

KEYWORD: Alcohol; Drugs

DIGEST: Applicant began consuming alcoholic beverages in high school. In college he was twice placed on disciplinary probation for alcohol-related misconduct. He began smoking marijuana in high school and increased his use in college. He was evaluated by a certified substance abuse counselor as an abuser of marijuana and alcohol. He stopped using marijuana at the end of his third year of college, but he continues to excessively consume alcohol. The security concern based on drug involvement is mitigated, but the concern based on alcohol consumption is not mitigated. Clearance is denied.

CASENO: 04-03514.h1

DATE: 10/31/2005

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03514

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant began consuming alcoholic beverages in high school. In college he was twice placed on disciplinary probation for alcohol-related misconduct. He began smoking marijuana in high school and increased his use in college. He was evaluated by a certified substance abuse counselor as an abuser of marijuana and alcohol. He stopped using marijuana at the end of his third year of college, but he continues to excessively consume alcohol. The security concern based on drug involvement is mitigated, but the concern based on alcohol consumption is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 11, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines G (Alcohol Consumption) and H (Drug Involvement).

Applicant answered the SOR in writing on April 25, 2005, admitted the allegations, and requested a hearing. The case was assigned to me on July 8, 2005, and heard on September 9, 2005 as scheduled. DOHA received the transcript (Tr.) on September 21, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 23-year-old billing accountant for a defense contractor. He worked as a intern for his present employer until he graduated from college in May 2004. He has never held a security clearance.

Applicant began smoking marijuana in October 1999, while he was in high school. Initially, he used marijuana about once a month. When he started college, his use increased to about four times a month, although he sometimes would not use marijuana for a month or two. He last smoked marijuana in May 2003, at the end of his third year of college. ⁽¹⁾ He testified he stopped using marijuana because it is illegal and inconsistent with his lifestyle and career aspirations. ⁽²⁾

Applicant started consuming alcohol in 1997, while he was 15 years old and in high school. He drank beer with friends at parties about twice a month. ⁽³⁾ In college, Applicant's drinking increased to about three to six times a week and included beer as well as hard liquor. On a weekend night, he would consume six to eight beers. ⁽⁴⁾

In October 2000, when he was a 18-year-old college student, he received five cans of beer from a classmate and stored it in his refrigerator in his dormitory room. At a college disciplinary hearing he was charged with underage possession of alcohol and possessing alcohol in an alcohol-free building. He admitted the offenses. He was required to attend an alcohol-education program and placed on disciplinary probation for one year. ⁽⁵⁾

In February 2001, Applicant and several other students were drinking alcoholic beverages in their dormitory room. Applicant estimated they had been drinking for "five hours or plus," and the number of drinks he consumed were in the "double digits." ⁽⁶⁾ One of the students became unconscious and was later found to have alcohol poisoning with a blood-alcohol content of .307%. In a college judicial board hearing, Applicant was charged with underage possession of alcohol, possessing alcohol in an alcohol-free building, endangering the physical well-being of himself or others, and violating the rules regarding dormitory guests. He was placed on disciplinary probation until May 2003 and ordered to attend a formal risk assessment from a qualified alcohol abuse counselor. ⁽⁷⁾

In accordance with the decision of the college judicial board, Applicant was evaluated in April 2001 by a certified substance abuse counselor, who found moderate alcohol abuse and drug abuse. The treatment notes state Applicant "was

not motivated for any treatment," and he was advised he could return for treatment or seek treatment in his home town. (8) Applicant did not seek treatment, because he did not think it was required or necessary. (9)

Applicant continues to consume alcohol. He testified he always keeps track of how much he has consumed. He has never missed work as a result of consuming alcohol. He has not consumed alcohol to the point of memory loss since his 21st birthday in college. (10) He now consumes alcohol about twice a week, usually consuming one to three drinks. (11) Every one or two months, he consumes too much alcohol to drive home legally and safely. (12)

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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E2.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline J: Alcohol Consumption

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. Directive ¶ E2.A7.1.1. A disqualifying condition (DC 1) may arise from alcohol-related incidents away from work, including criminal incidents related to alcohol use. Directive ¶ E2.A7.1.2.1. Based on evidence of college disciplinary actions for Applicant's alcohol-related misconduct, I conclude DC 1 is established.

Diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional (DC 3) or a "licensed clinical social worker who is a staff member of a recognized alcohol treatment program" (DC 4) is a disqualifying condition. Directive ¶¶ E2.A7.1.2.3, E2.A7.1.2.4. Applicant was evaluated by a certified substance abuse counselor, not a credentialed medical professional or a licensed clinical social worker. At Department Counsel's request, I took administrative notice of the training and education requirements of a certified substance abuse counselor in Applicant's jurisdiction. ⁽¹³⁾ The qualifications of a certified substance abuse counselor are different from the qualifications of a credentialed medical professional or licensed clinical social worker. Nothing in the materials submitted in support of administrative notice indicates a certified substance abuse counselor is qualified or authorized to evaluate a patient as an alcohol abuser or alcohol-dependent. Instead, the qualifications relate to treatment of persons who have been determined

to be alcohol abusers or alcohol-dependent. Accordingly, I conclude DC 3 and DC 4 are not established. However, I also conclude the evaluation by the certified substance abuse counsel is relevant. Combined with the two disciplinary actions for alcohol-related misconduct, the evaluation should have put Applicant on notice that he might have a problem.

"Habitual or binge consumption of alcohol to the point of impaired judgment" is a disqualifying condition (DC 5). Directive ¶ E2.A7.1.2.5. Applicant admitted he had "overdone it in the past a few times" and admitted drinking to the point of memory loss on his 21st birthday. These admissions establish binge consumption under DC 5.

A mitigating condition may apply if alcohol-related incidents do not indicate a pattern (MC 1) or there is no indication of a recent problem (MC 2). Directive ¶¶ E2.A7.1.3.1., E2.A7.1.3.2. Neither mitigating condition is established because Applicant's habit of regularly drinking to excess has continued to the present. At the hearing, he admitted he still drinks to the point of legal intoxication every one or two months.

"Positive changes in behavior supportive of sobriety" are a mitigating condition (MC 3). Directive ¶ E2.A7.1.3.3. Applicant has never admitted having an alcohol problem, and he has never sought treatment. Except for avoiding binge drinking, Applicant has not changed his drinking habits and continues to drink to excess on a regular basis.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on alcohol consumption.

Guideline H: Drug Involvement

Under Guideline H, improper or illegal involvement with drugs raises questions regarding an applicant's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Directive ¶ E2.A8.1.1. Any illegal use of a controlled substance can raise a security concern and may be a disqualifying condition (DC 1). Directive ¶ E2.A8.2.1. Illegal drug possession also is a disqualifying condition (DC 2). Directive ¶ E2.A8.2.2. Applicant's admission of drug possession and use establishes DC 1 and DC 2.

An evaluation of drug abuse by a credentialed medical professional (DC 3) or "licensed clinical social worker who is a staff member of a recognized drug treatment program" (DC 4) is a disqualifying condition. Directive ¶¶ E2.A8.1.2.3., E2.A8.1.2.4. Since Applicant was evaluated by a certified substance abuse counselor rather than a credentialed medical professional or licensed clinical social worker, I conclude DC 3 and DC 4 are not established.

Security concerns based on possession and use of marijuana can be mitigated by showing that it was not recent (MC 1). Directive ¶ E2.A8.1.3.1. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then the Administrative Judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.* Drug involvement also can be mitigated by a "demonstrated intent not to abuse any drugs in the future" (MC 3). Directive ¶ E2.A8.1.3.3.

Applicant has not used marijuana since May 2003, more than two years ago. He is no longer in the college environment where most of his marijuana use occurred. He has decided it is inconsistent with his current lifestyle and career aspirations. At the hearing, Applicant appeared clean-cut, sincere, and honest. I found his disavowal of further marijuana use credible. I believe he stopped using it in May 2003 and does not intend to use it again. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude MC 1 and MC 3 are established for Applicant's marijuana use. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on drug involvement.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline G (Alcohol Consumption): 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 H (Drug Involvement): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Government Exhibit (GX) 3, pp. 1-2; Tr. 49.
2. Tr. 49.
3. Tr. 34-35.
4. Tr. 35-36.
5. GX 2, p. 2-3.
6. Tr. 39.
7. GX 2; GX 4; GX 5..
8. GX 6.
9. Tr. 42-44.

10. Tr. 59.

11. Tr. 45.

12. Tr. 58.

13. *See* Hearing Exhibit I.