

KEYWORD: Alcohol; Personal Conduct; Criminal Conduct; Personal Conduct

DIGEST: Applicant has a history of alcohol abuse that includes drinking to intoxication, alcohol-related incidents on and off the job site, and failure to follow prescribed protocols following treatment-discharge. Applicant compounds judgment lapses associated with his history of alcohol abuse with a now-aged, non-alcohol related, arrest and his concealment of his alcohol-related arrests and treatment when completing his security clearance application. Neither Applicant's judgment lapses associated with his abuse of alcohol, alcohol-related arrests, and failure to adhere to his treatment protocol, nor his omissions of his alcohol-related arrests and treatment in his security clearance application are mitigated and raise continuing security concerns about his judgment and reliability. Clearance is denied.

CASENO: 04-02120.h1

DATE: 10/31/2005

DATE: October 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02120

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmonds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol abuse that includes drinking to intoxication, alcohol-related incidents on and off the job site, and failure to follow prescribed protocols following treatment-discharge. Applicant compounds judgment lapses associated with his history of alcohol abuse with a now-aged, non-alcohol related, arrest and his concealment of his alcohol-related arrests and treatment when completing his security clearance application. Neither Applicant's judgment lapses associated with his abuse of alcohol, alcohol-related arrests, and failure to adhere to his treatment protocol, nor his omissions of his alcohol-related arrests and treatment in his security clearance application are mitigated and raise continuing security concerns about his judgment and reliability. Clearance is denied.

STATEMENT OF CASE

On March 15, 2005, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on April 12, 2005, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on January 16, 2004, and received it on June 30, 2005. Applicant did not respond to the FORM. The case was assigned to me August 24, 2005.

SUMMARY OF PLEADINGS

Under Guideline G, Applicant is alleged to have (1) consumed alcohol, at times to excess and to the point of intoxication, from at least 1969 to at least December 2003, (2) been arrested for driving under the influence (DuI) on three occasions between 1969 and 1999, (3) been suspended for a week in December 1994 after testing positive for intoxication on the job site in an administered breath test, (4) received treatment for diagnosed alcohol dependence at N Hospital in September 1999, and (5) continued consuming alcohol notwithstanding his treatment for alcohol dependence.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of December 2002 by omitting (a) his three alcohol-related arrests and (b) his treatment for alcohol dependence. Applicant's alleged suspension from work and DuI arrest of August 1999 are incorporated by reference.

Under Guideline J, Applicant's alleged alcohol-related arrests and omissions are incorporated by reference. Under Guideline J, Applicant is alleged to have been arrested in February 1971 for breach of peace.

For his response to the SOR, Applicant admitted each of the allegations. He provided no explanations in connection with any of his admissions.

FINDINGS OF FACT

Applicant is a 58-year-old yard jockey for a defense contractor, who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant regularly consumed alcohol between 1969 and December 2003. He typically consumed between six and 12 beers on weekends, sometimes to the point of intoxication.

Between 1969 and August 1999, Applicant was involved in four alcohol-related incidents, three of which were outside

the work place. Specifically, in February 1969, he was arrested and charged with DuI and failure to consent to a sobriety test. He was fined \$125.00 for the offense and had his license suspended for 30 days. In April 1978, he was arrested and charged with operating while intoxicated, for which he was fined \$150.00 and had his license revoked. In a separate non-alcohol-related incident in February 1971, Applicant was charged with breach of the peace. For this offense, he was fined \$15.00.

After a security guard with his employer reported smelling alcohol on Applicant's person at the latter's work site in December 1994, Applicant was escorted to his employer's hospital for alcohol testing. The results of the breath test administered Applicant showed him to have been intoxicated while on the job. As the result of the test findings, Applicant was suspended from work for one week. He had been Christmas shopping before reporting for work and consumed alcohol to excess.

In August 1999, a gate guard detected alcohol on Applicant's breath and reported his observations to a local sheriff who was called to investigate. When he arrived, the sheriff administered a road side sobriety test on Applicant. Applicant was then taken into custody by the sheriff and administered a breath test. The test showed Applicant to be legally intoxicated. Applicant was subsequently fined \$50.00 for the offense.

Following an argument with his wife in September 1999, Applicant fell down some stairs in their home and was knocked unconscious. He was taken to a local hospital for treatment. Before his release, his wife convinced him to accept transfer to an alcohol rehabilitation facility for alcohol-related treatment. Once admitted to N Hospital, Applicant was evaluated by a credentialed physician and detoxified. Medical notes report Applicant expressed concerns about his losing his job, family and wife if he did not stop drinking. Unemployed at the time, he recognized he was on a self-destructive course with his drinking and agreed to continue outpatient treatment and participate in Alcoholics Anonymous (AA). At discharge, he was diagnosed with acute alcohol intoxication, alcohol dependence, alcohol withdrawal, and adjustment disorder with depressed mood. Medical notes indicate Appellant's mood and treatment motivation were much improved at discharge (*see ex. 7*). Altogether, Applicant spent seven days in inpatient treatment at N Hospital.

Since his discharge, Applicant continues to consume alcohol and provides no documented showing of whether or how long he participated in outpatient treatment and/or AA. To what extent Applicant has been able to avert alcohol abuse since his inpatient discharge in September 1999 is unknown in the record.

Asked to complete an SF-86 in December 2002, Applicant answered in the negative to both question 24 (inquiring about drug/alcohol-related offenses) and question 30 (inquiring about alcohol-related treatment or counseling within the previous seven years). In denying any prior alcohol-related arrests and treatment, Applicant failed to disclose his three alcohol-related arrests in 1969, 1978, and 1999, respectively, and his alcohol-related treatment in September 1999. He provides no explanations in his answer as to why he omitted his arrests and treatment.

