

KEYWORD: Alcohol; Drugs; Personal Conduct

DIGEST: Applicant has a history of three alcohol-related arrests over a 13-year period that resulted in convictions, jail time, fines and probation. Since being diagnosed for alcohol dependence, he has continued to consume alcohol without any updated prognosis. His restorative efforts to date, while encouraging, are insufficient to enable safe predictive assessments about his ability to avoid recurrence in the foreseeable future. Applicant's history of drug abuse, while considerable, includes no probative recent use and is, accordingly, mitigated by the passage of time. His omissions of his alcohol-related offenses and drug use in his security clearance applications (SF-86s) draw mixed conclusions: Falsification is established with respect to his omitted and understated drug use, but not as to his alcohol-related arrests. Clearance is denied.

CASE NO: 04-03795. h1

DATE: 05/31/2006

DATE: May 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03795

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of three alcohol-related arrests over a 13-year period that resulted in convictions, jail time, fines and probation. Since being diagnosed for alcohol dependence, he has continued to consume alcohol without any updated prognosis. His restorative efforts to date, while encouraging, are insufficient to enable safe predictive assessments about his ability to avoid recurrence in the foreseeable future. Applicant's history of drug abuse, while considerable, includes no probative recent use and is, accordingly, mitigated by the passage of time. His omissions of his alcohol-related offenses and drug use in his security clearance applications (SF-86s) draw mixed conclusions: Falsification is established with respect to his omitted and understated drug use, but not as to his alcohol-related arrests. Clearance is denied.

**STATEMENT OF CASE**

On April 26, 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 July 19, 2005, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 2, 2006. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his alcohol consumption, drug use, and personal conduct issues. The case was assigned to me January 23, 2006.

**SUMMARY OF PLEADINGS**

Under Guideline G, Applicant is alleged to have (a) consumed alcohol, at times to excess and to the point of intoxication (to include three drinks daily), from at least the early 1980s to at least February 2004, (b) been arrested on three occasions between July 1983 and August 1996 for alcohol-related offenses, (c) received treatment from April 1997 to December 1998 at Center F for diagnosed (in part) alcohol dependence, and (d) continued to consume alcohol notwithstanding his treatment for alcohol dependence.

Under Guideline H, Applicant is alleged to have (a) used marijuana with varying frequency, at times daily, from about 1972 to at least January 2000, (b) purchased marijuana, (c) continued to use marijuana after he had been granted a security clearance in May 1988 and September 1993, respectively, and (d) been terminated from his employment with Company A in January 2000 for violation of a last chance memo and violation of the terms and conditions of Company A's drug-free workplace program, after testing positive for marijuana in a urinalysis test.

Under Guideline E, Applicant is alleged to have (a) falsified his security clearance application (SF-86) of September 1992 by answering no to ever using illegal substances, omitting two of his alcohol-related arrests, (b) falsified his SF-86 of June 2002 by omitting two of his alcohol-related offenses, and (c) understated his marijuana use in a signed, sworn statement given to a DoD investigator in 1999.

For his response to the SOR, Applicant denied having more than three drinks a day or being involved with law enforcement since 1996. He denied using marijuana between 1988 and 1993, intentionally omitting his 1983 DuI offense in answering his 1992 SF-86, and intentionally omitting his 1983 and 1988 DuI offenses in answering his 2002 SF-86. Applicant admitted the balance of the allegations with explanations about his drinking practices, his drug use, and his drug use omissions.

### **FINDINGS OF FACT**

Applicant is a 50-year-old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant began experimenting with alcohol at the age of 14. By the early 1980s he was consuming beer on a regular basis. From a consumption pattern of a couple of beers a day in the early 1980s, he escalated his alcohol consumption to

no less than a 6-pack a day over a 10-year span before cutting back some following an alcohol-related incident in August 1996. Following his 1996 arrest, he continued to consume alcohol (approximately three beers a day) through arch 1997.

In July 1983, Applicant committed the first of his three alcohol-related offenses. He was arrested in State A and charged with operating a motor vehicle with a BAC level of .10 per cent (a felony). He pleaded guilty to an amended charge of operating a vehicle impaired by alcohol and was sentenced to 10 days in jail and fined \$250.00 (*see* items 9 and 10).

Applicant was involved in a second alcohol-related offense in May 1988 in State B. Court records indicate he was arrested and charged with driving under the influence of alcohol (DuI) and driving without automobile insurance. He pleaded guilty to the DuI count and was ordered to serve 130 hours of community service, in addition to being fined \$917.00. The second charge was dismissed, and he was placed on probation for seven years (*see* items 6 and 8).

