

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is a 39-year-old manufacturing engineer for a defense contractor. He has three arrest for DUI from 1995 to 2003. The blood alcohol content of the last incident was .264%. Applicant continues to consume alcohol. He did not disclose his April 2003 DUI arrest, his latest, to the government investigator during the August 2003 interview, but did so later before being confronted with the facts. Applicant did not mitigate the alcohol consumption security concern, but did mitigate the personal conduct security concern. Clearance is denied.

CASENO: 03-25320.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25320

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 39-year-old manufacturing engineer for a defense contractor. He has three arrest for DUI from 1995 to 2003. The blood alcohol content of the last incident was .264%. Applicant continues to consume alcohol. He did not disclose his April 2003 DUI arrest, his latest, to the government investigator during the August 2003 interview, but did so later before being confronted with the facts. Applicant did not mitigate the alcohol consumption security concern, but did mitigate the personal conduct security concern. 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 January 11, 2005, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on February 17, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on April 4, 2005. On June 23, 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. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 14, 2005.

**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 39 years old and is a program manager for a defense contractor. He has a masters degree in manufacturing engineering. He has worked for this company for several years. He is divorced but now engaged to be married. (TR. 22, 23, 39, 50, 64; Exhibit 1)

Applicant was arrested three times for driving while intoxicated or under the influence of alcohol (DUI). His first arrest for DUI occurred in December 1995 after he departed a bar where he had been drinking with friends. His blood alcohol content (BAC) was .18%. Applicant was on probation for six months, attended an alcohol safety course, paid a \$500 fine, and had his driver's license suspended for 30 days. Applicant disclosed this arrest on his security clearance application (SCA) signed May 21, 2001. (Tr. 17, 25; Exhibits 2-4)

Applicant's second DUI arrest occurred in December 1999 after leaving a Christmas party at a bar where he was drinking with friends. His BAC was .20%. He hit a tree on his way home. Applicant entered an accelerated disposition program, paid a fine of \$700 and attended alcohol safety classes. The case was later dismissed because he completed all requirements. There was no driving privilege suspension. Applicant voluntarily attended Alcoholics Anonymous (AA) meetings from December 1999 to June 2000. He ceased his attendance because he "felt good and never sensed a craving for alcohol." Applicant disclosed this arrest on his SCA. (Tr. 17, 26; Exhibits 2, 3)

Applicant's latest arrest for DUI occurred on April 19, 2003. He was stopped by the local police for speeding. His BAC was .264% and the second test was .244%. He pled guilty, his driver's license was suspended for a year, spent two days in jail, paid a \$778 fine, and placed on probation for two years from July 2003. The court ordered him to attend a ten-week alcohol education program, which he has not completed. He started the course in 2004, missed two classes because of work commitments, and has not restarted. He was also ordered to have an alcohol evaluation completed, which he did after August 8, 2003, resulting in the class requirement. Applicant did not disclose this arrest on his SCA because it occurred after he completed the SCA, but he did deliberately deny to the government investigator on August 8, 2003, that he had any other arrests. He deliberately did not disclose it because he was afraid of losing his security clearance. (Tr. 17, 28-35, 53-55, 61, 70; Exhibits 1-3, 5)

Applicant disclosed his 2003 arrest to the government investigator on August 13, 2003, when the investigator arrived at the scheduled appointment for Applicant to sign the typed statement from the August 8, 2003, interview. Applicant telephoned the investigator on August 9 and left a message that he had more information to disclose, but never spoke directly with the investigator then. Applicant made a hand-written supplement to his typed statement disclosing the April 2003 arrest. (Tr. 53-55, 64-73; Exhibit 3)

Applicant saw a marriage counselor between January and May 2003, as his first marriage was deteriorating. That marriage counselor also provided alcohol and drug counseling, but Applicant did not consult him for those services. After his April 2003 DUI arrest, at the suggestion of his attorney in that case, Applicant asked the counselor to provide a letter about his counseling of Applicant for alcohol problems. The counselor did provide such a letter to be used by the attorney and local court in the disposition of the DUI case. Applicant's counselor never gave an alcohol diagnosis and none exists in Applicant's record. Applicant spent five minutes during a marriage counseling session discussing alcohol,

regardless of Applicant's deliberate statement to the investigator that he consulted the counselor for his alcohol consumption concerns. (Tr. 45-50, 56-58; Exhibit 3)

