

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant is 45 years old and has worked as a production specialist for a government contractor since 1983. Applicant has five criminal incidents dating from 1992 to 2003 in which alcohol was a contributing factor. Applicant continues to drink alcohol. Applicant deliberately failed to list an assault charge and an open container charge on his security clearance application. He failed to mitigate the security concerns regarding Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline E, personal conduct. Clearance is denied.

CASENO: 04-10580.h1

DATE: 02/22/2006

DATE: February 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10580

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 45 years old and has worked as a production specialist for a government contractor since 1983. Applicant has five criminal incidents dating from 1992 to 2003 in which alcohol was a contributing factor. Applicant continues to drink alcohol. Applicant deliberately failed to list an assault charge and an open container charge on his security clearance application. He failed to mitigate the security concerns regarding Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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, alleged security concerns under Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline E (personal conduct).

In a sworn statement, dated August 28, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under the Guidelines and offered explanations. The case was assigned to me on November 25, 2005. A notice of hearing was issued on December 23, 2005, scheduling the hearing for January 19, 2006. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted two exhibits that were marked as Applicant's Exhibits A-B. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 27, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, 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 45 years old and has worked as a production specialist for a government contractor since 1983. He was married from 1981 to 1987, and has three grown children from that marriage. He divorced and remarried in 1989.

Applicant began drinking alcohol when his parents divorced and he was 14 years old. His consumption increased during his teen years, and he would often drink to intoxication. He cut back considerably on his drinking when he married in 1980. During this marriage he did not drink as much because of his wife and children. However, after he divorced his drinking increased. Applicant continues to drink alcohol and admits he has consumed it to the point he knows he should have stopped. He drinks a couple of drinks every 3-4 days, but not every week, and his consumption increases to six drinks every other weekend. Applicant drinks to intoxication sporadically. His current wife consumes alcohol and they often consume it together.

On August 22, 1992, Applicant had consumed alcohol at a tavern and left with another person. The police stopped him, and the passenger had an open container of alcohol. Applicant was arrested and charged with Open Container in Vehicle. He pled guilty and was sentenced to 10 days in jail, suspended upon successful completion of 12 months probation, and fined \$100 with \$50 suspended.

On December 3, 1996, Applicant and his wife were arguing. He claims he had only consumed one alcoholic drink, but his wife had consumed more alcohol. He grabbed her by the ears and asked her to leave. She got up to do so and went to the door. He stated, "I kind of gave her a little bit of a shove, and she fell out the door in a pile of snow." ⁽²⁾ Applicant was arrested and charged with assault. He pled guilty and was sentenced to 365 days in jail with 350 days suspended, ordered to attend an anger management class, fined \$1,500 and placed on probation.

Applicant was arrested on May 18, 2002, and charged with Driving Under the Influence (DUI). He had consumed approximately 5-6 drinks prior to the incident. He knew he should not have driven after consuming that amount of alcohol. Applicant pled guilty to a reduced charge of Alcohol related Reckless Driving and was sentenced to 180 days in jail with 180 days suspended, ordered to attend alcohol education, placed on probation, and fined \$925.

On December 30, 2003, Applicant was charged with having an open container of alcohol in his vehicle. He had been drinking prior to the incident and had a cooler in the backseat of his vehicle with a full bottle of whiskey. The seal was broken on the bottle.

On September 30, 2005, Applicant was arrested for assaulting his sister and interfering with an emergency phone call. They had been yelling and arguing and the neighbors called the police. Applicant stated he was "slightly intoxicated."⁽³⁾ He stated that his sister walked by him and knocked into him and he "kind of bumped her back."⁽⁴⁾ He stated he shoulder butted her twice. He pled guilty to the assault and no contest to interfering with an emergency phone call.⁽⁵⁾ Applicant reported this incident to his facility security officer.

Applicant completed his security clearance application (SCA) on June 6, 2003. He answered "Yes" to Question 24 (*Your Police Record-Alcohol/Drug Offenses-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. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*) and listed the alcohol-related reckless driving offense in May 2002, but failed to list the open container alcohol-related offense in August 1992. In his sworn statement he said:"I did not list the two above incidents because they were citations and I was not arrested. I did not think a citation was applicable."⁽⁶⁾ Applicant testified at the hearing he forgot to list one of the offenses because he had forgotten about it because it was so long ago. He also stated he failed to list it because he was not actually the person with the open container, and that was why he failed to remember the incident. Applicant's reasons and inconsistencies for failing to divulge the information are not credible.

Applicant answered "No" to Question 26 (*Your Police Record-Other Offenses-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. 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.)*), deliberately failing to list the assault charge from December 1996. Applicant intentionally failed to list the charge because he was embarrassed. Applicant stated in his sworn statement "I did not list the [arrest] incident on my questionnaire because [I] did not read the question closely enough, and I was not aware of the time frame that the questionnaire required."⁽⁷⁾ During his testimony he stated: "I know that I should have put that on there, but it was something I was embarrassed about. I wanted to leave that one in my past."⁽⁸⁾ He further stated, "I left that off purposely, yes, I did, and I apologize for that."⁽⁹⁾ Applicant did not volunteer the facts requested in Questions 24 and 26 until an investigator confronted him with the information.

