

KEYWORD: Alcohol consumption; Financial considerations; Personal conduct

DIGEST: Applicant failed to mitigate security concerns relating to alcohol consumption, financial considerations, and personal conduct by failing to mitigate evidence of excessive alcohol use, debts of over \$8,600.00 and two bankruptcies, and failure to list debts and bankruptcies on his application for security clearance. Clearance is denied.

CASE NO: 05-02593.h1

DATE: 06/21/2006

DATE: June 21, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02593

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran. Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns relating to alcohol consumption, financial considerations, and personal conduct by failing to mitigate evidence of excessive alcohol use, debts of over \$8,600.00 and two bankruptcies, and failure to list debts and bankruptcies on his application for security clearance. Clearance is denied.

STATEMENT OF CASE

On October 20, 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.

In a sworn written statement dated November 7, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 12, 2005. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional information and the case was assigned to me on March 28, 2006.

FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor. He admitted all of the allegations concerning alcohol and financial considerations but partially denied one alcohol allegation. He offered explanatory information about some of the allegations. He denied the allegations relating to personal conduct. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant has a long history of excessive alcohol use and abuse since 1979. He was charged with a felony DUI in 1982 and, after diagnosis of alcoholism, received alcohol treatment in 1997. Despite that treatment he continued to drink. He has admitted drinking 3-5 beers a day and purchasing 30 cans of beer a week. He was drinking on the date he was scheduled to be interviewed relating to his security clearance and was interviewed six days later. He is not ready to stop drinking but promises to go to de-tox and return to AA.

Applicant has a long history of financial problems and filed for Chapter 7 bankruptcy in 1986 and 1998. One debt for over \$8,600.00 is the only significant delinquent debt alleged and Applicant contends that it was included in the second bankruptcy. However, no proof was offered through the bankruptcy records either in his answer or after receiving the FORM despite encouragement in the FORM to do so. He also has two other smaller debts that he has paid.

Applicant failed to acknowledge the delinquent debts of 90 and 180 days and the two bankruptcies on his May 19, 2003, application for security clearance (SF 86) at Questions 33, 38, and 39.

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 that it is clearly consistent with the national interest to grant or continue the applicant's 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 legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's history of excessive alcohol use over a long period of time prompted allegations of security concerns 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.), evaluation of alcohol abuse or dependence by a staff member of a recognized alcohol treatment program (E2.A7.1.2.4.), habitual consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.).

Possible mitigating conditions might include the fact that the 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.). Neither of the mitigating conditions are applicable since there are current problems and no evidence was submitted of positive changes in behavior supportive of sobriety.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating conditions might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control (E2.A6.1.3.3.) The assertion in his answer that he thought the largest debt was included in the second bankruptcy but offered no proof that it was. This is insufficient to provide grounds for application of any of the mitigating conditions.

Also alleged under Guideline E is Applicant's failure to acknowledge the judgments and delinquent debts in response to relevant questions on his SF 86 indicates questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). His conduct falls under E2.A5.1.2.2 regarding the deliberate omission of relevant and material facts from any personnel security questionnaire. No mitigating conditions are applicable since his only excuse for the omissions was that he forgot about the dates of the bankruptcies and believed the principal delinquent debt was included in the bankruptcy. However, Question 38 should have been answered in the affirmative since it concerns any debts over 180 days delinquent in the past seven years.

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 concerns 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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

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.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Paragraph 3.Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge