

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant has a history of criminal offenses, most of which were alcohol-related. He was convicted of driving while impaired in 2002, after he had been diagnosed with alcohol dependence in 2000. Applicant falsified his security clearance application by deliberately failing to acknowledge the 2002 conviction and alcohol-related treatment and counseling. Clearance is denied.

CASENO: 04-08124.h1

DATE: 03/27/2006

DATE: March 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08124

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of criminal offenses, most of which were alcohol-related. He was convicted of driving while impaired in 2002, after he had been diagnosed with alcohol dependence in 2000. Applicant falsified his security clearance application by deliberately failing to acknowledge the 2002 conviction and alcohol-related treatment and counseling. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 25 April 2005, detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 24 May 2005 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 8 December 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 9 December 2005, but did not respond in the allotted time period. The case was assigned to me on 3 February 2006.

FINDINGS OF FACT

Applicant is a 33-year-old machinist for a defense contractor. He married in March 2000. He consumed alcohol, on

occasion to the point of intoxication, from 1989 to at least March 2004. Answer.

In April 1993, while Applicant was a college student, he was arrested for assaulting a female. His girlfriend had returned from Spring Break and showed him a hickey on her neck. He pushed her down and she fell into a closet. She called the police and he was arrested. At her request, the charge was later dropped. Alcohol was not a factor in this incident. Item 7 at 1.

Applicant was arrested in July 1995 for driving while his license was restricted/revoked. SOR ¶ 2.c. The charge was dismissed. Answer. Although Applicant admits he was arrested for the offense, there is no evidence to support a belief he actually committed the offense.

Applicant was arrested in August 1996 for assaulting a female, the woman who is now his wife, after consuming eight beers. This incident made Applicant "realize that [his] use of alcohol was creating a problem within his relationship with his [girlfriend]. He voluntarily sought alcohol treatment before his trial date. He pled guilty and was sentenced to 60 days in jail, suspended, given probation for 12 months, fined, and ordered to continue treatment in the substance abuse clinic. Item 7 at 2; Item 9 at 3. He did not list this offense in his security clearance application (SCA). He stopped attending counseling when he believed he could continue to drink alcohol without adversely affecting his relationship with his girlfriend. Item 7 at 2.

After an April 1998 arrest, Applicant was convicted of driving while intoxicated (DWI), Level II. Applicant took a breathalyzer, which registered .14%. He was sentenced to 12 months in jail and was ordered to complete alcohol education classes by attending weekly group counseling sessions for six months. Item 6 at 3. He did not drink any alcoholic beverages from June-December 1998. Item 6 at 4. He received treatment from November 1999-June 2000 for alcohol dependence. Answer.

In April 2001, Applicant was arrested for assaulting a female. After being out drinking with friends, Applicant and his wife had an argument about him not acting like a married man. She called the police. Applicant pled guilty to the charge, although he insists he never struck his wife. Ex. 8 at 1-2. Applicant was sentenced to 75 days in jail, probation for 12 months, and a fine. Item 9 at 4. The court ordered conditions of probation to include not possessing alcohol, and providing breath, blood, or urine samples when requested. Item 8 at 2.

Applicant was arrested for driving while impaired in March 2002 for DWI. His breathalyzer registered .18%. He pled guilty and was sentenced to 180 days in jail, 170 of which were suspended, probation for 12 months, and a fine. He was ordered to attend alcohol education classes. During his term of probation, he complied with the court-ordered prohibition on consuming any alcoholic beverages. Item 6 at 3-4. He continues to drink, but because of his work schedule and health concerns, he does not drink as much or as often as he did before.

On 27 January 2003, Applicant completed an SCA by certifying that his statements were "true, complete, and correct" to the best of his knowledge and belief, and by acknowledging that a knowing and willful false statement could be punished by imprisonment and/or a fine. Item 5 at 7. Question 26 asked if, in the previous seven years, Applicant had been arrested for, charged with, or convicted of any offenses not listed elsewhere in the SCA. Applicant answered "yes," and listed his 1998 conviction for DWI. He did not list his 2002 conviction for driving while impaired. Question 30 of the SCA asked if, in the previous seven years, Applicant's use of alcoholic beverages had resulted in any alcohol-related treatment or counseling. Applicant answered "no." He failed to list the treatment he received from November 1999 to June 2000 at a substance abuse clinic. In a signed, sworn statement to a Defense Security Service (DSS) agent, Applicant admitted he had been convicted of DWI in 2002 and had received alcohol-related treatment and counseling from 1999-2000.

