

KEYWORD: Drugs; Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant failed to mitigate security concerns resulting from excessive use of alcohol and from falsifications he made about his illegal drug use while holding a security clearance. Clearance is denied.

CASENO: 04-08583.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08583

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant failed to mitigate security concerns resulting from excessive use of alcohol and from falsifications he made about his illegal drug use while holding a security clearance. 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 27, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on June 30, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on October 17, 2005. The FORM contained documents identified as Items 1 through 6. By letter dated October 18, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM November 7, 2005. He did not submit any information within the required time period. On December 28, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct under Guideline H, Drug Involvement, three allegations of disqualifying conduct under Guideline G, Alcohol Consumption, two allegations of disqualifying conduct under Guideline E, Personal Conduct, and one allegation of disqualifying conduct under Guideline J, Criminal Conduct. In his answer to the SOR, Applicant admitted the Guideline H, G, and E allegations. The Government established in the record that his Guideline E falsifications were also criminal conduct under Guideline J. Applicant's admissions are incorporated as findings of fact.

Applicant is 47 years old and has worked for 25 years for a government contractor. On February 9, 1998, he was granted a Secret security clearance in the Department of Defense (DoD) industrial security clearance program. (Item 3.)

Applicant has been married twice and is the father of two children. He was married to his first wife from 1979 to 1999. He married his second wife in 2002. (Item 3.)

Applicant began drinking alcohol in his teen years. He did not drink alcohol between the ages of 21 and 38. Applicant resumed drinking sometime between 1996 and 1999. (Item 4 at 2; Item 5.) In 1999, at about the time of his divorce, he drank a half pint of tequila daily after work. (Item 5.) From September 1999 to November 1999, while holding a security clearance, Applicant used cocaine on a weekly basis. (Item 6 at 1.) In 2000, he sought treatment for chemical dependency and reported "shakes, blackouts, and loss of control." (Item 4 at 2.)

Applicant was diagnosed as alcohol dependent and suffering from depression by a licensed physician. (Item 4 at 2-3.) As a part of his treatment plan, he was admitted to a one-week outpatient program for alcohol dependency. He completed the program on May 4, 2000, and was advised "to attend Alcoholics Anonymous meetings, find a sponsor, and stay clean and sober." (Item 4 at 3.) For a week after the program ended, he attended Alcoholics Anonymous meetings. He stopped going to the Alcoholics Anonymous meetings because he found them depressing. (Item 5 at 1.) From April 2000 to November 2003, Applicant admitted drinking a six pack of beer a week. Applicant expressed an intent to consume alcohol in the future. (Item 5 at 1-2.)

Applicant completed and certified a security clearance application (SF-86) on July 9, 2003. (Item 3.) Question 27 on the SF-86 asks if an applicant has "illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?" Applicant answered "no" to Question 27. (Item 3.)

Question 28 on the SF-86 asks if an applicant has "EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?" Applicant answered "no" to Question 28. (Item 3.)

On December 17, 2003, in a signed, sworn statement to a special agent of the Defense Security Service (DSS), applicant admitted his weekly cocaine use from September 1999 to November 1999. He deliberately omitted his cocaine use on his SF-86 because he was embarrassed and did not want others to know about it. He also did not want to be caught in a random drug test at work. Applicant said he did not intend to use cocaine or any other illegal substance in the future. (Item 6 at 2.) Applicant admitted his drug use to his employer in 1999. (Answer to SOR.)

When he completed his SF-86 on July 9, 2003, Applicant signed and dated the following statement:

CERTIFICATION BY PERSON COMPLETING FORM

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of [T]itle 18, United States Code).

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 personal 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.

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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *ISCR Case No. 01-20700 at 3* (App. Bd. Dec. 19, 2002); *see Directive ¶ E3.1.15*. 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*.

CONCLUSIONS

Guideline H - Drug Involvement

In the SOR, DOHA alleged under Guideline H that Applicant used cocaine, with varying frequency, from at least September 1999 to November 1999 (¶ 1.a.), and that he used cocaine after being granted a secret DoD industrial security clearance on February 10, 1998 (¶ 1.b.)⁽³⁾

The Government's concern with Guideline H conduct is that it raises questions regarding an individual's willingness to protect classified information. Drug abuse or dependence may impair social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1.

Drugs are defined under Guideline H as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (the Act) and inhalants and other similar substances. ¶¶ E2.A8.1.1.2., E2.A8.1.1.2.1., E2.A8.1.1.2.2. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3. Cocaine, the drug that DOHA alleges Applicant used illegally, is a controlled substance under the Act.

Through Applicant's own admissions, the Government established a *prima facie* case that Applicant's improper or illegal involvement with drugs raises serious concerns about his security worthiness. Applicant has admitted Guideline H drug involvement specified in the SOR and identified as disqualifying under Disqualifying Condition (DC) E2.A8.1.2.1.

The record shows that Applicant's involvement with cocaine began in 1999, when he was 41 years old. Applicant's last admitted drug use occurred in November 1999, approximately six years ago, demonstrating that his drug involvement was not recent. Accordingly, Mitigating Condition (MC) E2.A8.1.3.1. is applicable. Applicant's admitted drug use spanned a period of approximately three months in 1999. He stopped using cocaine because he feared his use would be detected by his employer in a random drug test. He says he will never use illegal substances again, and he has not done so for six years. Applicant's drug involvement was limited to a three month period, and he has demonstrated an intent not to abuse drugs in the future. Accordingly, MC E2.A8.1.3.2. and C E2.A8.1.3.3. apply to allegation 1.a. of the SOR. The allegation at 1.a. of the SOR is concluded for the Applicant.

Illegal involvement with drugs is a serious matter whenever it occurs. When an individual uses illegal drugs while holding a security clearance, he raises concerns under ¶¶ E2.A8.1.1.1., E2.A8.1.1.2., and E2.A8.1.1.3. of Guideline H that go to the essence of his security worthiness. Illegal drug involvement, which alters mood and judgment, raises questions about an individual's willingness or ability to protect classified information and increases the risk of disclosure of classified material. Applicant's use of cocaine while holding a security clearance raises a security concern under DC E2.A8.1.2.1. None of the Guideline H mitigating conditions apply to this conduct. Accordingly, the allegation at 1.b. of the SOR is concluded against the Applicant.

Guideline G - Alcohol Consumption

In the SOR DOHA alleged Applicant consumed alcohol, at times to the point of intoxication, from approximately 1998 to at least November 2003 (¶ 2.a.); that from April 28, 2000 to May 4, 2000, he was treated for a condition diagnosed as alcohol dependence (¶ 2.b.); and that, from at least November 2003, he continued to consume alcohol notwithstanding his treatment for alcohol dependence (¶ 2.c.).

Security concerns under Disqualifying Conditions (DC) E2.A7.1.2.3., DC E2.A7.1.2.5., and E2.A7.1.2.6. are raised by Applicant's admissions and the record evidence. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. Applicant admits he consumed alcohol at times to excess and to the point of intoxication from approximately 1998 to at least November 2003. His habitual consumption of alcohol to the point of impaired judgment raises concerns under DC E2.A7.1.2.5. In 2000, Applicant was diagnosed as alcohol dependent by a credentialed medical professional, a physician, raising a concern under DC E2.A7.1.2.3. After his diagnosis of alcohol dependence, and after completing an alcohol rehabilitation program, he continued to consume alcohol, raising a concern under DC E2.A7.1.2.6. of Guideline G.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (Mitigating Condition (MC) E2.A7.1.3.1.), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2.), if Applicant shows positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. (MC E2.A7.1.3.4.)

Applicant's episodic heavy drinking in the past indicates a lifestyle and pattern of behavior. He continues to use alcohol despite a diagnosis of alcohol dependence and after completion of an alcohol rehabilitation program. His continued use of alcohol does not provide evidence of positive changes in behavior supportive of sobriety. I conclude that MC E2.A7.1.3.1., MC E2.A7.1.3.2., MC E2.A7.1.3.3., and MC E2.A7.1.3.4. do not apply to Applicant's case. The Guideline G allegations in the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, by falsifying material facts in his responses to Questions 27 and 28 on the SF-86 that he completed and certified on July 9, 2003. Applicant answered "no" to Questions 27 and 28, when he knew he had used cocaine weekly from September to November 1999, while he held a security clearance.

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR , the Government has established its case. Applicant's intentional falsification of his answers to Questions 27 and 28 raises security concerns under Disqualifying Conditions (DC) E2.A5.1.2.2., DC E2.A5.1.2.4., and DC E2.A5.1.2.5. of Guideline E. In his signed, sworn statement of December 17, 2003, to a DSS special agent, Applicant admitted deliberately concealing information about his use of cocaine in 1999, while he held a security clearance, because he was embarrassed by his conduct and didn't want people to know about it. Applicant's deliberate concealment of relevant and material facts from his SF-86 raises security concerns under DC E2.A5.1.2.2. Additionally, his failure to reveal the truth about his use of cocaine because he considered it embarrassing could make him vulnerable to coercion and blackmail. (DC E2.A5.1.2.4.) His conduct also raises additional concerns under DC E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation.

Applicant's reticence to reveal the truth about his past conduct suggests that, under some circumstances, he may put his interests before those of the Government. The ability to be truthful goes to the essence of an individual's security worthiness. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. Jul.10, 2000).

Mitigating condition (MC) E2.A5.1.3.1. does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsifications were isolated, not recent, and if the Applicant subsequently provided the correct information voluntarily. (MC E2.A5.1.3.2.) While Applicant supplied the correct information when questioned by a DSS special agent in December 2003, approximately five months had passed since he had completed and certified his SF-86. Applicant's falsifications were not isolated incidents and they are recent. Accordingly, allegations in subparagraphs 3.a. and 3.b. of the SOR are concluded against the Applicant.

Guideline J - Criminal Conduct

In the SOR, DOHA alleged that Applicant's admitted falsification of his answers to Questions 27 and 28 on his SF-86 were deliberate and intentional pursuant 18 U.S.C. § 1001 and constituted criminal conduct under Guideline J of the Directive. (¶ 4.a.)

The security concern under Guideline J is that an individual's history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's admitted deliberate falsifications on his SF-86 raise security concerns under Guideline J Disqualifying Conditions (DC) E2.A10.1.2.1 and E2.A10.1.2.2.

Applicant's intentional falsifications occurred in 2003, making them recent. His falsifications were multiple and not isolated incidents. Applicant does not provide clear evidence of successful rehabilitation. Thus, Mitigating Conditions (MC) E2.A10.1.3.1., MC E2.A10.1.3.2., and MC E2.A10.1.3.6. are inapplicable. Accordingly, the Guideline J allegations in the SOR are concluded against the Applicant.

In ISCR Case No. 98-0761 at 3 (App. Bd. Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not mitigated the security concerns raised by the allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1.: Guideline H.: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2.: Guideline G.: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3.: Guideline E.: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Paragraph 4.: Guideline J.: AGAINST APPLICANT

Subparagraph 4.a.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant's SF-86 identifies February 9, 1998 as the date he was granted a Secret security clearance.