

KEYWORD: Alcohol; Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 47-year-old electronic technician who has worked for a federal contractor since 2003. He had five alcohol-related incidents from 1983-2003. He has four years of unpaid federal income taxes and three unpaid state tax liens, in addition to many other delinquent debts that remain unpaid. Applicant failed to list all of his past alcohol-related offenses on his security clearance application and later provided misleading information to an investigator in a sworn statement, in violation of 18 U.S. C. 1000, felony violations. Applicant failed to mitigate the security concerns regarding Guidelines G, alcohol consumption, F, financial considerations, E, personal conduct, and J, criminal conduct. Clearance is denied.

CASENO: 04-09058.h1

DATE: 02/28/2006

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09058

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old electronic technician who has worked for a federal contractor since 2003. He had five alcohol-related incidents from 1983-2003. He has four years of unpaid federal income taxes and three unpaid state tax liens, in addition to many other delinquent debts that remain unpaid. Applicant failed to list all of his past alcohol-related offenses on his security clearance application and later provided misleading information to an investigator in a sworn statement, in violation of 18 U.S. C. 1000, felony violations. Applicant failed to mitigate the security concerns regarding Guidelines G, alcohol consumption, F, financial considerations, E, personal conduct, and J, criminal conduct. Clearance is denied.

STATEMENT OF CASE

On June 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption, Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct.

In a sworn statement dated August 3, 2005, Applicant responded to the SOR allegations. He elected to have his case decided on the written record. He admitted SOR allegations ¶¶ 1.b-1.g, 2.a-2.d, 2.f, 2.h, 2.i, 2.k, and 2.m-2.q, with explanations. He denied SOR allegations ¶¶ 1.a, 2.e, 2.g, 2.j, 2.l, 3.a and 3.b, with explanations. Department Counsel submitted the government's file of relevant material (FORM) on August 26, 2005. The FORM was mailed to Applicant on September 21, 2005, and received on November 15, 2005. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file any additional material. The case was assigned to me on January 11, 2006.

FINDINGS OF FACT

Applicant is 47 years old and has worked as an electronics technician for a federal contractor since 2003. He is a high school graduate and received a diploma from a vocational school. He is married but separated from his wife, and he has three children. Applicant served in the Army and later the Army Reserves and was honorably discharged.

From about 1983 to April 2004, Applicant consumed alcohol, sometimes to excess and to the point of intoxication. On January 1983, he was arrested and charged with Driving Under the Influence (DUI), Interfering with an Officer, and Assault and Battery on an Officer. The disposition on the DUI is unknown, no disposition was imposed on the interference charge, and he was found guilty of the assault and battery.

On September 16, 1984, Applicant was charged with DUI and later found guilty and fined \$208.

On September 24, 1990, Applicant was charged with DUI-2nd (BAC .19%). He was found guilty, sentenced to one year of confinement, and his jail sentence was suspended after he served 30 days confinement or ten days of public service. He was ordered to pay a total of \$1,375 including court cost/fees, and to serve one year of supervised probation. A warrant was issued for his arrest on September 26, 1991, for violating the conditions of his probation by failing to report to his probation office in April, and June through September, and failing to pay the court ordered fees, which resulted in \$1,425 arrearage. Applicant left the state without advising his probation officer, a probation violation. He was found guilty of probation violation, and his probation was extended for one year, and he was ordered to perform an additional 40 hours of public service.

Applicant was arrested on October 24, 1998, and charged with DUI (BAC 15%). He was found guilty, fined \$637, and his driver's license was suspended for one year.

On February 25, 2003, Applicant was arrested and charged with DUI-2nd Offense (BAC .19%). He was found guilty, sentenced to one year of confinement, all suspended except two days, fined \$1,000 plus costs and assessments, ordered to participate in an alcohol education program, and his driver's license was suspended. Applicant has not completed the alcohol education program and believes his driver's license remains suspended in the state where the offense occurred.

Applicant continues to consume alcohol, although he claims he no longer drives after drinking. He claims he has a beer after work 2-3 times a week. He sometimes has hard liquor instead of beer and drinks more on the weekend. He considers himself a social drinker.

