

KEYWORD: Personal Conduct; Alcohol

DIGEST: Applicant had two alcohol-related driving offenses over a ten-year period. He continues to drink alcohol on a moderate basis. He did not disclose the fact that he left his previous place of employment under unfavorable circumstances in response to question 20 of his security clearance application. He has mitigated the concerns raised by his alcohol consumption and but concerns about his lack of candor on his security clearance application remain. Clearance is denied.

CASENO: 04-10205.h1

DATE: 03/28/2006

DATE: March 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10205

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two alcohol-related driving offenses over a ten-year period. He continues to drink alcohol on a moderate basis. He did not disclose the fact that he left his previous place of employment under unfavorable circumstances in response to question 20 of his security clearance application. He has mitigated the concerns raised by his alcohol consumption and but concerns about his lack of candor on his security clearance application remain. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline E, Personal Conduct and Guideline G, Alcohol Consumption.

In a sworn statement dated August 10, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on December 12, 2005. A notice of hearing was issued on January 20, 2006, scheduling the hearing for February 8, 2006. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (Gov Ex) 1 - 4. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted no exhibits. DOHA received the hearing transcript (Tr.) on February 16, 2006.

FINDINGS OF FACT

Applicant denies the allegations in subparagraphs 1.a and 1.b. He admits the allegations in subparagraphs 2.a, 2.b and 2.c. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 50-year-old systems engineer who is employed by a Department of Defense contractor. He is single and has two children from prior marriages, a son, age 25, and a daughter, age 16. (2) He has an associates degree in engineering. (3)

On December 15, 1993, Applicant was stopped for speeding while driving home from a company Christmas party. He was charged with Driving Under the Influence. He pled guilty and was placed on two years probation and ordered to attend an alcohol education course. He completed a 12-week alcohol education course and attended Alcoholics Anonymous meetings for about a six months. (4) He did not drink alcohol during the course but started to drink alcohol occasionally after the course.

In August 2002, he was asked to resign from his employment with a county government based on a suspected inappropriate relationship with a female co-worker. (5) He understood that if he did not resign, he would be fired. (6) His co-worker was fired. (7)

From September 2002 to May 2003, Applicant was unemployed. (8) On May 28, 2003, he accepted a position with his current employer. On September 11, 2003, he submitted a security clearance application. He answered, "No" to question 20 which reads:

20. Your Employment Record

Has any of the following happened to you in the last 7 years? - Fired from job, - Quit after being told you'd be fired, - Left a job by mutual agreement following allegations of misconduct, - Left a job by mutual agreement following allegations of unsatisfactory performance, and - Left a job for other reason under unfavorable circumstances. (9)

He answered, "No" to this question. He claims he did not think he had to list this information since he resigned from his position with the company. He claims he had no intent to deceive. (10) Under cross examination, he admitted that he left his employment under unfavorable circumstances and he should have listed this information when he filled out his security clearance application. (11)

On October 14, 2003, Applicant was driving home from a party and he was stopped for speeding. He failed a field sobriety test and his blood alcohol content was .13. (12) He was arrested for Driving, Attempting to Drive a Vehicle

While Under the Influence. He pled guilty and was sentenced to 30 days in jail (suspended), 18 months supervised probation, a \$200 fine, and attend a 12 hour alcohol education program. ⁽¹³⁾ Appellant successfully completed the 12 hour education program. The program recommend that he refrain from drinking. ⁽¹⁴⁾ There is nothing in the record which indicates a diagnosis of alcohol abuse or alcohol dependence.

On October 18, 2003, Applicant provided a signed, sworn statement to a Special Agent of the Defense Security Service. He discussed his two alcohol-related driving arrests and indicated that he had failed to mention on his security clearance application that he left his employment with a county government under unfavorable circumstances. ⁽¹⁵⁾ He could not recall who brought up this issue during the interview but does recall it occurred when he and the Special Agent were going over the questions on his security clearance application. ⁽¹⁶⁾

Applicant's current level of alcohol use is moderate. He takes precautions to not drink too much when he is driving. ⁽¹⁷⁾ He occasionally has a glass of wine with dinner and has a couple of drinks with his friends on social occasions. For example, he will have a couple drinks with his friends after they race sail boats. ⁽¹⁸⁾

From October 15, 1974, to February 15, 2003, Applicant served on active duty in the United States Air Force. ⁽¹⁹⁾ He was involuntarily separated from the Air Force with a discharge characterized as general under honorable conditions. He was asked about his discharge from the service during the hearing. He indicated he was tried by court-martial for trafficking and using drugs and for conspiracy to commit murder. He was acquitted but was eventually discharged from the Air Force. ⁽²⁰⁾ He admits to using hashish while on active duty in the Air Force. ⁽²¹⁾

Applicant answered, "No" to question 21 on his security clearance application which reads:

Your Police Record-Felony Offenses Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice.) 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 18 U.S.C. 3607.

He did not list his court-martial charges in response to question 21.

POLICIES

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."⁽²²⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline E - Personal Conduct: 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. (Directive ¶ E2.A5.1.1.)

Guideline G - Alcohol Consumption: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increase the risk of unauthorized disclosure of classified information due to carelessness. (Directive ¶ E2.A7.1.1.)

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽²³⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁴⁾ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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.⁽²⁵⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽²⁶⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁷⁾ An applicant "has the ultimate

burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (28) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (29)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (30) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

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 Guideline E, Personal Conduct and Guideline G, Alcohol Consumption.

Guideline E - Personal Conduct

Applicant left his previous employment under unfavorable circumstances. He was told by his supervisor that he could resign or he would be fired based on allegations of an inappropriate relationship with a female co-worker. He chose to resign. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1: (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*) applies with regards to circumstances related to Applicant's resignation from his previous job.

Applicant deliberately withheld the circumstances behind his departure from this job in response to question 20 on his security clearance application. Personal Conduct Disqualifying Condition E2.A5.1.2.2: (*The deliberate omission, concealment, or falsification of relevant and material facts from any personal 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*) applies. Despite his expressed belief that he thought he did not have to list the circumstances behind his departure from his previous job since he resigned, his circumstances for leaving were unfavorable. He was aware that he left this job under unfavorable circumstances. As such, Applicant should have listed this information in response to question 20.

Applicant was also required to list his court-martial charges in response to question 21 on his security clearance application. He did not list the court-martial charges. While this omission was not alleged in the SOR, I am considering the omission of his court-martial charges on his security clearance application to assess the credibility of his testimony at the hearing.

I find none of the Personal Conduct Mitigating Conditions (PC MC) apply to Applicant's case. PC MC E2.A5.1.3.1: *(The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability)* does not apply. Applicants are required to be truthful with the Government at all times. A lack of candor raises questions as to whether the person is trustworthy enough to protect classified information. In addition, he has not provided sufficient information to mitigate the circumstances behind his resignation from his county government job.

Deliberate falsification can be mitigated if as alleged under PC MC E2.A5.1.3.3: *(The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts)*. In this case, Applicant has failed to meet his burden that he made a prompt, good-faith effort to correct his falsification. He did not disclose the circumstances related to his resignation until he went over his employment history during his interview with a Special Agent of the Defense Security Service, approximately three months after he submitted his security clearance application. I do not find that his disclosure was prompt. Accordingly Guideline E, is concluded against Applicant.

Guideline G - Alcohol Consumption

The Government's evidence establishes potentially disqualifying conditions under Guideline G, Alcohol Consumption.

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)* applies because Applicant has had two alcohol-related driving arrests from December 1993 to October 2003.

As to the mitigating conditions, I find that Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1: *(The alcohol-related incidents do not indicate a pattern)* applies. Absent, any other evidence of excessive use of alcohol, two alcohol-related arrests within a ten year period does not indicate a pattern. The two incidents are too remote in time. Although he used poor judgment when deciding to drink and drive, I find there is no pattern of alcohol-related incidents.

AC MC E2.A7.1.3.2: *(The problem occurred a number of years and there is no indication of a recent problem)* applies. Applicant's most recent alcohol-related incident occurred in October 2003. He successfully completed his court-ordered alcohol education course and his probation was terminated early.⁽³¹⁾ There have been no alcohol-related incidents since 2003. Although he still drinks a moderate amount of alcohol, the level of use does not raise a concern. Applicant has mitigated the security concern raised by his alcohol consumption.

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 E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For 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.

Erin C. Hogan

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. Tr. at 50.
3. Tr. at 53.
4. Gov Ex 2, p.2; Tr. at 29, 46.
5. Gov Ex 2, p.3.; Tr. at 25.
6. Tr. at 22.
7. Tr. at 37.
8. Gov Ex 1.
9. Gov Ex 1, question #20.
10. Gov Ex 2, p.3; Tr. at 16-17.
11. Tr. at 22.
12. Gov Ex 2, p.2.
13. *Id.*
14. Gov Ex 4.
15. Gov Ex 2, p. 2.
16. Tr. at 42.
17. Tr. at 34.
18. Tr. at 49.
19. Gov Ex 1, question # 11.
20. Tr. at 52.
21. Tr. at 54.
22. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
23. Directive ¶ E2.2.1.
24. *Id.*
25. *Id.*
26. Directive ¶ E3.1.14.

27. Directive ¶ E3.1.15.

28. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

29. Directive ¶ E2.2.2.2.

30. Exec. Ord. 10865 § 7.

31. Gov Ex 3.