

KEYWORD: Criminal Conduct; Alcohol; Personal Conduct

DIGEST: Applicant's excessive alcohol consumption led to questionable judgment and a failure to control his impulses- he assaulted his wife on three occasions. In his security clearance application, he deliberately omitted reference to his criminal offenses and his treatment for alcohol abuse. Applicant failed to mitigate security concerns raised by his criminal conduct, excessive alcohol consumption, and personal conduct. Clearance is denied.

CASE NO: 04-12831.h1

DATE: 05/26/2006

DATE: May 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12831

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Esq., Department Counsel

FOR APPLICANT

Steven H. Fleischer, Esq.

SYNOPSIS

Applicant's excessive alcohol consumption led to questionable judgment and a failure to control his impulses-he assaulted his wife on three occasions. In his security clearance application, he deliberately omitted reference to his criminal offenses and his treatment for alcohol abuse. Applicant failed to mitigate security concerns raised by his criminal conduct, excessive alcohol consumption, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 21 July 2005 detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in an undated letter and elected to have a hearing before an administrative judge. The case was assigned to me on 28 November 2005. On 8 May 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The delay in scheduling was caused by the difficulty in arranging for court interpreters. DOHA received the hearing transcript (R.) on 17 May 2006.

FINDINGS OF FACT

Applicant is a 46-year-old senior inspector for a defense contractor. He has been employed there for 24 years. He was first granted a security clearance in May 1990 and still had access to classified information at the time of the hearing. Ex. 1 at 6; R. 64, 66-67.

Applicant married his first wife in 1983. They had two children. One is in college and the other is in high school. After the death of his first wife in 2001, he married again in December 2004.

Applicant began consuming alcoholic beverages when he was 15 years old. ⁽¹⁾ Ex. 9 at 2, 12. He consumed three six-packs of beer every Friday, Saturday, and Sunday from 1977-1998. In 1999, he switched to wine and drank 10-12 glasses a day until 2003. Applicant was arrested for simple assault in October 1997, June 1999, and October 2000 after engaging in alcohol-related fights with his first wife, who was alcohol-dependent. Each of the charges was dismissed. But after the last incident, the court ordered Applicant to enter an in-patient rehabilitation program. He had also been reprimanded at work due to frequent absences attributable to his drinking. Applicant was admitted to a 28-day program in January 2001. He was diagnosed with chemical dependence. His wife attended the 28-day program a month later.

At the end of his treatment, Applicant was advised to abstain from using alcohol and was referred to Alcoholics Anonymous and an aftercare counselor. Almost immediately, Applicant was missing his scheduled appointments with the counselor and was not attending Alcoholics Anonymous meetings as recommended by both his in-patient treatment program and his aftercare counselor. In March 2001, his wife returned home from her in-patient therapy. In May 2001, Applicant's counselor wrote to him because he was not attending counseling sessions. On 23 May 2001, Applicant left a message for his counselor that he had relapsed and was requesting help. He scheduled an appointment for 31 May but later rescheduled it for 11 June. On 6 June his wife fell out of bed while drunk and struck her head. She died on 16 June 2001. Applicant returned to counseling briefly, but sporadically. On 28 February 2002, the counselor closed Applicant's case because of his failure to continue in therapy.

On 21 February 2003, Applicant completed a security clearance application (SCA) by certifying that his statements were true, complete, and correct to the best of his knowledge and belief, and by acknowledging that a knowing and willful false statement could be punished by a fine and/or imprisonment under 18 U.S.C. § 1001. Ex. 1 at 7. Question 26 asked if, in the previous seven years, Applicant had been arrested for, charged with, or convicted of any offenses not listed elsewhere on the SCA. Question 30 asked if, in the previous seven years, Applicant's use of alcoholic beverages had resulted in any alcohol-related treatment or counseling not otherwise reported on the SCA. Applicant answered "no" to both questions. Applicant had not otherwise reported on his SCA his three arrests for assault or the alcohol-related treatment programs in which he was enrolled in January and February 2001. Applicant intentionally omitted this information because he thought his employer might fire him from his job if he provided the correct answers.

In September 2003, Applicant returned to the facility from which he had been receiving counseling after his in-patient treatment. He reported he had started drinking at age 15, had last used alcohol-six beers-approximately 10 days earlier, that at times he was drinking daily, and that a physician had diagnosed him with possible liver damage due to excessive alcohol consumption. Ex. 9 at 2.

Applicant was given an in depth substance abuse evaluation in April 2005 at a hospital. The clinical findings were "alcoholism: episodic 303.92." The clinician noted Applicant's impaired judgment regarding his use of alcohol and lack of insight regarding the need for total abstinence. Applicant agreed to follow up with outpatient and outreach programs and to reenter Alcoholics Anonymous. At the hearing, Applicant admitted he is still consuming wine. He had four

glasses on the Saturday before the hearing.

