

KEYWORD: Criminal Conduct

DIGEST: Applicant is a 31-year-old human factors specialist employed by a defense contractor. Not long after his divorce became final in 2003, Applicant went to a lounge and spent several hours drinking with acquaintances. After his cohorts left, he moved his binge to a nearby pub. For inexplicable reasons, he snatched a purse from the pub's bar and got as far as the alley before being stopped. In court, he was given a pre-trial diversion, probation, and sent to an alcohol/drug school. He has no other record of either substance abuse or criminal activity. Because of the unlikelihood of the singular circumstances recurring, and owing to the fact that this was an isolated incident, Applicant mitigated security concerns related to his criminal conduct. Clearance is granted.

CASENO: 03-25333.h1

DATE: 05/23/2005

DATE: May 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25333

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old human factors specialist employed by a defense contractor. Not long after his divorce became final in 2003, Applicant went to a lounge and spent several hours drinking with acquaintances. After his cohorts left, he moved his binge to a nearby pub. For inexplicable reasons, he snatched a purse from the pub's bar and got as far as the alley before being stopped. In court, he was given a pre-trial diversion, probation, and sent to an alcohol/drug school. He has no other record of either substance abuse or criminal activity. Because of the unlikelihood of the singular circumstances recurring, and owing to the fact that this was an isolated incident, Applicant mitigated security concerns related to his criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 2005, 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 J-Criminal Conduct, it 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. In response, by letter of January 21, 2005, the Applicant admitted to the sole allegation contained in the SOR and requested an administrative determination based on the submissions.

The Government's case was submitted on February 24, 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 received a copy of the FORM on March 7, 2005, but did not submit any additional material. I received this case on May 11, 2005.

FINDINGS OF FACT

Applicant has admitted to the allegation set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 31 year-old male who has been employed as a human factors specialist by a defense contractor since March 2003. In 2000, while he balanced his work as a graduate research assistant with the completion of his Ph.D., Applicant wed. After graduation, he taught at a local college while he also worked as a self-employed human factors specialist in a neighboring state. In November 2002, Applicant moved in with his parents in that neighboring state while his wife stayed behind. Their marriage ended in divorce in late February 2003, two days after Applicant commenced his current employment and shortly before he moved out from his parents' home.

On Sunday, May 25, 2003, Applicant went to a local lounge. While there, he ran into a number of acquaintances with whom he socialized and caroused for several hours. After his cohorts left, Applicant moved his imbibing to a neighboring pub. There, he noticed a woman he had seen at the lounge earlier, but to whom he did not speak. At some point, the woman placed her purse on the bar near the Applicant and walked away. Sometime after midnight, Applicant took the woman's purse from the bar, made his way out of the pub, and got as far as the alley. There, he fumbled through the purse, pocketed her keys, and left the remainder of its contents in tact.

In the interim, the woman realized her purse was no longer on the bar. Two witnesses first searched, then found the Applicant in the alley. As one observed him looking in the purloined purse, the other closed in on him. Once aware of the encroaching witness and before being subdued, Applicant threw the purse across the alley. A passing police officer was flagged down and Applicant was taken into custody around 1:00 a.m, charged with misdemeanor theft. In court, he was given a pre-trial diversion, required to attend an alcohol/drug information school, and received a three month probation. Subsequently, Applicant completed the court's requirements.

Throughout the night, Applicant had been upset about his divorce and was drinking heavily. He was extremely intoxicated, a state which is rare for him, and could not comprehend his actions or fathom why he filched the purse. Applicant usually only drinks alcohol socially, about twice a month, and three beers is his usual limit. His occasional use of alcohol has not caused him any financial or health related problems, nor has it affected either his personal or professional life. For the seven years prior to his security clearance application, Applicant's record is clean.

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.

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

Guideline J-Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. [\(2\)](#)

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 and discussed in the Conclusions section below.

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 [\(3\)](#) 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." [\(4\)](#) Therefore, any doubts will be resolved in favor of the national security, not the applicant

Finally, 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.

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 respect to the allegation set forth in the SOR:

With respect to Guideline J, the Government has established its case. Applicant's unbridled consumption of alcoholic beverages and snatching of a fellow pub patron's purse create doubt as to his judgment, reliability, and trustworthiness. Under Guideline J, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 is raised in the presence of *[a]llegations or admissions of criminal conduct, regardless of whether the person was formally charged* and, pursuant to CC DC E2.A10.1.2.2, when there has been *[a] single serious crime or multiple lesser offenses*. Here, Applicant committed theft, a crime sufficiently serious to raise both disqualifying conditions.

Applicant admits the allegation set forth in the SOR. He was distraught over his divorce and attempted to seek solace through barroom socializing and a rare spree of drunken revelry that went beyond his limit. His resultant drunkenness and muddled thinking led to the taking of the purse. Barring this sole, aberrant incident, however, Applicant has neither a record of criminal conduct, nor a record of alcohol or drug abuse. Further, the facts do not demonstrate that he has an alcohol problem. Instead, this incident appears to be an aberration, an atypical episode, and not a manifestation of questionable judgment, reliability, or trustworthiness. As such, I find Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.2 (*the crime was an isolated incident*) applies.

Moreover, although Applicant is unable to discern what he was thinking at the time, the fact remains that his act was volitional. Given the juxtaposition of these facts and the unique issues Applicant was then facing, however, the chance that such factors will ever again recur is not so great as to present a security risk. Therefore, I additionally find CC MC E2.A10.1.3.3 (*the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) applies.

Looking at the whole person, Applicant is a well educated young man who has demonstrated academic prowess and diligence, as well as the discipline of self-employment. He obviously has the support of his parents. With the exception of this one incident, Applicant's record is thoroughly clean. Indeed, that record does not indicate any prior criminal or alcohol-related incidents, accusations, or arrests, nor does it reveal any signs of general substance abuse or financial difficulty. In sum, Applicant is a young man whose personal achievements and success are only marred by the

emotional set back of his recent divorce and this one isolated, albeit criminal, incident.

Based on the record evidence as a whole, the facts and circumstances in this matter, and Applicant's explanation as to the event at issue, I find that Applicant has met his burden in proving that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Consequentially, I find subparagraph 1.a. of the SOR in Applicant'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 J: FOR THE APPLICANT

Subparagraph 1.a For 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 grant or continue a security clearance for Appellant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. The government submitted 7 items in support of its case.
2. ⁰ Directive, Enclosure 2, Attachment 10, Guideline J, ¶ E2.A10.1.1.
3. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
4. ⁰ *Id.*, at 531.