

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant has a history of alcohol-related arrests. From October 2003 to February 2004, he was treated for a condition diagnosed as alcohol abuse. Applicant failed to list two alcohol-related charges on the personnel security clearance form (SF-86) he completed and signed in April 2003. Applicant failed to mitigate security concerns under Guidelines G and E of the Directive. Clearance is denied.

CASENO: 05-00102.h1

DATE: 03/07/2006

DATE: March 7, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00102

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol-related arrests. From October 2003 to February 2004, he was treated for a condition diagnosed as alcohol abuse. Applicant failed to list two alcohol-related charges on the personnel security clearance form (SF-86) he completed and signed in April 2003. Applicant failed to mitigate security concerns under Guidelines G and E of the Directive. 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. On October 7, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on November 14, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 28, 2005. The FORM contained documents identified as Items 1 through 10. By letter dated December 30, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM January 3, 2006. He did not submit any information or objections within the required time period. On February 22, 2006, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct under Guideline G, Alcohol Consumption, and one

allegation of disqualifying conduct under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted eight allegations under Guideline G and did not admit or deny one allegation under Guideline G. He denied the one Guideline E allegation. (Item 3.) Applicant's admissions are incorporated as findings of fact.

Applicant is 42 years old and employed as a program manager by a government contractor. He was married in 1983. He and his wife are the parents three adult children. From 1981 to 1984, Applicant served in the Navy as a petty officer second class. From 1986 to 2002, he served in the Marine Corps as a gunnery sergeant. In 1996, Applicant and his wife filed a petition for bankruptcy. (Item 4.)

While in the military, Applicant held a security clearance and was granted access to Sensitive Compartmented Information (SCI). (Item 3; Item 4.) For over five years, Applicant's duties included interviewing and submitting clearances for Marines requiring access to SCI. (Item 3 at 2.)

From December 1981 to at least September 2003, Applicant consumed alcohol on occasion to the point of intoxication, conduct that resulted in several alcohol-related incidents and arrests. On or about December 24, 1981, at the age of 18, Applicant was arrested and charged with Driving under the Influence (DUI). He pled guilty and was fined. (Item 4; Item 5.) In September 1983, while in the Navy, Applicant was detained by local police on a misdemeanor complaint for (1) Battery, (2) Communicating a Threat, (3) Disrespect to Security Patrolmen, and (4) Disobeying a Lawful Order. The local police transported Applicant back to his ship and turned him over to the Navy. The Navy's Incident/Complaint Report stated Applicant smelled of alcohol, had bloodshot eyes, and verbally threatened and abused a local police officer who detained him. (Item 9 at 2.)

In December 1988, Applicant was arrested on a military installation and charged with Driving While Impaired. The Navy Incident/Complaint identified Applicant's blood alcohol content as .13. The report also specified alcohol involvement and characterized the incident as a military and traffic offense. (Item 10 at 1.) In October 1993, Applicant received a non-judicial punishment under Article 15, Uniform Code of Military Justice, for DUI and Provoking Speech or Gestures. (Item 4; Item 6.) Applicant admitted receiving treatment from October 1994 to November 1994 at a substance abuse center at a military installation. (Item 3.)

On or about September 25, 2003, Applicant was arrested and charged with (1) Improper Lane Change, (2) Possession of Open Alcohol Beverage/Container in Motor Vehicle, (3) Operating Motor Vehicle Under the Influence of Alcohol/Drugs, and (4) Failure to Wear Seatbelts. His blood alcohol level was .229. He pled guilty to Count (3). He was ordered to pay fines and costs of approximately \$575 and to attend an alcohol substance abuse program. The other counts were dismissed. (Item 5 at 1-2.)

On October 15, 2003, Applicant appeared for an intake appointment at an alcohol safety action program facility. He was classified for the following substance abuse services: 12 hours of alcohol education; a referral to a substance abuse

treatment program, and two community resource meetings (such as Alcoholics Anonymous or Narcotics Anonymous) per week. (Item 8) Applicant successfully completed the alcohol education safety program. On October 22, 2003, Applicant began a 16-week intensive substance abuse treatment program. He received a diagnosis of alcohol abuse from a licensed clinical social worker. Applicant maintained abstinence throughout the treatment program, which he successfully completed in February 2004. (Item 7, at 3; Item 8.)

The facility recommended for Applicant's aftercare that he continue to develop his plan of action for avoiding alcohol consumption in the future and participate in support groups such as Alcoholics Anonymous for continued monitoring. (Item 7 at 3.)

Applicant stated he has not consumed alcohol since September 25, 2003. He denied he has an alcohol problem. He denied his use of alcohol ever caused any problems with his finances, health, family, or employer. He has no future intention to drink alcohol. (Item 5, 1-2.) He provided no information on whether he participates in aftercare activities.

Applicant completed and signed a security clearance application (SF-86) on April 21, 2003. (Item 4.) Question 24 on the SF-86 asks if an applicant has ever been charged with or convicted of any offense related to alcohol or drugs. In his response to Question 24 on the SF-86, Applicant replied "yes" and listed his DWI arrest in October 1981 and his non-judicial punishment in October 1993 for DUI. He failed to list the misdemeanor complaint against him in September, 1983, for Battery, Communicating a Threat, Disrespect to Security Patrolmen, and Disobeying a Lawful Order, conduct which occurred after he had consumed alcohol to excess. He also failed to list his arrest in December 1988 for Driving While Impaired on a military installation.

On December 16, 2003, in a signed, sworn statement to a special agent of the Defense Security Service, Applicant stated: "I have had no other alcohol-related incidents other than what I listed on my security questionnaire in 1993 and 1981, and these incidents were discussed during previous background investigations." (Item 5 at 2-3.) In his answer to the SOR Applicant denied deliberately failing to list the September 1983 and December 1988 alcohol-related incidents on his SF-86. He admitted, however, that they had occurred. (Item 3 at 1-2.)

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 has 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 personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline G - Alcohol Consumption

In the SOR DOHA alleged Applicant consumed alcohol, at times to the point of intoxication, from approximately December 1981 to at least September 2003 (¶ 1.a.); that in December 1981, he was arrested and charged with Driving Under the Influence, a charge to which he pled guilty and was fined (¶1.b.); that in about September 1983, a misdemeanor complaint was filed against Applicant for (1) Battery, (2) Communicating a Threat, (3) Disrespect to

Security Patrolmen, and (4) Disobeying a Lawful Order after he had been consuming alcohol (§ 1.c.); that he was arrested in December 1988 on a military installation and charged with Driving While Impaired, with a blood alcohol level of .13, which resulted in his base driving privileges being suspended for one year (§ 1.d.); that he received a non-judicial punishment on or about October 19, 1993 for Driving Under the Influence and Provoking Speech or Gestures (§ 1.e.)

DOHA further alleged Applicant received treatment from October 1994 to November 1994 at a substance abuse center at a military installation (§ 1.f.); that in September 2003 he was charged with and pled guilty to Operating a Motor Vehicle Under the Influence of Alcohol /Drugs, was sentenced to jail time, ordered to attend an alcohol and drug education program, to pay fines and costs, and his license was suspended for 90 days (§ 1.g.); that, from approximately October 13, 2003 to November 20, 2003, he received treatment in an alcohol safety program (§ 1.h.); and that, from October 9, 2003, to February 20, 2004, he received treatment for a condition diagnosed as alcohol abuse (§ 1.i.).

Security concerns under Disqualifying Condition (DC) E2.A7.1.2.1. (3) and DC E2.A7.1.2.5. (4) are raised by Applicant's admissions and the record evidence. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. Applicant's admissions and the record evidence show he was arrested or detained for five alcohol-related incidents away from work between 1981 and 2003, thus raising a concern under DC E2.A7.1.2.1. of Guideline G.

Applicant admits he consumed alcohol at times to excess and to the point of intoxication from December 1981 to at least September 2003. His habitual consumption of alcohol to the point of impaired judgment raises concerns under DC E2.A7.1.2.5.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (Mitigating Condition (MC) E2.A7.1.3.1.), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (MC E2.A7.1.3.4.)

Applicant's episodic heavy drinking from approximately 1981 to 2003 indicates a lifestyle and pattern of behavior. His most recent alcohol-related arrest occurred in September 2003 and is therefore recent.

Applicant received a diagnosis of alcohol abuse in October 2003. Following that diagnosis, he successfully completed a court-ordered alcohol treatment and rehabilitation program. He asserted he has abstained from alcohol since September 2003 and does not plan to drink alcohol in the future. Additionally, he denied alcohol ever was a problem in his life, and he denied his past use of alcohol had caused any problems with his finances, health, family, or employer.

Applicant's alcohol treatment included aftercare recommendations by the licensed clinical social worker who was a staff member of a recognized alcohol treatment program. The licensed clinical social worker recommended Applicant continue to attend support groups such as Alcoholics Anonymous for continued monitoring and develop a plan of action to address impulses to drink in the future. Applicant presented no evidence to show is he carrying out the aftercare requirements of his alcohol rehabilitation program, such as attending support group meetings and developing a plan to maintain sobriety. While he claims he has not drunk alcohol since September 2003, he does not present evidence of positive changes in awareness and behavior supportive and predictive of continued sobriety. I conclude that MC E2.A7.1.3.1., MC E2.A7.1.3.2., and MC E2.A7.1.3.3. do not apply to Applicant's case. I further conclude that MC E2.A7.1.3.4 applies only in part to Applicant's case. Accordingly, the Guideline G allegations in the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, by falsifying material facts in his responses to Question 24 on his SF-86. DOHA alleged that Applicant deliberately failed to list his alcohol-related incidents identified at ¶¶ 1.c. and 1.d. of the SOR. (¶ 2.a.)

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR , the record evidence supports a conclusion that the Government has established its case. Applicant's failure to answer Question 24 completely, truthfully, and correctly raises a security concern under Disqualifying Condition (DC) E2.A8.1.2.2. of Guideline E. In his answer to the SOR, Applicant acknowledged his awareness of the alcohol-related incidents alleged at ¶¶ 1.c. and 1.d. of the SOR, and he failed to offer a credible explanation for failing to list them on his SF-86. Applicant's actions to conceal information about his 1983 and 1988 alcohol-related incidents could make him vulnerable to coercion and blackmail. (DC E2.A5.1.2.4.) His conduct raises additional concerns under DC E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his past conduct suggests that, under some circumstances, he may put his interests before those of the Government. The ability to be truthful goes to the essence of an individual's security worthiness.

Mitigating condition (MC) E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsifications were isolated, not recent, and if the Applicant subsequently provided the correct information voluntarily. (MC E2.A5.1.3.2.) Applicant was not forthcoming about the alcohol-related incidents identified at ¶¶ 1.c. and 1.d. of the SOR, and he provided no credible explanation for omitting them in his answer to Question 24 on his SF-86. He continued to deny the existence of the incidents in his signed, sworn statement of December 16, 2003. Applicant's falsifications were not isolated incidents and they are recent. Accordingly, the allegation in subparagraph 2.a. of the SOR is concluded against the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not mitigated the security concerns raised by the allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1.: Guideline G.: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2.: Guideline E.: AGAINST APPLICANT

Subparagraph 2.a.: Against 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 continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. ¶ E2.A7.1.2.1. under Guideline G, Alcohol Consumption identifies "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" as conduct that could raise a security concern and disqualify one from a grant of a security clearance.

4. ¶ E2.A7.1.2.5. under Guideline G identifies "habitual or binge consumption of alcohol to the point of impaired judgment" as conduct that could raise a security concern and disqualifying condition.