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

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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.

CONCLUSIONS

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from 1989 to at least March 2004 (¶

1.a); was arrested for assault in August 1996 (¶ 1.b) and April 2001 (¶ 1.f) after consuming alcohol ;was arrested for DWI in April 1998 (1.c) and July 1998 (¶ 1.d) and driving while impaired in arch 2002 (¶ 1.g); was treated for alcohol dependence from November 1999-June 2000 (¶ 1.e); and he continues to consume alcohol (¶ 1.h). In his Answer to the SOR, Applicant admitted each of these allegations. 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. Directive ¶ E2.A7.1.1.

The Government's evidence and Applicant's admissions established potentially disqualifying conditions under Guideline G. Applicant had alcohol-related incidents away from work (DC E2.A7.1.2.1). Although Applicant admitted being treated for alcohol dependence (¶ 1.e), there is no evidence the diagnosis was made by a credentialed medical professional or licensed clinical social worker as described in DC E2.A7.1.2.3 or DC E2.A7.1.2.4. Therefore, those disqualifying conditions do not apply.

An applicant may mitigate the potentially disqualifying conditions by demonstrating the problem occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2), or he has made positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3). I conclude neither of these mitigating conditions apply. Applicant has a lengthy history of alcohol abuse that resulted in criminal conduct such as assault and driving while under the influence of alcohol. The alcohol-related incidents continued after he attended an alcohol education and rehabilitation program as late as June 2000, at which he was diagnosed as being alcohol dependent. Nevertheless, he continues to drink, even to the point of intoxication as late as March 2004. Under all the circumstances of this case, Applicant failed to mitigate security concerns raised by his excessive alcohol consumption.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested and charged with assaulting a female in April 1993 (¶ 2.a); was arrested for driving while his license was restricted/revoked in July 1995 (¶ 2.b); arrested in June 1997 for violating the noise ordinance in June 1997 (¶ 2.c); was cited for misdemeanor probation violation in March 2002 (¶ 2.d); and was arrested and charged for offenses listed in ¶¶ 1.b, 1.c,1.d, 1.f, and 1.g. In his Answer, Applicant admitted each of the allegations, except for ¶ 2.c. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions establish each of the allegations in ¶ 2, except ¶ 2.c. Applicant denied that allegation and the record does not contain any evidence to support it. The Government established potentially disqualifying conditions. Applicant admitted criminal conduct (DC E2.A10.1.2.1) consisting of multiple lesser offenses (DC E2.A10.1.2.2). He had three incidents of driving under the influence of alcohol and three of assault.

An applicant may mitigate such potentially disqualifying conditions by establishing his criminal behavior was not recent (DC E2.A10.1.23.1), the factors leading to the violation are not likely to recur (MC E2.A10.1.3.3), or there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6). Applicant's last criminal incident was in March 2002, almost four years ago. I find his criminal behavior was not recent. I conclude the other mitigating conditions do not apply. Most of Applicant's criminal incidents occurred after he had consumed alcoholic beverages. He was diagnosed as being alcohol dependent but continues to drink. Under the circumstances, I am unable to conclude that the factors leading to the violations are not likely to recur or that there is clear evidence of successful rehabilitation. After weighing all the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find against Applicant on ¶ 2, except for ¶ 2.c.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts in his SCA by deliberately failing to admit his complete police record in answer to question 27 (¶ 3.a) and failing to admit he had received alcohol counseling in the previous seven years (¶ 3.b). In his Answer, Applicant denied each of the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The deliberate omission of relevant and material facts from any SCA is a security concern and may be disqualifying. DC E2.A5.1.2.2. Applicant deliberately omitted information about his alcohol-related treatment and counseling from 1999-2000. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002). An applicant's police record and history of alcohol-related treatment or counseling are matters that could affect a final agency decision on whether to grant the applicant a clearance.

An applicant may mitigate possibly disqualifying conditions by showing the falsification was an isolated incident, was not recent, and he subsequently provided correct information voluntarily (MC E2.A5.1.3.2) or he made prompt good-faith efforts to correct the falsification before being confronted with the facts (MC E2.A5.1.3.3). I conclude neither of these mitigating conditions apply. An applicant's falsification in the SCA on which he is currently seeking a security clearance is recent, and although he provided the correct information voluntarily, it was only after being confronted by a DSS agent. I find against Applicant on ¶ 3.

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

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

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

James A. Young

Administrative Judge