

KEYWORD: Alcohol

DIGEST: Applicant is 44 years old, married, and works for a defense contractor. He had a 1981 driving under the influence of alcohol arrest and conviction. He attended two alcohol rehabilitation programs, had intermittent periods of sobriety, but continues to drink alcohol although he admits he is an alcoholic who has been professionally diagnosed as an alcohol abuser. Claiming he has stopped drinking alcohol, he gives three different dates over a two year period for ceasing to drink alcohol. When compared to his entire history, none are believable. Applicant has not mitigated the alcohol consumption security concern. Clearance is denied.

CASENO: 04-07825.h2

DATE: 02/08/2006

DATE: February 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07825

REMAND DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Ray Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 44 years old, married, and works for a defense contractor. He had a 1981 driving under the influence of alcohol arrest and conviction. He attended two alcohol rehabilitation programs, had intermittent periods of sobriety, but continues to drink alcohol although he admits he is an alcoholic who has been professionally diagnosed as an alcohol abuser. Claiming he has stopped drinking alcohol, he gives three different dates over a two year period for ceasing to drink alcohol. When compared to his entire history, none are believable. Applicant has not mitigated the alcohol consumption security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 18, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on June 16, 2005. He requested his case be decided on the written record in lieu of a hearing.

On July 27, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant initially appeared not to have filed a response to the FORM within the scheduled due date of September 10, 2005. The case was assigned to me on September 20, 2005, without any response in the file. I decided the case in a decision dated October 31, 2005.

Applicant appealed to the DOHA Appeal Board contending, among other issues, that he had filed a response by the September 10th deadline. He submitted evidence showing he submitted a response dated September 4, 2005 that was received at DOHA on September 9, 2005. Thereupon, the Appeal Board remanded the case to me for consideration of the response in accordance with the Directive. The response was included in the case file returned to me. I read it and considered it.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, including Applicant's September 4, 2005, response, I make the following additional findings of fact:

Applicant is 44 years old, married, and works for a defense contractor. He is an electronics technician. He is a veteran with 20 years' service in the U.S. Marine Corps. (Item 4)

Applicant consumed alcohol from 1981 until at least November 2004. In his May 2003 statement to the government investigator, he had declared his intention to stop drinking alcohol then, attend an Alcoholics Anonymous (AA) meeting that very day, to admit he continued to drink alcohol, and "to seek and maintain sobriety." (Item 5 and Response)

Applicant was arrested in January 1981 for driving under the influence of alcohol (DUI) after consuming 12 beers at a party. He was sentenced on his guilty plea to 48 hours of jail time, 40 hours of community service, fined \$1,000, and put on probation for up to three years. Applicant stopped drinking alcohol for about 18 months after that incident. (Items 2 and 5)

When Applicant resumed drinking alcohol, he drank 10 to 12 beers over five hours each Friday and Saturday nights with his friends. This drinking pattern went on from about June 1982 to sometime in 1985 when Applicant started to drink every night. He would drink four or five beers every night at home while continuing the 10 to 12 beer consumption on weekends. (Items 2 and 5)

In July 1988, Applicant realized he had a drinking problem when he awoke and discovered he had vomited in his sleep. He told his supervisor. Within a week he was admitted to a naval hospital for six weeks of in-patient treatment. He successfully completed the program and was discharged from it. He went to AA meetings daily for the first 90 days, then four or five times weekly. In 1995 or 1996 Applicant stopped attending AA because he thought he had solved his alcohol problem. In 1997, however, he resumed drinking again with the same pattern of nightly drinking and heavier consumption on the weekend. (Items 2 and 5)

On July 28, 2001 Applicant was admitted to a hospital to treat his acute alcohol withdrawal and dehydration. The physician there diagnosed Applicant as suffering from alcohol abuse. He was discharged on July 30, 2001, with recommendations for AA attendance and participation in a "new visions" program to assist Applicant to deal with his alcohol abuse problem. Applicant attended AA for 90 days, then attended four or five meetings each week until October 2001. At that time he moved to another state for employment. Within 10 days of his move, he started to drink again. Now he drinks one or two nights per week, consuming one or two beers. He continues to attend AA one or two times per week. Applicant knows he should not drink. He knows he has an alcohol problem and intended when he made his statement to the government investigator in May 2003 to stop drinking alcohol immediately. However, Applicant admitted in his answer to the SOR he continued to drink until at least March 2004. He also stated he was an alcoholic and battles alcoholism every day. His latest admission is that he stopped drinking in November 2004, but there is no substantiation of his claim from a credentialed medical professional or licensed clinical social worker who is staff member of a recognized alcohol treatment program. (Items 2, 5, 6)

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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). 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 adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply

equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that 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 that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

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

Guideline G: 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. E2.A7.1.1*

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The Disqualifying Conditions (DC) applicable are DC 1 (Alcohol-related incidents away from work, such as driving under the influence. (E2.A7.1.2.1), DC 3 (Diagnosis by a credentialed medical professional (e.g., physician) of alcohol abuse

or alcohol dependence. E2.A7.1.2.3), DC 5 (Habitual or binge consumption of alcohol to the point of impaired judgment. E2.A7.1.2.5), and DC 6 (Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program. E2.A7.1.2.6).

Applicant has a 1981 DUI. The physician attending him in 2001 when Applicant was admitted to the hospital for alcohol detoxification diagnosed alcohol abuse. Applicant's drinking pattern of every night and larger consumption on weekends is habitual consumption under the guideline. His continued use of alcohol, and his inability to cease drinking even after two alcohol treatment hospitalizations in 1988 and 2001 and periods of sobriety, show Applicant does not have full control over his drinking. Applicant admitted he is an alcoholic in his SOR answer and FORM response, yet he continued to drink alcohol. He keeps changing the latest time when he stopped drinking alcohol, from May 2003 to March 2004, and now the latest date is November 2004. While well-meaning, Applicant does not have sufficient control over his drinking problem to instill confidence in his professions of future sobriety. Furthermore, he does not support his latest statement contained in his September 2005 response with any professional evaluation to counterbalance his 20 year alcohol history. His unsupported present declarations of future sobriety, the fact he never compromised classified information while he was in the military, and "his impeccable service record" are not sufficient to overcome security concerns raised by his inability to control his alcohol consumption.

There are no Mitigating Conditions (MC) applicable here. There are no positive changes to support sobriety, no lengthy current sobriety. Applicant's statements after May 2003 when he signed his statement for the investigator show he has been unable to control his drinking. Therefore, I conclude this alcohol consumption security guideline against Applicant.

FORMAL FINDINGS

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

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

Subparagraph 1.f: Against 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 continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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).