In August 1996, Applicant was arrested for a third alcohol-related offense in State C. Court records report that Applicant was charged with DuI and was permitted to enter a deferred prosecution program, conditioned on his paying a fine of \$425.00 and a fee of \$600.00. Additionally, he was required to attend a DuI victim impact panel and alcohol classes and AA meetings (*see* item 11). Applicant is credited with completing the terms of his probation, and the case was dismissed in January 1998.

To satisfy his probation requirements, Applicant voluntarily enrolled in Center F's active recovery group for substance abusers in April 1997. F Center treatment records report that Applicant was diagnosed as chemically dependent on admission, with the primary substance being alcohol. Counselors with F Center recommended he return to intensive outpatient treatment to stabilize himself against relapse risks. Between May 1997 and November 1997, Applicant participated in F Center's recovery program. Progress notes report varying success with his after care during this period of participation. While he attended AA meetings during this period, he exhibited depression and a lack of motivation about his recovery. Details of his AA participation are not available.

While attending Center F's outpatient program, Appellant continued to drink on weekends and experienced difficulties maintaining his sobriety. Seeking assistance from his company's employee assistance program (EAP), he consulted a company substance abuse counselor in November 1997. He informed the counselor in this session that he had alcohol-related attendance problems with his employer and was concerned about losing his job. Acknowledging a continuing alcohol and drug problem, he was kicked out of a treatment program he entered the previous January 1997 after relapsing and had been unable to get inpatient treatment approval from his insurance company. He confirmed his continuing involvement with Center F's program for the previous several months, while continuing to drink on weekends (6 to 8 beers a weekend). While he admitted to being an alcoholic/addict, he had not as yet embraced sobriety in his life.

Shortly after meeting with his company EAP counselor in November 1997, Appellant enrolled in VG's inpatient program for substance abuse. At VG, Applicant encountered difficulties integrating recovery and was recommended to return to Center F's focus program for relapse prevention. When he met again with his EAP counselor in December 1997, he verbalized his continuing struggles with recovery and concerns over his possible job loss and was assigned a guarded prognosis.

Appellant continued to participate in Center F's focus group between December 1997 and December 1998. Attendance records indicate progress in understanding his alcohol problems and willingness to work on his recovery needs. Appellant's treatment counselor spoke with the court probation officer in January 1999 and advised the officer that Applicant had received enough professional support for ongoing recovery to the point where there was no further clinical need for him to continue with their support program (*see* item 13). The probation officer, in return, indicated the probation department was ready to close its file on Applicant.

Applicant continued to attend AA meetings following his discharge from Center F in January 1999. His EAP records credit him with AA attendance and good recovery awareness for the first few months of 1999. But he began having attendance problems again in the latter months of 1999. October 1999 EAP progress notes report Appellant's infrequent AA visits, attendance problems, and a lack of strong recovery activities. Applicant was also credited with apparent sobriety and reasonable progress, and was encouraged to attend AA (item 13).

Applicant acknowledges being an alcoholic but continues to consume alcohol: about two to three beers a day (*see* item 8). He expresses his intention to continue drinking about three beers a day, while holding down a job, attending church, and going to AA meetings.

Although alcohol was Applicant's principle substance of choice, he also used illegal substances. Between 1972 and 1980, he used marijuana regularly (near daily use). He turned to cocaine in approximately 1981 (at the age of 26) and used this substance two to three times a week until about 1988, along with his occasional use of LSD. Most of the time he used illegal drugs in conjunction with alcohol. Applicant was granted a security clearance in 1988 and 1993. Applicant continued using marijuana on a regular basis between 1994 and January 2000, although less frequent (about three to four times per month). Most of his use occurred at parties in the company of friends. During this period, he sometimes purchased marijuana (generally in the form of \$20 to \$30 plastic baggies) for his personal use (*see* item 7). While Applicant was treated for both alcohol and drug use during his brief 1997 stay at VG Hospital, he soon returned to using marijuana after his discharge (*see* items 8 and 12). Applicant's interview statements are corroborated by the statements contained in his November 1997 EAP report, which confirms his use of illegal drugs for most of his life (*i.e.*, from high school through 1997). Based on this reported information from Applicant and his company's EAP, inferences warrant that he used illegal drugs from 1972 (while he was in high school) through January 2000, with some intermittent breaks of use between 1988 and 1993.

