

KEYWORD: Alcohol; Personal Conduct

DIGEST: Applicant is 46 years old and has worked for a federal contractor since 1985, as a warehouse identification production specialist. He was arrested three times for driving under the influence of alcohol. He only recently acknowledged he is an alcoholic. He has tried to stop drinking, but has had repeated relapses, his most recent was twelve days before his hearing. Applicant deliberately failed to list two of his three arrests on his security clearance application. He failed to mitigate the security concerns regarding Guideline G, alcohol consumption, and Guideline E, personal conduct. Clearance is denied.

CASENO: 05-03359.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03359

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 46 years old and has worked for a federal contractor since 1985, as a warehouse identification production specialist. He was arrested three times for driving under the influence of alcohol. He only recently acknowledged he is an alcoholic. He has tried to stop drinking, but has had repeated relapses, his most recent was twelve days before his hearing. Applicant deliberately failed to list two of his three arrests on his security clearance application. He failed to mitigate the security concerns regarding Guideline G, alcohol consumption, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 24, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G (alcohol consumption) and Guideline E (personal conduct).

In a sworn statement, dated October 6, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR responses, Applicant admitted all of the allegations under Guidelines G. He denied the allegation in SOR ¶ 2.a. The case was assigned to me on November 22, 2005. A notice of hearing was issued on December 21, 2005, scheduling the hearing for January 11, 2006. The hearing was conducted as scheduled. The government submitted ten exhibits that were marked as Government Exhibits (GE) 1-10. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted one exhibit that was marked as Applicant's Exhibit A. The exhibit was admitted without objection. DOHA received the hearing transcript (Tr.) on January 19, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 46-year-old warehouse identification production specialist who has worked for a federal contractor since 1985. He is married and has three grown children. He has been drinking alcohol since he was in high school.

On February 21, 1987, Applicant was arrested for driving under the influence (DUI) of alcohol and a separate charge of DUI with a blood alcohol content (BAC) over .10%.⁽²⁾ His BAC was .256%. He did not believe he was drunk at the time, but did not remember how much he had to drink.⁽³⁾ On May 28, 1987, he pled guilty to the DUI, and the charge of DUI with a BAC over .10% was dismissed. He was fined \$372.50 and placed on probation for 9 months.

On September 11, 1998, Applicant was arrested for DUI, driving while license suspended, no registration, and a separate charge of DUI with a BAC of .10% or more. His BAC was over .15%. He did not remember how much he had to drink, but admitted he should not have been driving due to the amount of alcohol he had consumed.⁽⁴⁾ On April 1, 1999 the charges were dismissed because the arresting officer did not appear in court. Applicant was assessed court costs of \$350.00.

Applicant was arrested on January 26, 2003, for DUI. His BAC was .219%. He did not recall how much he had to drink.⁽⁵⁾ On March 26, 2003, he pled guilty to DUI, was fined \$442.50, sentenced to ten days in jail, ordered to complete an alcohol evaluation, complete 16 hours of community service and attend a MADD Victim Impact Panel. He was placed on probation for 12 months. Applicant completed the court ordered alcohol evaluation, and diagnosed as a problem drinker in need of corrective action. It was recommended that he receive alcohol awareness education and outpatient counseling.

Applicant continued to drink and drive at least six times after he had consumed more than four alcoholic beverages.⁽⁶⁾ However, he did not believe he was intoxicated to the point where he could not drive and did not believe he would be arrested if stopped by the police.⁽⁷⁾ Prior to his 2003 arrest, Applicant consumed nine (12 ounce) beers nearly every weekday and twelve on the weekends.⁽⁸⁾ Applicant estimated that the month prior to his arrest in 2003, he experienced one to two blackouts.⁽⁹⁾ His primary care doctor had prescribed anti-depressant drugs for him that were not to be taken with alcohol. Applicant consumed alcohol while taking these drugs for several months.⁽¹⁰⁾ From approximately January 26, 2003 to June 10, 2004, Applicant frequently drove a motor vehicle while under the influence of alcohol.

Applicant's level of alcohol consumption remained consistent until September 2005, when he realized he was an alcoholic. His revelation came after he had an interview with the Defense Security Service's (DSS) investigator and subsequent to receiving the SOR.⁽¹¹⁾ Applicant told the DSS investigator he consumed approximately five beers a day

except on the weekends when he consumed between 6-10 beers. (12) Applicant's statement is inconsistent with what he told the interviewer on his court ordered alcohol evaluation in April 2003, that is he consumed nine beers a day. (13) Applicant started attending Alcoholics Anonymous (AA) in September 2005. He stopped drinking sometime in September 2005 until sometime in November 2005, when he had a relapse and resumed drinking. (14) He relapsed approximately six times, but continued to attend AA. The last drink he consumed was on New Year's Eve 2005. He had three beers. At the time of the hearing, Applicant had been sober for twelve days.