Applicant continues to drink about the same amount of alcohol as he has in the past. He admits he should not drink, at least not to the extent he has in the past. He stated he should quit drinking, but it is something he must do on his own.⁽¹⁰⁾ He intends on continuing to drink alcohol.⁽¹¹⁾

Applicant provided letters from two co-workers who view him as an enthusiastic, reliable employee with a good attendance record, willing to work overtime, has a good work ethic, and does quality work.⁽¹²⁾

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, pertaining to alcohol consumption, Guideline J, pertaining to criminal conduct, and Guideline E, pertaining to personal 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.⁽¹³⁾ The government has the burden of proving controverted facts.⁽¹⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁵⁾ 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.⁽¹⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁷⁾

No one has a right to a security clearance⁽¹⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²¹⁾ 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 the evidence, I find the following adjudicative guidelines 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 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.

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.

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 Guideline G, J and E.

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 August 1992 to December 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's alcohol-related incidents indicate a pattern. From 1992 to 2003, he has had five criminal incidents where alcohol was involved. After each incident he continued to consume alcohol. Some incidents were minor, such as an open container, but they show that alcohol remains a constant in his life. Applicant admits he should stop drinking, but will do so on his own. He did not provide any indication that he had plans to do so in the future. To the contrary, he admitted he plans on continuing to drink alcohol. Although there is no indication he is an alcoholic or is in a constant state of intoxication, there is an obvious indication that when he drinks he is more likely to get in trouble and exercise poor judgement. I have not considered Applicant's latest alcohol incident that occurred in September 2005 for disqualifying purposes, but I have considered it when applying the mitigating conditions and whether it is likely alcohol will continue to have negative consequences on his life. I conclude it will, because Applicant has not offered evidence as to positive changes he has made in his life regarding his alcohol consumption. I find that AC MC E2.A7.1.3.1, AC MC E2.A7.1.3.2, and AC MC E2.A7.1.3.3 do not apply. I find Applicant has failed to mitigate the security concerns under Guideline G.

Based on all of the evidence, I have considered all the disqualifying conditions and especially 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*), and conclude both apply. Applicant has been arrested and charged with DUI, assault and two open container violations. The DUI charge was reduced to alcohol-related reckless driving.

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. Applicant's last arrest and conviction alleged in the SOR was in 2003, a period of almost three years ago. I find CC C E2A10.1.3.1 applies. I find that the frequency that Applicant has been involved in criminal violations negates the applications of CC MC E2A10.1.3.2. Applicant's criminal conduct is directly related to his alcohol consumption. Until Applicant makes positive changes regarding his alcohol consumption, there is not clear evidence that he is successfully rehabilitated. This is also supported by Applicant's recent conviction in 2005 for an alcohol-related assault, which is a matter to consider when reviewing his conduct within the "whole person" concept. Applicant failed to mitigate Guideline J, criminal conduct.

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*) applies in this case. Applicant deliberately failed to divulge required information on his SCA. He provided inconsistent reasons for why he did so and admitted he was embarrassed about the assault charge against his wife, so purposely did not divulge it.

I have considered all the mitigating conditions and especially 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.A5.1.2.2 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), 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. Applicant's falsifications were not isolated, as evidenced by the two times he provided inconsistent statements and the inconsistencies between his sworn written statement and his sworn testimony. The falsifications are recent because they were included as part of his current SCA. Applicant did not make a voluntary good faith effort to correct his falsifications until he was confronted by an investigator. He admitted he was embarrassed by the assault charge and purposely did not list it. He claimed he was confused and then later said he forgot to list the open container charge. He failed to provide information about positive steps he has taken to eliminate his vulnerability to exploitation. Applicant's falsifications reflect very questionable judgment. Applicant failed to mitigate the security concerns raised by her personal 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 the whole person and I find Applicant failed to mitigate the security concerns regarding Guidelines G, alcohol consumption, Guideline J, criminal conduct, and Guideline E, personal conduct. 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, Guideline G, J, and E 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

Paragraph 2 Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Paragraph 3 Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the 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.

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. Tr. 35.

3. Tr. 20.

4. *Id.*
5. This charge was not part of the SOR allegations and will not be considered for disqualifying purposes, other than to review Applicant's conduct with regards to the whole person concept.
6. GE 2 at 2.
7. *Id.*
8. Tr. 19.
9. *Id.*
10. Tr. 42-43.
11. Tr. 44.
12. AE A-B.
13. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
14. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
15. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
17. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
18. *Egan*, 484 U.S. at 531.
19. *Id.*
20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865 § 7.