

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00415

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, age 38, admitted alcohol abuse since the age of 12. He used marijuana in 1991, while employed by a federal agency, and from 1999 to 2000. He admitted giving a false answer on his security clearance application and during an interview with a federal investigator. He failed to mitigate the security concerns about alcohol consumption, drug involvement, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR alleged facts under Guideline G (alcohol consumption), Guideline H (drug involvement), and Guideline E (personal conduct) which precluded DOHA from making a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. DOHA recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On August 23, 2005, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on April 24, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by May 24, 2006. Applicant filed no response to the FORM. The case was assigned to me on June 14, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 38-year-old chief steward with a federal contractor.⁽¹⁾ He was divorced on August 7, 2002.⁽²⁾ He has two children.⁽³⁾

Alcohol Consumption

From 1979 until 2005, Applicant at times consumed alcohol to excess.⁽⁴⁾ In fact he has been drinking heavily since he was 12 years old.⁽⁵⁾ In May 1999, he sought medical assistance to discontinue his use of alcohol.⁽⁶⁾ On July 1, 1999, a second attempt for assistance occurred when he was admitted to a hospital for detoxification based on a physician's diagnosis of acute chronic alcoholism and cannabis/marijuana abuse.⁽⁷⁾ On December 7, 2000, he was admitted to a medical center for detoxification and inpatient treatment based on a physician's diagnosis of acute chronic alcoholism and cannabis/marijuana dependence.⁽⁸⁾ On December 10, 2000, he left the facility before completing the program and against medical advice.⁽⁹⁾ He continues to consume alcohol.⁽¹⁰⁾

Drug Involvement

In June 1991, Applicant used marijuana at least once when he worked for a federal agency.⁽¹¹⁾ Between February and July 1999, and September and December 2000, he used marijuana multiple times.⁽¹²⁾ He received treatment for cannabis/marijuana abuse in July 1999 and December 2000.⁽¹³⁾ The physician's notes during Applicant's July 1999 hospitalization reveal, "Pt. Comes to ER w/his wife requesting Tx [treatment] for ETOH [alcohol] and cannabis abuse." The physician reported that Applicant's "current intake of alcohol averages approximately six beers a day, though sometimes is also combined with hard liquor and the continuation of marijuana smoking more than three 'joints' daily." The principal diagnosis was alcohol dependence, and the secondary diagnosis was "Cannabis/Marijuana Dependence, Continuous Use."⁽¹⁴⁾ The medical records from the December 2000 hospitalization cite "Cannabis/Marijuana Abuse, Continuous Use."⁽¹⁵⁾ Both diagnoses were made by credentialed medical professionals.⁽¹⁶⁾

In his September 2004 Defense Security Service (DSS) interview, he stated "I voluntarily submitted myself for detox for the use of alcohol, not marijuana" and "I was never professionally diagnosed as a chronic drug user." He made the further comment, "I do not use marijuana now or do not intend to use in the future. I have a great job, too much to lose, children who look up to me as a role model. I have learned from my lessons in life it doesn't pay to use drugs."⁽¹⁷⁾

Personal Conduct

On April 30, 2003, Applicant submitted a Security Clearance Application. Question 24- Your Use of Illegal Drugs and Drug Activity-(a) asked:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenic (LSD, PCP, etc.), or prescription drugs?⁽¹⁸⁾

He answered "No," deliberately failing to disclose his prior use of marijuana.⁽¹⁹⁾ In an interview with a special agent of the DSS on June 22, 2004, he deliberately omitted material facts by not disclosing his marijuana use in 1999 and 2000.⁽²⁰⁾ He finally admitted his marijuana use in a DSS interview in September 2004. When asked about his security clearance application he said, "I initially did not state that I used marijuana because I was scared and I did not want to cast a shadow on my past."⁽²¹⁾

After the DSS agent confronted Applicant about his marijuana use in September 2004, Applicant stated that he used marijuana only two times per month during the periods of February to July 1999, and September to December 2000.⁽²²⁾ The 1999 medical records note Applicant engaged in "marijuana smoking more than three joints daily."⁽²³⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽²⁴⁾ 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."⁽²⁵⁾ The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽²⁶⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽²⁷⁾ 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.⁽²⁸⁾

Once the government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁰⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽³¹⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline G: 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 H: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Guideline E: 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.

CONCLUSIONS

Alcohol Consumption

The government established its case under Guideline G. Applicant has a history of alcohol abuse. Applicant admitted the SOR allegations. The following Guideline G Alcohol Consumption Disqualifying Conditions (AC DC) apply.

Applicant has been diagnosed by physicians with "Unspecified Alcohol Dependence, Continuous Use" both in 1999 and 2000. AC DC E2.A7.1.2.3. (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*) is applicable. Applicant has been drinking heavily since he was 12 years old, and has continued at least to August 2005. He has consumed alcohol not only to the point of intoxication, but to the extent that he has submitted himself for detoxification three different times. AC DC E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*) applies. Despite this long history of alcohol abuse, the diagnoses, and his attendance at outpatient therapy, Applicant continues to drink. AC DC E2.A7.1.2.6. (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*) applies.

