

KEYWORD: Alcohol; Financial; Criminal Conduct; Drugs

DIGEST: Applicant failed to mitigate alcohol and financial security concerns because of the recency of excessive alcohol use and failure to pay delinquent debts. He successfully mitigated drug concern for a one time use of marijuana while being treated for rabies and criminal conduct because a four year period has elapsed since the last of four criminal charges. Clearance is denied.

CASENO: 04-07513.h1

DATE: 02/14/2006

DATE: February 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07513

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate alcohol and financial security concerns because of the recency of excessive alcohol use and failure to pay delinquent debts. He successfully mitigated drug concern for a one time use of marijuana while being treated for rabies and criminal conduct because a four year period has elapsed since the last of four criminal charges. Clearance is denied.

STATEMENT OF CASE

On May 18, 2005, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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 for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 20, 2005, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on September 6, 2005. A notice of hearing was issued on September 27, 2005, and a hearing was held on November 18, 2005. The Government introduced 23 exhibits and the Applicant introduced one. All exhibits were admitted into evidence. The Applicant testified. The record was left open for 30 days and Applicant submitted 16 additional documents which were admitted in evidence. The transcript was received on December 2, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor working as a software engineer who effectively admitted all of the specific allegations in the SOR by refusing to deny them. He offered extenuating circumstances for several of the allegations.

After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

In 1997 Applicant went through a difficult divorce which led to a series of incidents involving his former wife when he was arrested five times while intoxicated. Two charges of battery in 1997 were nolle prosequi, the third in 1999 involving his landlord resulted in a protective order, the fourth involving failure to pay child support in 2000 resulted in a contempt citation, a fourth in 2000 for violating an injunction was dropped, and the fifth in 2001 involved harassment, resisting an officer without violence, and failure to appear resulted in a nolo plea and conviction only of failure to appear. He was sentenced to serve five days already served. He has had medical problems including seizures which was attributable to rabies treatment for having been bitten by a rabid raccoon that came into his home. While engaged in the painful rabies treatment he used marijuana on one occasion in 2001.

Applicant has extensive delinquent debts totaling over \$12,000.00. He was indebted for \$9,000.00 in child support arrearage for his only child, a 14-year-old son, which was the subject of the fourth criminal charge. Under court order, \$400.00 per month is being withheld from his pay and that debt is being reduced.

Despite earning over \$70,000.00 per annum and having no family responsibilities other than his child support payments, Applicant has taken few steps to resolve his delinquent debts. He has stated his intent to do so at various times with several officials but to date none of the delinquent debts have been extinguished or reduced substantially. None are on a payment schedule except for the child support.

Applicant has used alcohol to excess from 1997 until 2001 when he entered a treatment program for several months. He was diagnosed as alcohol dependent, and despite the diagnosis, he continued to drink but less after his discharge. He now drinks in moderation and has attended some meetings of Alcoholics Anonymous. He has had no criminal or alcohol related difficulties since 2001.

Applicant has held a security clearance for over 20 years both in military service and while working for various defense contractors since 1990. He served over eight years on active duty as a non-commissioned officer and four years in the National Guard. He is a university graduate. He has received several military awards and has never had a security violation. He has a favorable record in his corporate employment (Exh. B Items 8-16).

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The first allegation concerns Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) raising the issue of alcohol related incidents away from

work such as criminal incidents related to alcohol use and consumption to the point of impaired judgment (E2.A7.1.2.5.). The record of Applicant's arrests clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G.

Applicant failed to establish that he has been rehabilitated from alcohol abuse despite having been in a program for alcohol abuse where he was diagnosed as alcohol dependent (Exhs. 22 and 23). His history of alcohol abuse and the pattern of conduct over a long period of time is indicative of continuing alcohol related problems notwithstanding his treatment and occasional attendance at meetings of Alcoholics Anonymous. The last criminal incident involving intoxication occurred in May 2001 (SOR ¶ 3.f.) although Applicant admitted drinking to excess as recently as in 2004 (Tr. 61) when he was hospitalized for three days and diagnosed as having had a gran mal seizure. He is not certain whether the cause was alcohol or something else. However, his admission of intoxication in 2004 indicates a failure of rehabilitation as of only a year ago.

While there has been an effort by Applicant at rehabilitation and an intention not to drink to excess, there has been insufficient change in behavior supportive of sobriety. He does not meet any of the mitigating conditions (E2.A7.1.3.) for this guideline since he continues to drink, albeit at a reduced level, after diagnosis of dependency and a history of abuse.

Applicant's extensive debts prompted the allegation of Financial Considerations under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has not mitigated this issue since the only delinquent debt that is decreasing is for child support payments and it is being withheld from his pay by court order.

Guideline J involving Criminal Conduct is alleged. The Government has established a sufficient basis that Disqualifying Condition (E2.A10.1.1) might be applicable to Applicant in that he was charged with four criminal offenses during the period 1997 to 2001. The last arrest resulted in conviction and five days of confinement. The allegation could be mitigated by the facts that the criminal behavior was not recent. (E2.A10.1.3.1) The offenses all occurred over four years ago and I conclude that the mitigating condition is applicable.

The government has alleged Drug Involvement under Guideline H. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a

condition that may be disqualifying. Possible mitigating conditions that might be applicable are that the drug involvement was not recent (E2.A8.1.3.1.), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) Applicant has indicated his intention not to use drugs in the future, and did so only once 14 years ago under extraordinary circumstances that he vividly described at the hearing. While he did use the drug while he held a security clearance, I believe this single use under extraordinary medical circumstances, justifies a conclusion that the mitigating condition should be applied.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. 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.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that, while the Applicant has changed his habits regarding alcohol, it has not been sufficiently successful and over an insufficient period of time to justify granting a clearance. His financial situation is not improved and shows no signs of likely improvement in the near future. It is premature to grant him a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G: 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 F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: Against Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f.: For Applicant

Paragraph 4. Guideline H: FOR APPLICANT

Subparagraph 4.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge