

KEYWORD: Alcohol; Criminal Conduct; Drugs; Personal Conduct

DIGEST: Applicant, a 25-year-old engineer, failed to mitigate alcohol, drug, and personal conduct security concerns. Although Applicant has an excellent work record and is strongly motivated to change her behavior, a serious DWI in 2004, and intoxication one month later, were too recent to justify application of mitigating condition. Drug involvement was mitigated by passage of time and no contact with drug user who lived with her. Clearance is denied.

CASENO: 04-11381.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11381

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 25-year-old engineer, failed to mitigate alcohol, drug, and personal conduct security concerns. Although Applicant has an excellent work record and is strongly motivated to change her behavior, a serious DWI in 2004, and intoxication one month later, were too recent to justify application of mitigating condition. Drug involvement was mitigated by passage of time and no contact with drug user who lived with her. Clearance is denied.

**STATEMENT OF CASE**

On August 5, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 25, 2005, Applicant answered the SOR allegations, and requested a hearing. Eight exhibits were attached to her answer. The matter was assigned to me on September 22, 2005. A notice of hearing was issued on September 30, 2005, and a hearing was held on October 18, 2005. Five government exhibits were admitted into evidence. Applicant introduced eight additional exhibits, testified, and called six witnesses. All of her exhibits were admitted in evidence. The record was left open for 30 days for submission of a clinical evaluation. It was submitted to me on November 22, 2005, dated November 14, 2005, and admitted. The transcript was received on November 14, 2005.

## FINDINGS OF FACT

Applicant admitted in whole or in part with explanations all of the specific SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 25-year-old employee of a defense contractor working as a systems engineer since June 2003. She has a bachelor's degree in electrical engineering and is working on a master's degree. Her academic record is excellent (Exh. G) and her professors speak highly of her (Exh. J). She is ambitious to obtain a doctorate in the field. She was divorced in 2003 and is a single mother of a four-year-old. She also provides support for her mother who is disabled. Her former husband is in prison and provides no support for her or her daughter. He has relinquished all parental rights to their child. She has recently become a first-time homeowner in which she takes great pride.

Applicant has had difficulties with alcohol resulting in two DWI charges separated by six years. The first was in 1998 and resulted in a conviction, fine of \$30.00 and suspension of her license. The second was in May 2004, when her automobile rolled over and she was injured. She was convicted, paid a fine of \$300.00 with fees of \$215.00, and received a suspension of her license for six months. She voluntarily went into counseling with a professional service where she was diagnosed as alcohol dependent and attended 20 weeks of alcohol treatment classes ending in August 2004. She also attended an extensive driver training program. The last time she drank to the point of intoxication was in June 2004, one month after the most recent DWI and after being diagnosed as alcohol dependent This occurred while on a kayaking trip with her boyfriend. She now rarely drinks, and at most a glass of wine.

Applicant used marijuana with varying frequency beginning in college continuing between 1997 and 2000. She stopped during her pregnancy but resumed use approximately once a month in 2002 and 2003. She no longer uses marijuana. In 2004, her boyfriend lived with her providing some parental support to her daughter. However, he used marijuana and cocaine until June 2004, when they separated briefly. She continued to live with him when he did not use drugs until ay, 2005, when he departed for other reasons and they are no longer in a relationship.

After the hearing concluded, Applicant had three sessions totaling six hours with a licensed clinical social worker (LCSW) who submitted a report dated November 14, 2005. She found in her assessment that Applicant was no longer alcohol dependent or an alcohol abuser and was "extremely motivated to continue her sober and substance free path" with "positive and realistic goals for her future" (Exh. Q). The LCSW recommended that she continue psychotherapy sessions for preventive support for her alcohol program. Applicant has agreed to do so.

Applicant is highly regarded by her employer, her supervisors, and her colleagues at work.

Five of them testified on her behalf and all spoke highly of her professionalism, good conduct, and excellent character. Her mother also testified concerning various issues that Applicant had overcome and exercise of responsibility for the care of her daughter. In addition to the testimony, 21 letters of support were introduced from colleagues, supervisors, friends, and relatives (Exh. J).

Applicant is an impressive and ambitious person with obvious talents who is conscientiously trying to overcome what appears to be the only problems she has in her life. She has a good job, is financially secure with solid academic and personal ambitions, a support mechanism at her company, and a family dedicated to help her achieve her goals.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information

*See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved

in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning under Guideline G (Alcohol Consumption). This relates to excessive alcohol consumption (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.1.) Possible mitigating factors include the fact that several events occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.) While there have been significant changes in behavior, there has been insufficient time since the May, 2004 DWI to justify the application of the mitigating factor.

Guideline J (Criminal Conduct) is also alleged. The Government has established a sufficient basis that DC 1 might be applicable to Applicant from the two arrests that occurred in 1998 and 2004. It could be mitigated by the facts that the criminal behavior was not recent (E2.A10.1.3.1), the crime was an isolated incident (E2.A10.1.3.2.), and there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). Even though the two offenses were separated by a six year period, the crimes were not isolated since both arose from similar conduct. While the 1996 incident is not recent, the 2004 incident is recent and is not mitigated.

The government has cited DC 1 under Guideline H concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse is the illegal use of a drug . . . ." (E2.A8.1.1.3) Possible mitigating Conditions (MC) that might be applicable are that the drug involvement was not recent. (E2.A8.1.3.1.), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) Applicant has indicated a strong intent not to use drugs in the future and has not used drugs for over two years. This period is of sufficient duration to justify application of the mitigating conditions.

Under Guideline E (Personal Conduct) of the Directive, questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant was involved with a boyfriend residing with her used drugs. That situation no longer exists so mitigating factors are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant is an

impressive person of talent who holds a responsible position with her employer. However, her conduct in the extensive past use and recent use of alcohol to the point of intoxication leads to the conclusion that it is premature to grant a security clearance. While she expresses sincere and credible regret for her conduct and the recent report of the LCSW shows considerable progress, there has not been sufficient time since her change of lifestyle to warrant a favorable security determination at this time.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's conduct precludes a finding that it is clearly consistent with the national interest to grant a security clearance to her. It is premature to grant Applicant a clearance at this time.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline J AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline H FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Paragraph 4. Guideline E FOR APPLICANT

Subparagraph 4.a.: For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard  
Administrative Judge