysis (Exh. B).

Guideline J (Criminal Conduct) is also cited based on the Guideline G allegations. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. is applicable to Applicant in that he has on three occasions been charged with criminal offenses. It could be mitigated by application of the facts in the case to certain of the Mitigating Conditions (MC). The most recent criminal behavior occurred three years ago (E2.A10.1.3.1.), and there is clear evidence of rehabilitation (E2.A10.1.3.6.). Mitigating conditions are applicable.

The government has also alleged personal conduct under Guideline E of the Directive, relating to questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant

omitted relevant and material facts about his first two arrests on his SF 86. (E2.A5.1.2.2.) However, he reported his most recent and serious arrest and conviction. He admitted that he deliberately withheld the information since he was uncertain about the dates of the offenses and did not realize the gravity of omission.

While this was inappropriate conduct, the fact that he candidly admitted the third is indicative that his failure to report was not designed to deceive the government. He did fully discuss the two events in his interview with a security investigator (Exh. 2).

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 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.

Applicant is on a successful career path as a recent graduate who has held steady employment for the past year and a half. Applicant is an impressive young man who made a few mistakes as a college student not uncommon to youth. His record since his employment is impressive and shows that he has a bright future.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is 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 G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge