

KEYWORD: Alcohol: Criminal Conduct; Financial; Personal Conduct

DIGEST: Applicant is 40 years old and works for a federal contractor. He has a history of alcohol-related offenses and other criminal conduct that spans an 18-year period. When he completed his 2003 security clearance application, he did not disclose one of the offenses and an alcohol treatment program. In addition, he has accrued significant delinquent debt over the years that he has been unable or unwilling to manage or resolve. He failed to mitigate the security concerns raised by his alcohol consumption, criminal conduct, financial considerations and personal conduct. Clearance is denied.

CASE NO: 04-09022.h1

DATE: 05/25/2006

DATE: May 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09022

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old and works for a federal contractor. He has a history of alcohol-related offenses and other criminal conduct that spans an 18-year period. When he completed his 2003 security clearance application, he did not disclose one of the offenses and an alcohol treatment program. In addition, he has accrued significant delinquent debt over the years that he has been unable or unwilling to manage or resolve. He failed to mitigate the security concerns raised by his alcohol consumption, criminal conduct, financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 25, 2005, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines G (Alcohol Consumption), J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On December 1, 2005, Applicant filed an Answer, admitting most of the allegations contained in the SOR, and elected to have the case decided on the written record in lieu of a hearing. On March 17, 2006, Department Counsel prepared a File of Relevant Material (FORM), along with Government Exhibits (GX) 1-26, and mailed Applicant a complete copy on March 20, 2006. Applicant had 30 days from the receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 11, 2006, and did not submit any additional information. This case was assigned to me on May 16, 2006.

PROCEDURAL MATTERS

The Government filed a Motion to Amend the SOR, and gave notice of it to the Applicant in the FORM that was mailed to Applicant on March 20, 2006. Applicant did not file an objection thereto. Hence, the Motion is granted and the last sentence of SOR Paragraph 4.a is amended to state "You deliberately failed to disclose that information as set forth under subparagraph 1.d."

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following additional findings of fact:

Applicant is 40 years old and employed as a graphics specialist for a federal contractor. He submitted a security clearance application (SCA) to renew his clearance in June 2003. He has worked for various contractors since 1991. Prior to that time, he served in the armed forces for several years during the 1980's.

Applicant admitted that he consumed alcohol, to the point of intoxication, from 1985 to August 1993. (SOR ¶1.1).

In April 1985, Applicant was charged with Allowing Self to be Served Alcohol as a Minor. He was found guilty and fined. He was 21 years old at the time. (SOR ¶ 1.k)

In December 1988, Applicant was charged with Driving While Intoxicated (DWI). In January 1989, he participated in an alcohol treatment program, sponsored by the armed forces. ⁽¹⁾ The case was later dismissed. (SOR ¶ 1.j)

In May 1990, Applicant was arrested and charged with three counts of misconduct: (1) DWI, (2) Carless Driving, and (3) Immediate Notice of Accident. He pleaded guilty, and was sentenced to jail (the sentence was suspended), fined, and

ordered to complete DWI school. (SOR ¶ 1.i)

In April 1992, Applicant received a SECRET security clearance. [\(2\)](#)

In March 1993, Applicant was arrested and charged with DWI and Careless Driving. He was found guilty and sentenced to jail (again suspended), fined and ordered to attend the Multiple Offenders Program. (SOR ¶ 1.h) From April to August 1993, Applicant received treatment for alcoholism, after being diagnosed by an Alcohol Counselor with the condition of Alcohol Abuse. [\(3\)](#) (SOR ¶ 1.g)

In January 1994, a SOR was issued to Applicant for allegations related to alcohol abuse. In August 1994, an Administrative Judge with this agency recommended denial of Applicant's security clearance. The Judge concluded that Applicant "has no commitment or dedication to sobriety or abstinence. This conclusion is supported by Applicant's past and continuing conduct of habitual or episodic consumption of alcohol to excess, as well as his failure to regularly attend AA or other similar support organization for the period of approximately one year following completion of the county council program." [\(4\)](#)

In January 1996, Applicant submitted a reapplication for a security clearance. That application was denied in February 1996, due to his admissions that he consumed alcohol, on occasion, to the point of intoxication after he had been denied a clearance in 1994. (SOR ¶¶ 1.e and 1.f)

In March 1997, Applicant filed another application for a security clearance. In May 1997, the application was approved, and in September 1997, it was granted, and he received a SECRET security clearance. (SOR ¶ 1.f)

In June 1997, Applicant was arrested and charged with Battery-Domestic Violence after consuming alcohol. In July 1997, he pleaded no contest and was sentenced to jail and fined. The sentence was suspended and deferred upon completion of an anger management program. In January 1998, the case was dismissed. (SOR ¶ 1.d)

In February 1998, Applicant was arrested and charged with four counts of misconduct: (1) Driving While Intoxicated Aggravated (2nd/3rd Offense), (2) Failure to Carry Proof of Financial Responsibility, (3) Possession of Open Container of Alcohol Beverage, and (4) Driving or Moving an Unsafe Vehicle. He pleaded no contest to Count 1, and was sentenced to 364 days in jail, 7 days mandatory jail time, and assessed court costs and a fine. He was also ordered to complete alcohol screening, perform 48 hours of community service, and placed on probation for one year. He finished the terms of the sentence in February 1999. (SOR ¶ 1.c) Prior to the completion of the sentence, Applicant participated

in another outpatient alcohol treatment program in November 1998. (SOR ¶ 1.a)

In February 2001, Applicant filed for Chapter 7 Bankruptcy. He listed his assets as \$74,895 and total liabilities as \$96,055. The bankruptcy was discharged in ay 2001.

In May 2001, Applicant was arrested and charged with three counts of misconduct: (1) Driving While License Still Revoked, (2) Failure to Exhibit Evidence of Registration, and (3) Failure to Carry Proof of Financial Responsibility. In July 2001, he pleaded no contest to Driving While License Still Revoked. He was sentenced to 364 days in jail, with 350 days suspended, fined, and placed on 350 days of unsupervised probation. (SOR ¶ 2.b)

In April 2002, Applicant was arrested and charged with Aggravated Assault Against a Househld Member, a 4th degree felony. In June 2002, he pleaded no contest to the misdemeanor of Attempt to Commit Aggravated Assault on Household Member. He was sentenced to 364 days in jail, with 363 days suspended. He was placed on probation for 363 days. (SOR ¶ 2.a)

When Applicant signed his June 2003 SCA, he swore his answers were "true, complete and correct." In response to Question 26. Your Police Record -Other Offenses (*In the last 7 years, have you been arrested for, charged with, or convicted of any offense (s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines or less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 13 U.S.C.)* to which he answered "Yes," but failed to disclose the June 1997 arrest involving alcohol. (SOR ¶ 4.a)

In response to Question 30. Your Use Alcohol (*In the last 7 years has your use of alcohol beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment, or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in EPS Module 19 (Section 21 of the SF86)*), he answered "No." He failed to disclose the alcohol treatment he received in 1998. (SOR ¶ 4.b)

In May 2004, Applicant met with a government investigator and signed a written statement addressing some of the matters in his SCA. He stated he did not disclose the 1997 arrest under Question 26 because he "had forgotten about the incident."⁽⁵⁾ He did not explain why he did not disclose the 1998 alcohol treatment program as requested in Question 30.

In regard to his use of alcohol, Applicant said, "Since about May 01 after my arrest for driving on a revoked license I drink beer on the weekends usually between Friday evening and Saturday. I might consume a twelve pack of beer each of those days . . . I intend to continue my current drinking habits and that is to drink responsibly."⁽⁶⁾ He does not drink and drive because he does not want to be arrested and go to prison.

Paragraph 3 of the SOR alleged that Applicant's delinquent debts, which accrued since the May 2001 bankruptcy discharge, total \$7,627.⁽⁷⁾ Applicant admitted owing the debts contained in ¶¶ 3.b through 3.k. They consist of two unpaid judgments, utility bills, credit card debt, and other miscellaneous outstanding bills. As of October 2005, the debts have either been placed in collection status or charged off by the creditors. None of the debts have been paid or resolved. As of ay 2004, he and his wife are able to pay their current living expenses and a few other on going debts.⁽⁸⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the

applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. 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 clearance." *Id.*

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

Guideline G - Alcohol Consumption: A security concern arises when an individual consumes alcohol excessively, as it 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.

Guideline J - Criminal Conduct: A security concern may arise when an individual's history or pattern of criminal activity creates doubt about his judgment, reliability and trustworthiness

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct: A security concern arises when conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that the person may not properly safeguard classified information.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I have considered all of the facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and conclude the following with respect to the allegations set forth in the SOR:

Guideline G: Alcohol Consumption

The Government established its case under this guideline. Three disqualifying conditions apply: (1) Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol*). From 1985 to 1998, Applicant was arrested six times for misconduct related to alcohol consumption. (2) AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant admitted that from 1985 to approximately August 1993, he consumed alcohol to the point of intoxication. Although he denied that he continues to consume it to the point of intoxication since completing an alcohol treatment program in 1998, his May 2004 statement indicates otherwise. He admitted that he drinks at least 12 beers each day of the weekend, clearly an excessive amount of alcohol, given his long and extensive history of alcohol abuse. (3) AC DC E2.A7.1.2.6 (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.*) In 1989, Applicant participated in an alcohol rehabilitation program. In 1993, Applicant was diagnosed by an alcohol counselor as abusing alcohol and completed a five-month alcohol treatment program. In 1998, the court ordered him to complete an alcohol rehabilitation program after receiving another DWI. Although he has participated in three separate programs since 1988, he admitted that he continues to drink and has no intention of quitting.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After considering all four of the Alcohol Consumption Mitigating Conditions (AC MC), I conclude none apply. (1) Applicant has a history of alcohol problems spanning 20 years and demonstrating a pattern of abuse, such that AC MC E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*) does not apply. (2) Based on his admission that he continued to abuse alcohol up to May 2004, AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*) is not applicable. (3) There is no evidence that he has remained sober for any

period of time, in particular within the last several years, which is the operative factor under AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). (4) AC MC E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) is not applicable. He did not provide any evidence to support this condition. In fact, the evidence continues to remain to the contrary, as previously noted by an administrative judge in 1994. Accordingly, Applicant failed to mitigate the security concerns raised by his alcohol consumption, and the allegations contained in SOR ¶¶ 1.a through 1.l under Guideline G are decided against him.

Guideline J - Criminal Conduct

Based on the evidence, the Government established its case under Guideline J, specifically, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). Applicant admitted the allegations of criminal conduct noted in the SOR, which consisted of one felony and multiple lesser offenses.

I reviewed all of the mitigating conditions under this guideline, in particular, two of them, and conclude neither applies. (1) As there are eight incidents of criminal conduct, CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), is not applicable. (2) Despite those arrests and convictions, the most recent occurring in 2002 and while holding a security clearance, he did not submit any substantive evidence addressing his alcohol problems, a major factor in his criminal conduct, or demonstrating rehabilitation; thus, CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), cannot apply. Accordingly, Applicant failed to mitigate the security concerns raised by his criminal conduct, and the allegations contained in SOR ¶¶ 2.a through 2.c under Guideline J are decided against him

Guideline F: Financial Considerations

The Government established its case under Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant admitted that he has a long history of not meeting his financial obligations that began prior to filing a Chapter 7 bankruptcy in 2001, and continues to the present as noted in a current credit report. Although he is managing his current bills, he is financially unable to satisfy or resolve the delinquent debt alleged in the SOR.

I reviewed all of the mitigating conditions, in particular, Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*), and conclude it does not apply. In 2001, Applicant filed a bankruptcy to resolve his unpaid debt. Since that discharge in bankruptcy, he has accumulated additional debts that have become delinquent over the past several years and are not being resolved, either with the help of a credit counselor or other plan

sufficient to resolve or control his delinquent debts. Hence, all allegations in the SOR are concluded against him. Accordingly, Guideline F is decided against Applicant.

Guideline E: Personal Conduct

Based on the evidence, the Government established its case under Guideline E, specifically, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant denied falsifying his answer to Question 26; he stated he "forgot" about the 1997 arrest. Based on his knowledge and experience in completing renewal applications, I do not find his excuse credible, nor do I find an explanation in the record for his failure to disclose the 1998 treatment program. I find the omissions of the requested information to be deliberate.

I reviewed all of the mitigating conditions under this guideline, in particular two of them, and conclude neither applies. (1) The falsification on his SCA was made in 2003, and it appears that Applicant did not volunteer the correct information, as required under Personal Conduct Disqualifying Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*). (2) Applicant did not present any evidence that he has taken consistent and substantial steps over the past 20 years to stop consuming alcohol, in spite of a long history of abuse and criminal conduct. It is apparent that Applicant would rather consume alcohol than embrace sobriety and retain a security clearance. I find that he has failed to eliminate his vulnerability to duress and the potential to inadvertently compromise classified information due to his untreated alcohol abuse, as contemplated by PC MC E2.A5.1.3. (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress*). Hence, the allegations contained in SOR ¶¶ 4.a through 4.c are not mitigated, and are concluded against him. Accordingly, Guideline E is decided against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline G (Alcohol Consumption) AGAINST APPLICANT

Subparagraphs 1.a through 1.l: Against Applicant

Paragraph 2: Guideline J (Criminal Conduct) AGAINST APPLICANT

Subparagraphs 2.a through 2.c: Against Applicant

Paragraph 3: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 3.a. through 3.k: Against Applicant

Paragraph 4: Guideline E (Personal Conduct) AGAINST APPLICANT

Subparagraph 4.a. through 4.c: 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.

Shari Dam

Administrative Judge

1. GX 16 at 3.
2. GX 24 at 2.
3. GX 23.
4. GX 24 at 6.
5. GX 15 at 3.
6. *Id.* at 4.
7. GX 5.
8. GX 15 at 6.