Applicant consumed alcohol, most often in the form of beer, from December 1995 to at least April 2003. During the week he claims he consumed one or two beers, and on weekends from zero consumption up to eight beers. In the past decade Applicant has been intoxicated at least eight to ten times, and his latest intoxication was the night of his arrest on April 19, 2003. He told the investigator that his last intoxication was December 2002. Applicant had a beer with dinner the night before the hearing. He still drinks three or four beers a week with dinner. The last time he had four beers in one day was Christmas 2004. Once every two months Applicant goes to bars and socially drinks with friends. (Tr. 38-52; Exhibit 3)

Applicant's character statements show he is a competent engineer for his company. Applicant likes the work he does, and his security officers's statements support Applicant's statements that he complies with security procedures. (Tr. 67-70; Exhibits A and B)

## 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 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

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. 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. ay 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

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.* E2.A5.1.1

## CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR under the alcohol consumption security concern. The applicable Disqualifying Conditions (DC) are DC 1 (Alcohol-related incidents away from work, such as driving under the influence. E2.A7.1.2.1), and DC 5 (Habitual or binge consumption of alcohol to the point of impaired judgment. E2.A7.1.2.5). Applicant has three DUI arrests over an eight-year period, with increasing BAC levels from .12% to .264% showing increased tolerance of alcohol. The magnitude of the BAC levels alone is of concern because they are well above the contemporary statutory limits. He has not completed the ten-week alcohol counseling course the court directed him to complete as of the time of the hearing. His two-year probation from July 2003 gave him enough time to complete this court-ordered requirement. Instead, Applicant continues to drink, and not think he has any problem. He stopped attending AA in June 2000 because he thought he had no alcohol problem. He was in marriage counseling for six months in 2003 when he was arrested in April 2003 for his most serious DUI to date.

There are no Mitigating Conditions (MC) that apply to Applicant's case. There is a pattern of alcohol related incidents. They are recent arrests, and Applicant has not applied himself to complete the court-ordered classes within the two year probation period. He continues to drink alcohol, so there are no positive sobriety supportive changes in his life. Additionally, under the circumstances of this case, such as his failure to acknowledge a problem, and his failure to complete the court-ordered training, there is also no evidence of continued sobriety. After evaluating all the evidence, I conclude this security guideline against Applicant.

Regarding the personal conduct security concern, the Government also established those allegations by substantial evidence and Applicant's admissions. The applicable DC are DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. E2.A5.1.2.2), DC 3 (Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, or other official representative in connection with a personnel security or trustworthiness determination. E2.A5.1.2.3), DC 4 (Personal conduct or concealment or 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. E2.A5.1.2.4), and DC 5 (A pattern of dishonesty or rule violations. E2.A5.1.2.5). Applicant deliberately failed to disclose his April 2003 arrest to the investigator. He also deliberately misled the investigator by telling him his last alcohol intoxicating experience was December 2002, when it was really April 2003. Applicant also misled the investigator when he stated he consulted an alcohol counselor in 2003, when in fact he only consulted that person for marital problems. There is a pattern of dishonesty and deliberate falsification shown here that increases Applicant's vulnerability to coercion.

The MC applicable here is MC 3 (The individual made prompt, good-faith efforts to correct he falsification before being

confronted with the facts. E2.A5.1.3.3). Applicant did try to contact the investigator after the August 8 interview, and did not sign the typed statement until he disclosed the April 2003 arrest. His handwritten supplemental statement addresses the latest arrest and his most recent intoxication issues. It did not remedy the counseling misrepresentation, but the SOR does not allege that statement under Guideline E, but does allege it under the previous Guideline G. Applicant made his new disclosures on August 13, 2003, before the investigator confronted him with the fact of his April 2003 arrest. Therefore, I conclude this guideline for 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

#### Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For 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).