

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a 48-year-old sheet metal worker who has worked for a federal contractor since 2003. Applicant has a history of criminal offenses from 1976 to 2004. Many of the offenses occurred after Applicant had consumed alcohol. Applicant continues to consume alcohol. Applicant failed to list any of his criminal offenses on his security clearance application as was required. Applicant has failed to mitigate the security concerns regarding his alcohol consumption, criminal conduct, and personal conduct. Clearance is denied.

CASENO: 04-05788.h1

DATE: 10/28/2005

DATE: October 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05788

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is a 48-year-old sheet metal worker who has worked for a federal contractor since 2003. Applicant has a history of criminal offenses from 1976 to 2004. Many of the offenses occurred after Applicant had consumed alcohol. Applicant continues to consume alcohol. Applicant failed to list any of his criminal offenses on his security clearance application as was required. Applicant has failed to mitigate the security concerns regarding his alcohol consumption, criminal conduct, and personal conduct. Clearance is denied.

STATEMENT OF CASE

On April 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline E, personal conduct.

In a sworn statement dated April 21, 2005, Applicant responded to the SOR allegations, admitting all of them, and provided some explanations for allegations 3.a. and 3.b. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on June 24, 2005. The FORM was received by Applicant on July 12, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. The case was assigned to me on October 7, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 48 years old, married and has two children, one who still lives at home. He has been employed as a sheet metal worker with a federal contractor since 2003. Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1971 to at least January 15, 2004. Applicant began drinking alcohol when he was 15-years-old in high school.⁽²⁾ Applicant's father and grandfather were both alcoholics.⁽³⁾

Applicant was arrested by military police on September 2, 1976, and charged with Destruction of Government property. He was intoxicated at the time.

Applicant was arrested on January 14, 1998, and charged with Operating Under the Influence, Unreasonable Speed, and Failure to Appear. Applicant had decided his wife was too drunk to drive, so he did instead. Applicant was found guilty of Operating Under the Influence and Unreasonable Speed. He was sentenced to 90 days in jail, suspended, one year of probation, fined \$500.00, plus a \$10.00 fee and ordered to perform 100 hours of community service. Applicant was also ordered to attend an alcohol awareness class and 8 Alcoholic Anonymous sessions.⁽⁴⁾ The Failure to Appear charge was Nolle Prosequi. No information was provided whether Applicant completed the class or sessions.

Applicant was arrested on July 23, 1999, and charged with Disorderly Conduct. Applicant was found guilty and sentenced to 30 days in jail, suspended, and one year Conditional Discharge. Applicant had gone over to a friend's house to retrieve his wife, who had been drinking, when an altercation ensued between them.⁽⁵⁾ Applicant had consumed alcohol prior to this arrest.

Applicant was arrested on July 13, 2000, and charged with Breach of Peace. He was found guilty and sentenced to six months in jail, suspended, and two years Conditional Discharge. Applicant argued with a state trooper and hit him with a water balloon during the argument.⁽⁶⁾

Applicant was arrested on August 14, 2000, and charged with Drinking While Driving. He was found guilty and fined \$85.00. Applicant had an open container of alcohol in his car and the state trooper observed it.⁽⁷⁾

Applicant was arrested on January 3, 2004, and charged with Domestic Violence Assault, 4th degree. He pleaded not guilty and a pretrial hearing was set for February 17, 2004. Applicant was issued a No Contact Order with an expiration date of January 4, 2006. Applicant had consumed alcohol prior to this arrest. Applicant, his wife, and his son were

involved in a shoving match.⁽⁸⁾ The police were called and Applicant was arrested. Applicant claims that the judge ordered his wife receive an alcohol evaluation and Applicant attend an anger management class.⁽⁹⁾ Applicant further claims once these are completed the judge will drop the charges.⁽¹⁰⁾ No information was provided to substantiate Applicant's claim or refute it. No further information was provided regarding the current status of these charges and the No Contact Order.

Applicant stated ""I have had a number of adverse contacts with law enforcement that have been alcohol related. However, I have never been diagnosed or treated for alcoholism. I do not feel that I have a drinking problem and never have. I currently use alcohol (beer) and my use always occurs at my home. I will routinely consume approximately one six pack of beer a week."⁽¹¹⁾ Applicant further stated, " I will not abuse alcohol in the future. I am attempting to get my family straightened out with the classes and counseling for my wife."⁽¹²⁾

Applicant executed a security clearance application (SCA) on March 19, 2003. Question 24 asked, *Your Police Record-Alcohol/Drug Offenses-Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 19 U.S.C. 3607.* Applicant answered the question "No" which was false.

Question 26 asked, *Your Police Record-Other Offenses, For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol related or drug related.)* Applicant answered the question "No" which was false.

Applicant claimed "at the time I filled out the questionnaire (sic), the offense I committed occurred (sic) so long ago I didn't recall."⁽¹³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline E, personal conduct considerations, with their respective DC and MC,

apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁴⁾ The government has the burden of proving controverted facts.⁽¹⁵⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁶⁾ 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.⁽¹⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁸⁾

No one has a right to a security clearance⁽¹⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²²⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist 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.

