

KEYWORD: Personal Conduct; Financial; Alcohol; Criminal Conduct

DIGEST: Applicant was charged with either Drunk Driving or Driving Under the Influence on three occasions between 1989 and 1999. He intentionally failed to disclose two of those charges in three separate security clearance applications he submitted and when asked about them during an interview conducted by a Defense Security Service Special Agent. He also has numerous delinquent accounts that he also failed to disclose as required. Clearance is denied.

CASENO: 04-00772.h1

DATE: 11/23/2005

DATE: November 23, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-00772

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina E. Redd, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant was charged with either Drunk Driving or Driving Under the Influence on three occasions between 1989 and 1999. He intentionally failed to disclose two of those charges in three separate security clearance applications he submitted and when asked about them during an interview conducted by a Defense Security Service Special Agent. He also has numerous delinquent accounts that he also failed to disclose as required. Clearance is denied.

## **STATEMENT OF THE CASE**

On May 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E (personal conduct), Guideline G, (alcohol consumption), Guideline F (financial considerations) and Guideline J (criminal conduct). Applicant submitted a response to the SOR, dated March 10, 2005, and requested a clearance decision based on the written record without a hearing. Applicant admitted all SOR allegations.

Department Counsel prepared a File of Relevant Material (FORM) on June 13, 2005, that was mailed to Applicant on June 16, 2005. Applicant acknowledged receipt of the FORM on June 20, 2005. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. The case was assigned to me on August 1, 2005.

## **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. Additionally, after a thorough review of the record, I make the following findings of fact:

Applicant is a 40-year-old man who has been employed by a defense contractor as a systems engineer since March 2002. He was previously employed by two separate defense contractors as a training specialist from July 2000 until March 2002, and as an assistant manager at a golf course from June 1998 until July 2000. Prior to that he was on active duty in the U.S. Army from April 1983 until June 1998. He received an honorable discharge from the Army and was a Staff Sergeant, paygrade E-6, at the time of his discharge. Applicant was married in February 1988 and divorced in June 2000. He remarried in August 2001.

Applicant was charged with Driving Under the Influence (DUI) on March 11, 1989. His blood alcohol concentration (BAC) was 0.17 at the time of his arrest. He was found guilty of a reduced charge of Reckless Driving and sentenced to serve 90 days in jail (suspended) and fined \$250.00 plus court costs. He also received a written reprimand from the Army for this offense.

Applicant was charged with Drunk Driving for an offense committed on February 13, 1998. His BAC was 0.19 at the time of this offense. He was disciplined under Article 15, Uniform Code of Military Justice (UCMJ), on March 19, 1998 for this offense, was reduced in paygrade from E-6 to E-5, ordered to forfeit \$806.00 pay, and perform 45 days extra duties. His driving privileges were also suspended for one year.

Applicant was again charged with Drunk Driving on June 1, 1999. His BAC at the time of this offense was 0.13. Administrative action was taken by the Army against him based upon this offense that required Applicant to perform 100 hours of community service, and his driving privileges were revoked for five years.<sup>(2)</sup>

Applicant began consuming alcohol on weekends, consuming a few beers at a time, when he was about 17 years old. He would drink to the point of intoxication approximately six to eight times a year. His mother was murdered in December 1996, and he thereafter began drinking more heavily, becoming intoxicated about twice a week.<sup>(3)</sup> In May 1997, realizing he was drinking too much, Applicant voluntarily began to consult with alcohol dependency counselors in an informal setting at the Army base where he was stationed. In June 1998, he entered into formal group and individual counseling sessions at the Army base and continued with those sessions until September 1998, shortly after he was discharged from the Army.<sup>(4)</sup>

Applicant either executed or caused to be submitted security clearance applications (SF 86) on October 18, 2000, November 25, 2000, and January 16, 2003. In each of those SF 86s, Applicant disclosed the 1998 Drunk Driving charge and Article 15 punishment, but failed to disclose the 1989 and 1999 charges and the alcohol treatment he received in response to questions requiring him to disclose that information. He was questioned by a Special Agent (SA) from the Defense Security Service (DSS) on November 1, 2002, and provided a signed sworn statement in which he discussed his 1998 Drunk Driving offense. However, he went on to affirmatively state: "I have not had any other alcohol-related incidents or arrests." He admitted during that statement deliberately failing to disclose the alcohol treatment because he was embarrassed about it.

Applicant was questioned by another SA from the DSS on October 21, 2003, and confronted with reports that had been obtained by the DSS concerning the 1989 and 1999 offenses. He admitted at that time that he had deliberately falsified the SF 86s he submitted and deliberately provided false information to the SA during the November 2002 interview because he did not think those offenses would be discovered.