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. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested in October 2000 for simple assault (¶ 1.a); arrested in June 1999 for simple assault (¶ 1.b); arrested in October 1997 for simple assault (¶ 1.c); and violated 18 U.S.C. § 1001 by falsifying his security clearance application (¶ 1.d).

In his Answer, Applicant admitted each of the allegations. A history or pattern of criminal activity creates doubt about

an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1. It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).

The evidence established Applicant deliberately falsified his SCA because he was afraid of the possible consequences to his employment. Information regarding an applicant's arrests and alcohol-related treatment and counseling are relevant and material to a determination of his security worthiness. The evidence persuades me Applicant violated 18 U.S.C. § 1001 by deliberately omitting this information from his SCA.

It is a potentially disqualifying condition for an Applicant to admit criminal conduct (DC E2.A10.1.2.1) or to have committed a serious crime or multiple lesser offenses. Applicant's three assaults on his wife are minor offenses. His violation of 18 U.S.C. § 1001 is a serious offense.

An applicant may mitigate criminal conduct security concerns by establishing that the criminal behavior was not recent (MC E2.A10.1.3.1), factors leading to the violations are not likely to recur (MC E2.A10.1.3.4), or there is clear evidence of rehabilitation (MC E2.A10.1.3.6). None of these, nor the other mitigating conditions listed under Guideline J, applies to this case. The assaults are not recent-the last being more than five years ago. Nevertheless, he committed his last criminal offense as recently as 2003 when he violated 18 U.S.C. § 1001 by deliberately omitting information from his SCA. And he continues to consume alcohol which appears to have been a catalyst in the assaults he committed. Applicant failed to persuade me that the factors leading to his violations of law are not likely to recur or that there is clear evidence of rehabilitation. I find against Applicant on ¶ 1.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant was diagnosed with chemical dependency at a 28-day in-residence chemical dependency program in January 2001 (¶ 2.a); was diagnosed with alcohol dependence when admitted to a chemical dependency counseling program in February 2001 (¶ 2.b); was diagnosed with alcohol dependence in September 2003 when he sought counseling because he had been drinking for the previous 12 months (¶ 2.c); was diagnosed with episodic alcoholism in April 2005 when he underwent a substance abuse evaluation (¶ 2.d); he continued to consume alcohol through March 2006 (¶ 2.e); and he was charged with multiple alcohol-related offenses as set forth in ¶ 1 (¶ 2.f). In his Answer, Applicant admitted each of the allegations.

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. Directive ¶ E2.A7.1.1. It is potentially disqualifying for an applicant to be involved in alcohol-related incidents away from work (DC E2.A7.1.2.1) or be evaluated as alcohol dependent by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program (DC E2.A7.1.2.4). Applicant's excessive alcohol consumption has resulted in the exercise of questionable judgment and a failure to control his impulses. He was involved in assaults on his first wife and was frequently absent from his job.

An applicant may mitigate such alcohol consumption security concerns by establishing that the problem occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2) or that he has made positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3). In his answer to an interrogatory regarding his present use of alcohol, Applicant wrote that he consumed "4 glasses of wine everyday & every weekend." At his hearing, Applicant testified he only consumes alcohol on the weekends and that his interrogatory answer was an error. Applicant failed to convince me that he does not still consume four glasses of wine every night or that either of these mitigating conditions apply. I find against Applicant on ¶ 2.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately denying he had ever been arrested in the previous seven years for any offenses not listed elsewhere on his application (¶ 3.a); and deliberately denying he had received any alcohol-related treatment or counseling as a result of his use of alcoholic beverages in the previous seven years (¶ 3.b). In his Answer, Applicant admitted each of the allegations.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. It is potentially disqualifying for an applicant to deliberately omit, conceal, or falsify relevant and material facts from an SCA. DC E2.A5.1.2.2. An applicant's arrest record and history of alcohol-related treatment and counseling are relevant and material to a determination of his security worthiness. I find DC E2.A5.1.2.2 applies.

An applicant may mitigate such personal conduct security concerns by establishing that he has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. MC E2.A5.1.3.5. Applicant has admitted he deliberately falsified his answers to questions 26 and 30 on his SCA. Such action does eliminate his vulnerability to exploitation. Nevertheless, after considering all of the evidence in this case, the disqualifying and mitigating conditions, and the adjudicative process factors, I find against Applicant on ¶ 3. Applicant failed to convince me that he has been totally honest about his consumption of alcohol or that he will be more candid in the future.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against 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.

JAMES A. YOUNG

Administrative Judge

1. In his March 2004 statement to an agent of the Defense Investigative Service (Ex. 4 at 2) and his intake interview with the 28-day rehabilitation facility (Ex. 8 at 2), Applicant claimed he started drinking at age 18.