

KEYWORD: Alcohol; Drugs

DIGEST: Applicant's abuse of alcohol and marijuana caused him to be terminated from his job in April 2003. He has been alcohol and drug abstinent since at least September 2003, and drastically altered his lifestyle. Clearance is granted.

CASENO: 04-06267.h1

DATE: 09/21/2005

DATE: September 21, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06267

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's abuse of alcohol and marijuana caused him to be terminated from his job in April 2003. He has been alcohol and drug abstinent since at least September 2003, and drastically altered his lifestyle. Clearance is granted.

STATEMENT OF THE CASE

On April 13, 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. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline H for drug involvement, and Guideline G for alcohol consumption. Applicant submitted an answer to the SOR that was received by DOHA on May 9, 2005, admitted all SOR allegations, and requested a hearing.

The case was assigned to me on July 18, 2005. A notice of hearing was issued on July 27, 2005, scheduling the hearing for August 17, 2005. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3, and admitted into the record without objection. The government also offered copies of two federal statutes that were marked as Appellate Exhibits (APP E) I and II. Administrative notice was taken of APP E I and II without objection. Applicant testified, called three witnesses to testify on his behalf, and offered six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6. AE 1-4 and AE 6 were admitted into the record without objection. AE 5 was admitted into the record over Department Counsel's objection. The transcript was received on August 25, 2005.

PROCEDURAL MATTERS

Department Counsel moved to amend SOR subparagraph 1.a. to conform with Applicant's testimony. The amendment was made on the face of the

SOR without objection.

A penciled-in change to the social security number listed in the SOR was made on the copy of the SOR returned by Applicant as his answer. The amended social security number is consistent with the social security number for Applicant contained in GE 2.

FINDINGS OF FACT

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

Applicant is a 30-year-old married man who has worked for a defense contractor since June 2003. He graduated from high school in 1993, and worked at various unskilled jobs until he enlisted in the United States Navy in October 1995. Applicant served in the Navy as a data systems technician (DS), possessed a secret security clearance, had no disciplinary incidents, and was honorably discharged in October 2001 as a DS2 (paygrade E-5). While in the Navy, Applicant married a Sailor, and they have one son who is eight years old.

Before joining the Navy, Applicant experimented with LSD once, mushrooms twice, and occasionally used marijuana. He also abused methamphetamine for a short period of time. Applicant denies any drug use while in the Navy, however, he admits abusing alcohol by regularly drinking 8-12 beers on Fridays and Saturdays and becoming intoxicated. He would also, on occasion, drink to intoxication during the week.

Applicant was unemployed for about six months after being discharged from the Navy. Applicant, his wife, and his son lived with his father during this time, and his wife worked at a convenience store. His father was concerned about Applicant's alcohol consumption, and it eventually resulted in Applicant's wife leaving him for about six months in 2003. Applicant drank to intoxication virtually every Friday and Saturday night, again consuming 8-12 beers, and would experience an alcohol-induced blackout about every two to three months. He would also regularly use marijuana while drinking in social settings. Applicant estimates he was using marijuana two to three times a month as of April 2002. He purchased \$20.00 quantities of marijuana on several occasions during this time.

Applicant was hired by a company in March 2002, and possessed a security clearance while in the company's employ. The company sent him and other employees on a business trip to a foreign country shortly after he was hired. Applicant managed to get drunk daily and used marijuana with other employees on one evening during this trip. He lost his identification as a result of being drunk, which caused problems in exiting the country. Applicant's employer suggested he seek treatment for his alcohol abuse and he complied by seeking assistance from a Veteran's Administration hospital. He attended sessions at the hospital once a month for approximately six months, and was prescribed Welbutrin, which he took for about a month.

In April 2003, Applicant attended a symposium with other employees. He became intoxicated and used marijuana one evening, and the following

evening again became intoxicated and forced his way into a woman co-worker's hotel room. He asked permission to sleep in her room and offered to use marijuana with her. She refused both requests and insisted he leave. Instead of leaving, Applicant went into the bathroom, consumed marijuana by himself, and then left the room at her insistence. She reported the incident to Applicant's employer and he was terminated on April 18, 2003, for inappropriate and unprofessional conduct and violation of company policy.

The loss of his job was apparently a wake-up call for Applicant. Shortly thereafter, he completely quit drinking alcohol and using marijuana. His wife and son have returned to live with him, and they have purchased their own home. His wife and father testified they have not seen him consume any alcohol since at least September 2003. Applicant has returned to school, is pursuing a college degree, and has accumulated about two years of college credit.

Applicant's supervisors are aware of his past transgressions and have seen nothing that would indicate Applicant uses either drugs or alcohol. They have received reports from other employees that Applicant always refuses to consume alcohol when in social settings where alcohol is present, and they have received no adverse reports from any source concerning Applicant. Applicant's references and performance appraisals attest to the fact that he has quickly become an outstanding employee who is punctual, professional, and knowledgeable.

Applicant's testimony and the evidentiary submissions strongly indicate that Applicant took stock of himself and his future when he was fired from his first post-Navy job. He has not consumed alcohol or abused marijuana for at least two years, professes an intent to remain abstinent in the future, and has demonstrated the willingness and ability to remain sober. Applicant no longer associates with the people he did while drinking and abusing drugs, but rather devotes most of his free time to family activities, especially with his eight-year-old son.

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 H, pertaining to drug involvement, and Guideline G, pertaining to alcohol consumption, 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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance,⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

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 abused alcohol while in the Navy and for almost two years after his discharge. His alcohol abuse in work related environments caused his employer to suggest he seek treatment following the first incident and to terminate his employment after the second incident. Disqualifying Condition (DC) 2: *Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job* applies.

Applicant has completely changed his lifestyle since being terminated from his job in April 2003. He no longer consumes alcohol, has disassociated himself from the people with whom he used to drink, is pursuing a college degree, has become a family oriented individual, and has impressed both family and work associates with his new persona. Mitigating Conditions (MC) 2: *The problem occurred a number of years ago and there is no indication of a recent problem*; and MC 3: *Positive changes in behavior supportive of sobriety* apply. Guideline G is decided for Applicant.

Under Guideline H illegal drug involvement raises questions about an individual's willingness or ability to protect classified information. Involvement with or use of an illegal drug indicates unwillingness or inability to abide by the law. Cleared employees must respect regulations whether they agree with them or not. If they do not respect the rules on illegal substances, they may not respect the rules designed to protect classified information.

Applicant used marijuana and other drugs before he entered the Navy in 1995, and marijuana from the time he was discharged in October 2001 until sometime before September 2003. He also purchased small quantities of marijuana on several occasions. He possessed a security clearance on at least some of the occasions when he abused marijuana after being discharged from the Navy. DC 1: *Any drug abuse*; and DC 2: *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution* apply.⁽¹²⁾

Again, the loss of his job obviously served as a much needed wake-up call for Applicant. He has not abused any controlled substance for more than two years, and has clearly demonstrated the intent, willingness, and ability to remain abstinent in the future. MC 1: *The drug involvement was not recent*; and MC 3: *A demonstrated intent not to abuse any drugs in the future* apply. Guideline H is decided for Applicant.

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 trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Having done so, I find Applicant has mitigated the security concerns caused by his alcohol consumption and drug involvement. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline H: For Applicant

Subparagraphs a-g: For Applicant

SOR ¶ 2-Guideline G: For Applicant

Subparagraphs a-c: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. DC 5: . . . *Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination* does not apply in this case based upon my finding that under the circumstances present herein Applicant's use of marijuana is not recent.