Applicant agrees that he has delinquent debts for various consumer items, credit card bills, and a repossession, totaling more than \$15,500, that he has not paid (SOR ¶¶ 2.a-2.d, 2.f, 2.h, 2.i, and 2.k). He has federal tax debts totaling more than \$12,650 for delinquent taxes for tax years 1994, 1997, 1998 and 1999 (SOR ¶¶ 2.m, 2.n, 2.o, 2.p). He also has three state tax liens that were filed in 1993, for state taxes totaling \$1,420 that are delinquent (SOR ¶ 2.q). Applicant believed he paid these liens, but provided no proof. Applicant is unaware of what the debts are for in SOR ¶¶ 2.e, 2.g, 2.j and 2.l, totaling approximately \$1,570. He has not taken any action to determine the validity of the debts or dispute them with the creditors or on his credit report. Applicant claimed he has retained an organization to help resolve his credit history. (2) He provided no documentation or substantiation with regards to any substantive efforts he has made in contacting creditors and paying his delinquent debts.

Applicant owns two homes he inherited that he estimates are valued at approximately \$150,000. He also owns undeveloped farmland that is valued at approximately \$50,000. Applicant is not making any payments on his delinquent debts. He has approximately \$425 left after paying his expenses at the end of the month. (3) He believes he lives within his means and admits he got into financial problems due to his poor spending habits, carelessness and irresponsibility. (4)

Applicant executed a security clearance application (SCA) on June 24, 2003, and answered "Yes" to Question 24 (*Your Police Record-Alcohol/Drug Offense-Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.*), and listed only the February 2003 DUI conviction. He deliberately failed to list his other alcohol-related offenses that occurred on January 2, 1983, September 16, 1984, and September 24, 1990. Applicant did not list his 1998 DUI arrest when answering this question, but did list it when answering another question on the SCA. (5) Applicant claimed his facility security officer (FSO) advised him he only had to list offenses for the past ten years.

In Applicant's sworn statement made to an authorized investigator for the Department of Defense, dated April 12, 2004, he stated "My first arrest for DUI occurred in Jun[e] 1997." (6) He further stated "The two DUI charges are isolated, and I do not make it a habit to drink and drive. Both incidents were stupidity on my part." (7) Applicant intentionally and deliberately failed to disclose to the investigator that he had more than two DUIs in his past. He intentionally did not disclose his 1983, 1984 and 1990 alcohol-related offenses. Based on Applicant's sworn statement and his failure to disclose his other alcohol transgressions, I find his claim of being misled by his FSO to be not credible. Applicant's intentional and deliberate falsifications and omissions are violations of 18 U.S.C. 1001, felonies.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, alcohol consumption, Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁸⁾ The government has the burden of proving controverted facts.⁽⁹⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

No one has a right to a security clearance⁽¹³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁶⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist because 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.

Guideline F-Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guidelines G, F, E and J.

Based on all the evidence, I considered all the disqualifying conditions and especially considered 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 use*), and conclude it applies. Applicant had five alcohol-related incidents, from January 1983 to February 2003. Applicant continues to consume alcohol.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem*

occurred a number of years ago and there is no indication of a recent problem), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). Applicant had five alcohol-related incidents spanning a 20-year period. His arrests for alcohol-related offenses did not deter him from resuming drinking alcohol and compiling a pattern of offenses, the last occurring a short time before he filed out his SCA. Although Applicant claims he no longer drinks and drives, he has a consistent and troubling record of alcohol abuse. He has not provided any reliable evidence that he has made positive changes in his behavior that are supportive of sobriety. To the contrary, he has not even completed a court-ordered alcohol education class. His cavalier attitude toward his pattern of alcohol-related offenses and his attempt to hide them is a grave security concern. I find none of the above mitigating conditions apply. I find Applicant has failed to mitigate the security concerns under Guideline G.

Based on all the evidence, 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*), apply in this case. Applicant accumulated significant delinquent debts. He owes both federal and state taxes, in addition to owing numerous other creditors. He has not substantiated any action he has taken on his delinquent debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), 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 is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are recent because he has failed to pay them and they are still owed. Applicant's state tax debts date back to 1993. His federal tax debts date back to 1997. He admits he owes most of the creditors listed, but has taken no action to pay or resolve the debts. He admits to living beyond his means in acquiring the debt, and being careless and irresponsible. Applicant has numerous creditors and therefore his delinquencies are not isolated. Applicant has not offered any evidence to show his financial turmoil is somehow a result of behavior that was beyond his control. Although he claims he is now seeking some type of credit counseling, he failed to provide proof of any action he has taken. This recent effort of counseling did not come until he was confronted with his delinquent debts, many of which are years old. Even if Applicant is now working with a credit counselor, it does not negate the fact that for years he took no action. Applicant has approximately \$200,000 in real estate and has some money left after paying his expenses, but has not used these assets for paying his debts. I have considered all the circumstances surrounding Applicant's financial situation and conclude he has made no effort to repay his creditors, including the federal government. I find Applicant failed to mitigate the financial considerations with regard to his financial consideration.

Based on all the evidence, 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*), and PC DC E2.A5.1.2.3 (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*), and conclude both apply in this case. Applicant deliberately failed

to divulge his past arrests, and then intentionally concealed his history of alcohol-related arrests when he provided a statement to an authorized investigator. He intentionally stated he had only two DUIs, and they therefore, were isolated incidents, leading the investigator to believe he had never had any other incidents, which was false.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating 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*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), PC MC E2.A5.1.3.4 (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*) and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. The SCA is clear in requiring Applicant's to list all his alcohol-related incidents. It does not give a period of time. The evidence supports that Applicant intentionally meant to hide his past alcohol-related incidents, when he deliberately told an investigator that he had only two DUIs and therefore he concluded they were isolated, when he knew he had other incidents in past. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. The falsifications are recent because they are a part of his SCA, and his subsequent sworn statement. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. The process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant materially obstructs the investigation of Applicant's security worthiness and raises serious concerns about the character and overall integrity of the individual. Applicant claimed he was misled by his FSO, however, when afforded the opportunity to provide the correct information he failed to provide truthful answers. Even if one were to believe he was misled by his FSO, he perpetuated the falsification by very clearly stating he only had two DUIs in his past, clearly an intentional falsification, which raises questions as to his credibility on his earlier claim of receiving incorrect information from his FSO. I find Applicant deliberately failed to provide the information required by the SCA and later provided false statements to an investigator. His lack of candor raises serious security concerns about his honesty, trustworthiness and judgment. I find Applicant has failed to mitigate Guideline E.

Applicant's falsifications were violations of 18 U.S.C. 1001, felonies. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions 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*), both apply.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), and conclude none apply. Due to the recency of Applicant's falsification, I find CC MC E2.A10.1.3.1 does not apply. I also find that there were two separate occurrences of lying, each requiring a specific intent to deceive and therefore these are not isolated incidents and negate the applications of CC C E2.A10.1.3.2. Applicant has not provided any credible evidence to conclude there is clear evidence of successful rehabilitation. Therefore, he has failed to mitigate Guideline J, criminal conduct.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination

that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by Guideline G, alcohol consumption, Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines G, F, E and J are decided against Applicant.

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:

Paragraph 1 Guideline G AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Paragraph 2 Guideline F AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Subparagraph 2.h: Against the Applicant

Subparagraph 2.i: Against the Applicant

Subparagraph 2.j: Against the Applicant

Subparagraph 2.k: Against the Applicant

Subparagraph 2.l: Against the Applicant

Subparagraph 2.m: Against the Applicant

Subparagraph 2.n: Against the Applicant

Subparagraph 2.o: Against the Applicant

Subparagraph 2.p: Against the Applicant

Subparagraph 2.q: Against the Applicant

Paragraph 3 Guideline E AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Paragraph 4 Guideline J AGAINST THE APPLICANT

Subparagraph 4.a: Against the Applicant

DECISION

In light of all 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 3.
3. Item 5 at 7.
4. Item 5 at 6.
5. Question 26 asked: *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 of less than \$150 unless the violation was alcohol or drug related...)* Applicant listed his 1998 DUI arrest in answering this question.
6. Item 5 at 1.
7. *Id.* at 3.
8. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
9. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
10. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
11. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

12. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

13. *Egan*, 484 U.S. at 531.

14. *Id.*

15. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

16. Executive Order 10865 § 7.