Applicant completed his security clearance application on October 14, 2004. It took him a couple of weeks to complete all of the information on it. He understood Question 24 (*Your Police Record-Alcohol/Drug Offenses Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.*) Applicant answered "Yes" to Question 24 and listed an arrest on January 26, 2003 for DUI, but did not list his two other arrests for DUI in 1987 and 1998. Applicant's explanations for why he failed to list the requested information was not credible. At his hearing, he claimed he did not have any of the information about his 1987 arrest, did not remember the outcome, and had difficulty putting the information into the computer. (15) He also admitted he knew he had been arrested and convicted. (16) He did not consider putting the information in Question 43 where it asked if the Applicant had any additional remarks to make. Applicant's responses were not credible.

Applicant also failed to list his 1998 DUI arrest. His explanation for failing to put his 1998 arrest on his SCA was "Well, I just wanted to finish the application up and so I left it blank thinking that, since it was dismissed, it wasn't legitimate or just hurry up and get it done." (17) He had no explanation for why he was in a hurry if he had already taken a couple of weeks to complete the application. In Applicant's sworn statement he said "I did not falsify the paperwork. I just did not feel like going back home and gathering all the information necessary to complete the form. All three arrest[s] did register with me when I read the question. The 1987 DUI was so long ago I did not feel I had to list that arrest plus I do (sic) not think I could come up with the information needed anyway. The 1998 arrest did not result in a conviction so I did not think I had to list the information. I thought I only needed to include the recent DUI. I just did not know it was all that important to complete the forms correctly." Applicant's testimony and statement are not credible.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to

hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁸⁾ The government has the burden of proving controverted facts.⁽¹⁹⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽²¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²²⁾

No one has a right to a security clearance⁽²³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁶⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist because 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 E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G and Guideline E.

Based on all the evidence I considered Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*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*), and AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*) and conclude both apply. Applicant has been arrested three times for DUI and convicted twice. Applicant recently acknowledged he is an alcoholic. He consumed nine alcoholic beverages every day for a period of years and more on the weekends. Applicant repeatedly consumed alcohol and drove a car, although he was not arrested. I have also considered the whole person concept and conclude that Applicant's alcohol consumption led to impaired judgment and irresponsibility.

I have considered all the mitigating conditions, especially Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). I conclude none of these mitigating conditions apply. Applicant's three DUI arrests constitute a pattern. Although Applicant now recognizes he is an alcoholic, it is only very recently that he sought treatment, and he has no record of sobriety. He initially stopped drinking in September 2005, after being confronted with his alcohol history by the DSS investigator. He relapsed shortly thereafter and has continued to do so up to 12 days before his hearing. Although Applicant is seeing a therapist and acknowledges his alcoholism, no substantive evidence was presented to indicate positive changes have been made by Applicant to support a change in his behavior or a commitment to sobriety. Applicant has failed to mitigate the alcohol consumption security concern.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and 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*), applies in this case. Applicant deliberately falsified information on his SCA by failing to list all of his arrests. He knew he had been arrested three times for DUI, and did not list all of them until confronted by an investigator. Applicant's explanations were not credible.

I considered all the mitigating conditions, and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant falsified his SCA. He did not provide the correct information until confronted by an investigator. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. Applicant was obviously attempting to hide and minimize the level of his alcohol consumption and arrests, which makes him especially vulnerable and unreliable. Applicant's explanations were contradictory and not credible. Applicant failed to mitigate the personal conduct security concern

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding his alcohol consumption and personal conduct. Applicant's concealment and disregard for the truth is a grave and serious concern that reflects poorly on his character and judgment. It is too recent to determine if Applicant will be committed to refraining from alcohol. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines G and E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section 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

Subparagraph 1.f: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The legal blood alcohol limit for the pertinent state is .08%.
3. Tr 18.
4. Tr. 19.
5. Tr. 20-21.

6. Tr. 22.
7. Tr. 23.
8. Tr. 26-27.
9. Tr. 24.
10. Tr. 24-26.
11. Tr. 28.
12. GE 2 at 1.
13. GE 8.
14. Tr. 29.
15. Tr. 32-33.
16. Tr. 33.
17. Tr. 34.
18. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
19. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
20. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
21. ISCR Case No. 94-1075 at pp. 3-4(App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
23. *Egan*, 484 U.S. at 531.
24. *Id.*
25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
26. Executive Order 10865 § 7.