

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is an employee of a defense contractor. He has three driving while intoxicated arrests between 1989 and 2002. He failed to disclose the first two arrests on his security clearance application. Applicant did not submit any evidence of alcohol treatment, sobriety, or successful rehabilitation. Applicant failed to mitigate the alcohol consumption and personal conduct security concerns. Clearance is denied.

CASENO: 04-00194.h1

DATE: 10/31/2005

DATE: October 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00194

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an employee of a defense contractor. He has three driving while intoxicated arrests between 1989 and 2002. He failed to disclose the first two arrests on his security clearance application. Applicant did not submit any evidence of alcohol treatment, sobriety, or successful rehabilitation. Applicant failed to mitigate the alcohol consumption and 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 March 1, 2005, DOHA issued a Statement of Reasons [\(1\)](#) (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 March 12, 2005. He requested his case be decided on the written record in lieu of a hearing.

On July 7, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM within the scheduled due date of August 13, 2005. The case was assigned to me on September 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 FORM, and full consideration of that evidence, I make the following additional findings of

fact:

Applicant is 60 years old, married, and employed by a defense contractor. He consumed alcohol to excess and to the point of intoxication from at least 1989 to at least July 2, 2003. During that time, he was arrested in August 1989 for driving while intoxicated (DWI). He pled guilty and was sentenced to four days suspended confinement, two years probation, a \$500 fine, but was granted a hardship driver's license. He was later arrested in July 1999 and charged with DWI and driving on the wrong side of the road/accident. He pled guilty to both charges and received a suspended imposition of sentence. He also was again granted a hardship driver's license. He was put on two years of probation for the DWI, and fined \$400 for driving on the wrong side of the road. Applicant's last arrest and conviction was in August 2002 for DWI and driving on the wrong side of the road. He pled guilty to the amended Charge 2 of operating a vehicle in a careless and imprudent manner and was fined \$297.50. (Exhibits 2, 4, 6 and 7)

Applicant deliberately did not disclose his arrests and convictions in 1989 and 1999 on his January 30, 2003, security clearance application (SCA) in answer to Question 24 (Have you ever been charged with or convicted of any offenses relating to alcohol or drugs?). He answered "no" to that question while answering Question 26 (Police Record-Other Offenses) with a disclosure about his 2002 DWI arrest. (Exhibits 2, 4, 6 and 7)

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. Regarding the alcohol consumption guideline, the Disqualifying Conditions (DC) applicable 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 DWI arrests, in 1989, 1999, and 2002. Applicant admitted all of these offenses in his Answer. The repeated drinking and driving incidents over a 13 year period shows Applicant habitually consumes alcohol to the point of impaired judgment, evidenced by his driving while intoxicated.

There are no Mitigating Conditions (MC) applicable here. There are no explanations from Applicant why he has three DWI arrests, and what his current alcohol relationship is. He provided no explanation of his failure to list his two arrests from 1989 and 1999 on his SCA responding to Question 24. Therefore, I conclude this alcohol consumption security guideline against Applicant.

Regarding the personal conduct guideline, the applicable DC are DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2), DC 4 (Personal conduct that increases an individual's vulnerability to coercion, exploitation, or duress E2.A5.1.2.4), and DC 5 (A pattern of rule violations. E2.A5.1.2.5). Applicant deliberately failed to disclose his two earlier DWI arrests and convictions, even though he knew or should have known about them, and they fell within the scope of Question 24 ("have you ever . . "). Applicant disclosed his latest DWI, and if he knew about that incident, he knew about the earlier ones.

The MC under the personal conduct guideline do not apply. Applicant did not submit a statement explaining anything about the allegations in the SOR. He has not submitted anything about his current relationship with alcohol, any positive steps he took to reduce any vulnerability, or explain how he might have omitted the two earlier DWI convictions. Absent any information, there is no basis to consider applying any MC. Therefore, 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.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).