None of the following Alcohol Consumption Mitigating Conditions (AC MC) apply. AC MC E2.A7.1.3.1. (*The alcohol-related incidents do not indicate a pattern*) does not apply because Applicant has been drinking since the age of 12. Since he continued to consume alcohol until at least August 2005, AC MC E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*) does not apply. AC MC E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*) is inapplicable as Applicant has not shown any change as he has continued to drink. Finally, the provisions of AC MC E2.A7.1.3.4. (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has 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*) cannot be used because Applicant has taken none of the steps enumerated in the mitigating condition. He left his last treatment program on the fourth day against medical advice. I conclude Guideline G against Applicant.

Drug Involvement

The government established its case under Guideline H. Applicant has a history of drug abuse. Applicant admitted the SOR allegations. Guideline H Drug Involvement Disqualifying Conditions (DI DC) E2.A8.1.2.1. (*Any drug abuse*) and E2.A8.1.2.3. (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*) apply. Both medical summaries from his 1999 and 2000 detoxification treatment programs list a secondary diagnosis of "Cannabis/Marijuana Dependence, Continuous Use" and "Cannabis/Marijuana Abuse, Continuous Use." Also applicable is DI DC E2.A8.1.2.5. (*Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional*). Applicant walked out of the December 2000 treatment program on the fourth day against medical advice.

Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1. (*The drug involvement was not recent*) applies. His last use was in 2000. Also, DI MC E2.A8.1.3.3. (*A demonstrated intent not to abuse any drugs in the future*) is applicable as he stated his intention not to use drugs in his DSS statement in September 2004.

DI MC E2.A8.1.3.2. (*The drug involvement was an isolated or aberrational event*) does not apply as there is known marijuana use beginning in 1991, and very heavy usage in 1999 and 2000. Finally, DI MC E2.A8.1.3.4. (*Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) does not apply because Applicant walked out of his last treatment program in 2000 against medical advice, and there is no favorable prognosis in the record. Although Applicant's drug abuse occurred over five years ago and he has stated his intention to refrain from future drug use, the fact he relapsed after his 1999 treatment program combined with his leaving the 2000 treatment program on the fourth day against medical advice outweigh the favorable mitigating factors. I find against Applicant under Guideline H.

Personal Conduct

The government established its case under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) PC DC E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant 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*), PC DC E2.A5.1.2.3. (*Deliberately providing false information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*), and PC DC E2.A5.1.2.5. (*A pattern of dishonesty*) all apply.

Applicant falsified his answer to a question about drug usage on his 2003 security clearance application. When given a second opportunity to divulge the truth during a DSS interview in June 2004, he failed to do so and gave the investigator a false answer. In September 2004, at a second DSS interview, and after being specifically confronted about his marijuana use, he admitted his past marijuana use. He continued to minimize his involvement with marijuana by not disclosing the extent of his use as revealed in the medical reports from his detoxification treatment programs in 1999 and 2000.

Mitigation is difficult since he failed to correct his falsification within the first six months of his executing his security clearance application, and before the information came out at the second DSS interview over a year later. Not only has the Appeal Board found the use of Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. of the Adjudicative Guidelines (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of PC MC E2.A5.1.3.3. (*The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*) as well in circumstances (as here) where the applicant has failed to correct his omission much earlier in a good-faith way.⁽³²⁾ The government must be able to repose a high degree of trust and confidence in persons granted access to classified information, and Applicant by his omission does not satisfy those high standards at this time.⁽³³⁾

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive ¶6.3., and have made a fair and commonsense assessment of the record. I have serious and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. He failed to mitigate security concerns about Guidelines G, H, and E. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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

Paragraph 2. Guideline H: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.c. Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a. Against Applicant

Subparagraph 3.b. Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (Security Clearance Application, dated April 30, 2003) at 1, 3.
2. *Id.* at 6.
3. Item 7 (Applicant's Statement, dated June 22, 2004) at 3.
4. Item 3 (Applicant's Answer, dated August 23, 2005) at 1.
5. Item 9 (Medical Records, dated July 1, 1999) at 2.
6. Item 3, *supra*, note 4, at 2.
7. Item 9, *supra*, note 5, at 2.
8. Item 10 (Medical Records, dated from December 7, 2000 through December 11, 2000) at 8.
9. Item 9, *supra*, note 5, at 14-15.
10. Item 3, *supra*, note 4, at 2.
11. Item 4, *supra*, note 1, at 4.
12. Item 9, *supra*, note 5, at 2-3.
13. *Id.* at 1-7; Item 10, *supra*, note 8, at 1-15.
14. Item 9, *supra*, note 5, at 5-7.
15. Item 10, *supra*, note 8, at 3.
16. Item 9, *supra*, note 5, at 5-7.; Item 10, *supra*, note 8, at 14.
17. Item 8 (Applicant's Statement, dated September 9, 2004) at 2.

18. Item 4, *supra*, note 1, at 8.
19. *Id.*
20. Item 7, *supra*, note 3, at 1-3.
21. Item 8, *supra*, note 14, at 1-3.
22. *Id.* at 2-3.
23. Item 9, *supra*, note 5, at 5.
24. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
25. *Id.* at 527.
26. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
27. *Egan*, *supra*, at 531.
28. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
29. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
30. *Id.*, at 3.
31. *See Egan*; Directive ¶ E2.2.2.
32. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995)
33. *See Snepp v. United States*, 444 U.S. 507, 511n.6 (1980).