Guideline J-Criminal Conduct 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, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G, Guideline J, and Guideline E.

Based on all the evidence I considered Alcohol Consumption Disqualifying Condition (AC DC) 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*), and conclude it applies. I have also considered the whole person concept and conclude that Applicant's alcohol consumption led to impaired judgment and irresponsibility. Applicant has admittedly been drinking alcohol since he was 15 years old, sometimes to the point of excess. Applicant has been arrested, charged and convicted of numerous offenses where alcohol was related to the offense or impacted his decision-making. Specifically Applicant was arrested, charged or convicted of Destruction of Government Property, Operating Under the Influence, Disorderly Conduct, Driving While Drinking and Domestic Violence Assault. These offenses spanned a period from 1976 to 2004 and Applicant had consumed alcohol prior to many of the arrests. Applicant acknowledges he has had adverse contacts with law enforcement that were alcohol related, but does not believe he has a problem with alcohol.

I have considered all the mitigating conditions especially Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). I conclude none of these mitigating conditions apply. Applicant has developed an established pattern of alcohol-related offenses as noted above that span over 28 years. Applicant's latest offense of domestic violence assault occurred in 2004, after he had filled out his SCA, and is therefore recent. No evidence was presented to indicate positive changes have been made by Applicant to support a change in his behavior or a commitment to sobriety. To the contrary, Applicant continues to consume alcohol and there is no indication that Applicant correlates his alcohol abuse with the negative impact it has had on his life. Applicant has failed to mitigate this security concern.

Based on all the evidence Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions*

of criminal conduct, regardless of whether the person was formally charged), and E2.A10.1.2.2 (A single serious crime or multiple lesser charges) apply. Applicant was arrested, charged with, and convicted for various and numerous offenses from 1976 through 2004. Applicant's most recent offense of Domestic Violence Assault 4th, occurred in 2004, when a No Contact Order was issued. No additional evidence was provided regarding the final disposition of this offense, however the No Contact Order does not expire until January 5, 2006. Applicant falsified his SCA when he failed to divulge his past criminal record, which is a felony, in violation of Title 18 U.S.C. § 1001.

I considered all the mitigating conditions especially Criminal Conduct Mitigating Condition (CC MC) E2.10.1.2.1 (*The conduct was not recent*); CC MC E2.10.1.2.2 (*The crime was an isolated incident*); CC MC E2.10.1.2.3 (*The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*); CC MC E2.10.1.2.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*); and CC MC E2.10.1.3.6 (*There is clear evidence of successful rehabilitation*). I conclude none of the mitigating conditions apply. Applicant's most recent arrest was in 2004, and no information was provided as to the disposition of the offense. Applicant's actions are not isolated based on his long history of criminal conduct from 1976 to 2004. There is no evidence that Applicant was pressured or coerced into committing any of the offenses, nor is there any evidence to suggest the offenses were not committed voluntarily. The recurring element related to most of the offenses is alcohol and that element continues to be a part of Applicant's life. Applicant does not seem to recognize that his consumption of alcohol has negatively impacted his judgment and his life. Although Applicant states he is to attend anger management classes and his wife is to be evaluated, no evidence was presented whether he attended any classes nor has there been any evidence to show Applicant has taken any positive steps towards rehabilitation. Applicant has failed to mitigate this security concern.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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*), PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply in this case.

Applicant deliberately omitted and concealed his extensive criminal record and alcohol related offenses. He deliberately provided false answers on his SCA and did not divulge the information until confronted by an investigator. Applicant's conduct and concealment of information increases his vulnerability to exploitation and coercion. Applicant has shown through his criminal activity spanning 28 years, and by lying on questions on his SCA a pattern of dishonesty and rule violations. I considered Applicant's explanation for failing to divulge his criminal offenses because he did not recall them because he committed them so long ago. Applicant failed to list even his most recent offenses, four of them, occurring from 1998 to 2000 on the SCA he filled out in 2003. Applicant's explanation is not credible.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided*

correct information voluntarily), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant blatantly falsified his SCA. He did not provide the correct information until confronted by an investigator. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. Applicant

was obviously attempting to hide his past, which makes him especially vulnerable and unreliable. Applicant failed to mitigate the personal conduct security concerns.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding his alcohol consumption, criminal conduct, and personal conduct. Applicant's concealment and disregard for the truth is a grave and serious concern that reflects poorly on his character and judgment. Applicant's obvious lack of respect for the law is also a serious concern. Alcohol has had a negative impact on Applicant's life for 28 years, yet he continues to consume it, and has failed to take steps towards rehabilitation. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines G, J, and E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1: Alcohol Consumption (Guideline G) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Paragraph 2: Criminal Conduct (Guideline J) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Paragraph 3: Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 5 at 4.
3. *Id.*
4. *Id.* at 2.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 3.
9. *Id.*
10. *Id.*
11. *Id.* at 4.
12. *Id.*
13. Item 3.
14. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
15. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
16. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
17. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
18. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
19. *Egan*, 484 U.S. at 531.
20. *Id.*
21. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
22. Executive Order 10865 § 7.