During a Christmas season vacation in 1999, Applicant visited friends. With these friends he smoked marijuana on a number of occasions and contributed money towards the purchase of the marijuana. When he returned to work in January 2000, his employer administered a random drug test in which he tested positive for marijuana. Based on the results of the random drug test, his employer terminated his employment, citing his violation of the company's last chance memo and his testing positive for marijuana. In his 2002 DSS interview (item 6), Applicant assured he had not used illegal drugs since his last use in December 1999 and did not intend to use any illegal drugs in the future (alcohol

being his drug of choice). He did not attempt to correct this cut-off date when interviewed again by DSS in February 2004 (*see ex. 8*). Absent any more documented proof of Applicant's using illegal substances past January 2000, no inferences of additional use may be drawn.

Asked to complete a security clearance application (SF-86) in December 1992, Applicant omitted his 1983 alcohol-related arrest and denied any use of illegal substances when responding to question 20. He attributes his arrest omission to a mistaken understanding over whether he was required to list offenses over seven years old that he had previously provided in a 1987 SF-86 (*see item 6*). By contrast, he admits to intentionally withholding information about his prior drug use for fear of losing his security clearance while employed for his previous employer. Six months later, Applicant was interviewed by a DSS agent and acknowledged both his 1983 and 1988 arrests without any apparent confrontation. Applicant's explained reasons for omitting his 1983 arrest, while mistaken, do not appear to have been deliberate and are accepted.

However, Applicant continued to withhold information about his prior drug use. Based on the circumstances surrounding his initial omissions of drug use, his assigned explanations and his continued withholding of information about his prior drug use in his June 1993 DSS interview (*see item 7*), inferences warrant that Applicant knowingly and wilfully withheld information about his use of illegal drugs in his December 1992 SF-86.

Applicant completed a second SF-86 in June 2002. In this questionnaire, he listed his 1996 alcohol-related arrest when answering question 24 but omitted his 1983 and 1988 arrests. He also understated his illegal drug use when answering question 27 by limiting his use to just the six times he acknowledged in December 1999. Applicant attributes his arrest omissions to a mistaken understanding over whether he had to list arrests over seven years old that he previously reported. His explanations are plausible and are accepted as credible reasons for his arrest omissions, free of any deliberate omission.

Less reconcilable with tenets of candor are Applicant's SF-86 understatements of his drug use. Considering his explanations for omitting his drug use in the previous SF-86 he executed and the absence of any responsive explanation for his drug use understatements in his June 2002 SF-86, inferences warrant that he deliberately understated his drug use out of concern for his security clearance.

Applicant was interviewed by a DSS agent in September 2002 (*see item 6*). In this interview, Applicant appears to have freely acknowledged his two alcohol-related arrests of 1983 and 1988 without any prodding from the agent. These voluntary disclosures serve to corroborate his omissions explanations. By contrast, Applicant again deliberately understated his use of illegal substances, limiting his use to the six times he used marijuana while on vacation in December 1999, and for which he later tested positive. Not until Applicant was interviewed by DSS for a second time (in February 2004) did he provide a more complete accounting of his drug history through January 2000 (*see ex. 8*).

Applicant's claims of being a loyal, hard working American citizen are not in dispute in this proceeding and are fully accepted. His cited history of involvement in charitable youth groups and his recognized employee skills are not challenged and are also accepted.

## **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 E2.2.2 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.

### **Drug Involvement**

*The Concern:* Improper or illegal involvement with drugs raises questions regarding an individual'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.

### **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.

### **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 fact[s] 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 is an assembler for a defense contractor with many years of valued service in the aviation industry, during which he held a security clearance for much of the time. He also brings a considerable history of alcohol problems, illegal drug abuse, and omissions of material information in the SF-86s he completed in 1992 and 2002, which raise security concerns about his judgment, reliability and trustworthiness.

### **Applicant's alcohol history**

Applicant's history of alcohol-related incidents and dependence diagnoses reflect both a recent pattern of alcohol abuse and a dependency problem that are security significant. On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: E2.A7.1.2.1 (*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*), E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional*), and E2.A7.1.2.6 (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*).

To his credit, Applicant has sought counseling and curtailed his drinking since his last alcohol-related incident (in August 1996). However, his lack of an identified current sponsor, limited time in AA attendance, continued drinking in the face of a dependency diagnosis, and failure to furnish a favorable prognosis preclude application of any of the mitigating conditions of the Guidelines. His renewed commitment to drinking, even at drastically reduced levels falls short of the type of firm commitment to sobriety required to make safe predictions about his ability to avoid incidents of alcohol abuse in the future. So, while Applicant is to be commended for the many months he has spent in treatment and recovery support programs, his efforts to date do not enable him to invoke any of the mitigating conditions of the guidelines for alcohol consumption.

All in all, Applicant's mitigation efforts to date reflect too little sustained commitment to active recovery support groups, including AA and its tenets of sobriety, to conclude he is no longer at risk to recurrence. Without a favorable prognosis, continued abstinence in the wake of a prior dependency diagnosis, and demonstrated ongoing commitment to recovery support programs (including AA), it would be imprudent to relax the time and other requirements of E2.A7.1.3.3 of the guidelines for alcohol (*Positive changes in behavior supportive of sobriety*) or E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of recognized alcohol treatment program*).

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 to warrant safe predictions that he is no longer at risk of judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by sub-paragraphs 1.a through 1.f of Guideline G.

## **Applicant's drug abuse**

Between 1972 and 2000, Applicant used marijuana periodically, ranging from daily use between 1972 and 1980, to intermittent use between 1993 and 2000, and a last admitted use in December 1999 that was detected in a random urinalysis conducted on Applicant in January 2000. Besides marijuana, Applicant also used cocaine regularly (two to three times a week) between 1981 and 1988, and some LSD during the same period. Based on Applicant's pleading admissions and compiled evidentiary record, two disqualifying conditions (DC) of the Adjudicative Guideline for drugs are applicable: E2.A8.1.2.1 (*Any drug abuse*) and E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

To be sure, there is considerable reason to question Applicant's denials of any drug use since December 1999 in the face of his lengthy history of recurrent drug use, his positive drug test in January 2000 (following his late 1999 recurrent marijuana use), and his repeated concealment of his more extensive drug use. But misconduct predictions, generally, may not be based on supposition or suspicion. *See* ISCR Case No. 01-26893 (October 2002); ISCR Case No. 97-0356 (April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used marijuana or other drugs since his last recorded use, or based on his past use is likely to resume usage in the future. *See* ISCR Case No. 02-08032 (May 2004).

Based on his own assurances of drug avoidance and the passage of time since his last detected use of illegal substances in January 2000, Applicant may invoke E2.A8.1.3.1 (The drug involvement was not recent) and E2.A8.1.3.4 (*A demonstrated intent not to abuse any drugs in the future*). While Applicant's recurrent marijuana (mixed with some earlier cocaine and LSD use) use over 28 years raises some questions over the strength of his avoidance assurances, it is not enough to prevent Applicant's successful mitigation of the issue. Applicant's recurrent use of marijuana between 1972 and 2000, has been interrupted by short periods of non use, and most importantly has not been shown to have occurred since January 2000 (a period of over five years).

Applicant's assurances that his marijuana involvement is a thing of the past are entitled to acceptance based on the lack of proven active marijuana use over the past five years that can be attributed to him. Considering all of the developed evidence of record, Applicant mitigates security concerns associated with his use and possession of marijuana and other drugs. Favorable conclusions warrant with respect to sub-paragraphs 2.a through 2.d of Guideline H.

## **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 and drug use omissions in each of his two SF-86s, as well as in each of his ensuing DSS interviews (*i.e.*, in 1993 and September 2002). So much trust is imposed on persons cleared to see classified information that the margins for excusing deliberate omissions are necessarily small.

By deliberately omitting his past marijuana, cocaine and LSD use in each of the SF-86s he completed, and repeating his drug use omissions and understatements in his ensuing DSS interviews, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. Applicant provides no justifiable explanations for omitting and understating his illegal drug use, and he cannot avert conclusions of knowing and wilful concealment of his drug use out of concern for losing his security clearance. Concern for losing his security clearance, while an understandable reaction, has never been considered by the Appeal Board to be justifiable grounds for concealing material information about illegal drug use, and is not a supportable reason for Appellant's drug use omissions and understatements.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2 factors), unfavorable conclusions warrant with respect to subparagraph 3.b and 3.d through 3.f of Guideline E. Applicant is entitled to favorable conclusions with respect to his alcohol-related arrest omissions covered by subparagraphs 3.a and 3.c.

In reaching my 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

**GUIDELINE H (DRUGS): FOR APPLICANT**

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

**GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT**

Sub-para. 3.a: FOR APPLICANT

Sub-para. 3.b: AGAINST APPLICANT

Sub-para. 3.c: FOR APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

**DECISION**

In light of all the circumstances presented by the record in this case, it is no clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley  
Administrative Judge