Applicant's credit reports disclose eight accounts, totaling almost \$5,800.00, that have either been submitted for collection or charged off as bad debts, and an additional collection account owing to a municipal/county government in the amount of \$2,696.00 that appears to be a claim for past due spousal support. Applicant denies he owes any back support payments, claims two of the credit card accounts were business cards that were paid in full when he left those jobs, that the two telephone bills were supposed to have been paid by his roommate, that he has no knowledge of one of the accounts, and/or that he has either contacted other creditors and not received a response or will include all the debts in a debt consolidation program he claimed he was going to enter. Applicant failed to provide any documentation in support of any of his claims concerning the nature or status of the debts. He also failed to provide any evidence to substantiate his claim that some of the debts had been paid in full and that he had entered into a debt consolidation plan to repay all his delinquent accounts.

Applicant failed to list any delinquent accounts in any of the SF 86s he submitted, despite having been questioned about some of them by the SA from DSS before he submitted the January 2003 SF 86. He admitted each SOR allegation pertaining to the falsifications of the SF 86s by failing to disclose these accounts. Further, his explanations about not knowing about the accounts and/or that he believed the accounts were paid are not credible.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline E, pertaining to personal conduct, Guideline G, pertaining to alcohol consumption, Guideline F, pertaining to financial considerations, and Guideline J, pertaining to criminal conduct, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(5)</sup> The government has the burden of proving controverted facts.<sup>(6)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(7)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(8)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(9)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(10)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(11)</sup>

No one has a right to a security clearance and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(13)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(14)</sup>

## CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant deliberately provided numerous false answers in the three SF 86s he submitted. He also deliberately provided false information to a Special Agent from the Defense Security Service when he was asked about any alcohol related offenses he may have had that were not previously disclosed. Applicant's lack of candor in failing to disclose his alcohol related offenses, alcohol treatment, and financial condition when he submitted multiple SF 86s and when he was interviewed by a SA from the DSS severely undermine the ability to place such trust and confidence in him. His false answers raise significant security concerns.

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 conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;* and DC 3: *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other representative in connection with a personnel security or trustworthiness determination* apply. I have considered all mitigating conditions and none apply. Guideline E is decided against Applicant.

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high-risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant has been charged with either DUI or Drunk Driving on three occasions, the last time being in June 1999. Each time he had an excessive BAC, and was either convicted or disciplined for the alcohol related offense or a reduced charge. DC 1: *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use* applies.

Applicant's consumption of alcohol appears to have increased significantly shortly after his mother was murdered. He voluntarily engaged in informal alcohol counseling beginning in May 1997, and undertook formal treatment from June 1998 until September 1998. According to his admission to SOR subparagraph 2.f., he again received treatment from July 1999 until December 1999, but was dis-enrolled due to his failure to

participate in the program. Although he admitted to the ambiguous allegation in SOR subparagraph 1.a. that he continued to drink alcohol to the point of intoxication until October 2003, he asserted in the statement he provided in November 2002 that he only drinks about two beers per week, and never to the point of intoxication. Accordingly, there is insufficient evidence to find that he has actually been intoxicated at any time since he was charged with Drunk Driving in June 1999.

Mitigating Condition (MC) 2: *The problem occurred a number of years ago and there is no indication of a recent problem* applies. Guideline G is decided for Applicant.

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant has numerous debts that have either been submitted for collection or charged off as bad debts, and that have been delinquent for years. Although he claims some were paid and others would be paid, and he was entering into a debt repayment program to satisfy others, he provided no documentation in support of any of those assertions. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply. I have considered all potentially mitigating conditions and none apply. Guideline F is decided against Applicant.

Criminal conduct under Guideline J is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break rules.

Applicant submitted SF 86s in 2000 and 2003, and provided a statement to a SA from the DSS in November 2002, and certified the answers he provided each time were true, complete, and correct to the best of his knowledge and belief. Those statements were made explicitly subject to the provisions of 18 U.S.C. § 1001 which makes it a felony to provide a false statement under those circumstances. DC 1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*; and DC 2: *A single serious crime or multiple lesser offenses* apply. I have considered all potentially mitigating conditions and none apply. Guideline J is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion to demonstrate it is clearly consistent with the national interest to grant or continue his access to classified information.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline E: Against Applicant

Subparagraphs a-m: Against Applicant

SOR ¶ 2-Guideline G: For Applicant

Subparagraphs a-f: For Applicant

SOR ¶ 3-Guideline F: Against Applicant

Subparagraph a-i: Against Applicant

SOR ¶ 3-Guideline J: Against Applicant

Subparagraph a: Against Applicant

**DECISION**

In light of all 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Although Applicant was no longer in the Army at the time of this offense, he was working at a golf course aboard an Army base in a foreign country which is apparently the reason for this administrative disposition of the drunk driving charge by the Army.
3. SOR subparagraph 2.a. alleges that Applicant consumed alcohol to the point of intoxication from 1982 until at least 2003. The record does not contain any information indicating that Applicant drank to the point of intoxication after entering into treatment in 1997, except for Applicant's admission to this allegation.
4. SOR subparagraph 2.f. alleges that Applicant also received alcohol treatment from July to December 1999, and was dis-enrolled due to his failure to participate. The record is devoid of any evidence, other than Applicant's admission, in support of this allegation.
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.