When he was interviewed by DSS (in December 2003), Applicant fully disclosed his three alcohol-related arrests and treatment at N Hospital. Whether or no he was confronted with his arrest and medical records is not clear. Because the evidentiary burden rests on Applicant to demonstrate his omission corrections were made promptly and voluntarily, no favorable inferences can be drawn without probative documentation of prompt and voluntary corrections from Applicant. Applicant failed to furnish any probative documentation of prompt, voluntary corrections, and none may be inferred from this written record.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Personal Conduct

The Concern: conduct involving questionable judgment, untrustworthiness, lack of candor, dishonesty, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant presents with a long history of alcohol abuse that includes regular drinking to intoxication levels, several alcohol-related arrests, as well as an earlier breach of peace arrest, a work suspension, alcohol treatment for diagnosed

alcohol dependence, and continued drinking in the face of his dependence diagnosis. Besides his arrests and history of excessive consumption of alcohol, Applicant falsified his 2002 SF-86 by omitting his alcohol-related arrests and treatment for alcohol dependence and associated alcohol problems.

Applicant's alcohol issues

Over a 30-year period, Applicant was involved in three alcohol-related incidents away from work and one work-related incident. After being fined \$500.00 following his August 1999 DUI conviction, Applicant entered an inpatient facility for a week of evaluation and treatment. Despite recommendations from his medical providers to continue with outpatient treatment and participate in AA meetings, Applicant continued to drink. He provides no documentation in this administrative record that he ever continued with outpatient treatment or attended AA meetings. On the strength of the evidence presented, four disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: E2.A7.1.2. (*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*), E2.A7.1.2.2 (*Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*), E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), and E2.A7.1.2.5 (habitual or binge drinking).

By his actions to date, Applicant has not demonstrated he has learned from his judgment lapses associated with his alcohol-related incidents: He continues to drink while ignoring his medical provider's recommendations. Applicant's lack of any documented efforts to avert his past judgment lapses associated with his abuse of alcohol preclude him from taking advantage of any of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption.

All in all, Applicant's efforts to date fail to reflect any increased understanding about alcohol abuse, much less concerted actions to avoid future abuse. His continued drinking over the past six years without any indications of participation in avoidance programs like outpatient therapy and AA reflects little judgment restoration.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol abuse in the future. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by subparagraphs 1.a through 1.g of Guideline G.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's alcohol-related arrests and treatment omissions in his December 2002 SF-86. So much trust is imposed on persons cleared to see classified information that judgment lapses associated with omissions are difficult to excuse.

By omitting his past alcohol-related arrests and treatment in his 2002 SF-86, Applicant concealed materially important

background information needed for the government to properly process and evaluate his security updates. He makes no claim of misunderstanding the questions, which were posed in a straightforward way in the questionnaire. His omissions were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: E2.A5.1.2.2 (*The deliberate omission, concealment, falsification or misrepresentation 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*).

Mitigation is difficult to credit Applicant with, since he failed to make any prompt voluntary corrections of his SF-86 omissions before sitting for a DSS interview a year later. Not only has the Appeal Board found the use of Mitigating Condition (MC) E2.A5.1.3.2 of the Adjudicative Guidelines for personal conduct (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity. Compare ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995).

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to subparagraphs. 2.b and 2.c of Guideline E. Applicant's alcohol-related work suspension in 1994 and 1999 DuI arrest reflect lapses in judgment that are part of a pattern of judgment impairment, too, that are not mitigated by any of the mitigating conditions in Guideline E or whole person assessment.

Criminal coverage of falsification issues

Both Applicant's three alcohol-related incidents and non-alcohol-related breach of peace arrest invite separate coverage of the criminal conduct guidelines of Guideline J. Because his SF-86 omissions were never prosecuted in a criminal proceeding, their coverage is less obvious.

That none of Applicant's SF-86 omissions resulted in formal charges and adjudication against Applicant does not mean that the falsification issues may not be raised and considered anew in a clearance proceeding such as the present. The Appeal Board has repeatedly stated that the government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. Cf. ISCR Case No. 94-1213 (June 7, 1996). Accordingly, two of the disqualifying conditions of the Adjudication Guidelines for criminal conduct may be invoked: E2.A10.1.2.1 (*Allegations or admission of criminal conduct regardless of whether the person was formally charged*) and E2.A5.1.2.2 (*A single serious crime or multiple lesser offenses*).

Unlike Guideline E-covered omissions, Guideline J is designed to afford more recognition to an applicant's overall judgment and reliability history. Still, an applicant must meet the requirements of at least some of the mitigation conditions if he is to successfully mitigate its related falsification parameters under 18 U.S.C. Section 1001.

Applicant's belated coming forward with his full disclosure of his alcohol-related arrests and treatment a year later (*i.e.*, in December 2003) in his interview represented a positive shift in his attitude about withholding his arrests and treatment information. Given his admitted withholding his alcohol-related arrests and treatment in his clearance application, however, his disclosures, while commendable, are not enough to meet the mitigation requirement of evidenced clear rehabilitation to entitle him to take advantage of E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*) of the Adjudication Guidelines at this time. More time is needed before Applicant is in a position to make the case his rehabilitation efforts are sufficient to mitigate the criminally-related features of his alcohol-related arrest and treatment omissions.

Based on a full review of the evidence and drawn inferences from the developed record, unfavorable conclusions warrant with respect to subparagraphs 3.a through 3.c of Guideline J as well.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.b: AGAINST APPLICANT

Sub-para. 3.c: 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge