

KEYWORD: Alcohol

DIGEST: Applicant failed to mitigate security concerns arising from four alcohol-related arrests and convictions over an 11-year period from 1992 until 2003. No evidence was offered by Applicant except an assertion that he had modified his conduct and learned to live by the rules. Clearance is denied.

CASENO: 05-04066.h1

DATE: 05/09/2006

DATE: May 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04066

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant failed to mitigate security concerns arising from four alcohol-related arrests and convictions over an 11-year period from 1992 until 2003. No evidence was offered by Applicant except an assertion that he had modified his conduct and learned to live by the rules. Clearance is denied.

STATEMENT OF CASE

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, issued a Statement of Reasons (SOR) dated October 5, 2005, 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. It was received by Applicant on October 17, 2005. 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 October 31, 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 January 9, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did so on February 11, 2006. The case was assigned to me on February 22, 2006.

FINDINGS OF FACT

Applicant admitted all the specific allegations in the SOR. 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 is a 33-year-old employee of a major defense contractor who has been employed since November 2003. He holds a Bachelor of Science degree. Between 1992 and 2003 he was arrested and charged with four separate alcohol-related traffic and public drunkenness offenses in three different states. He was ordered to do community service in one case, paid fines in two cases, and served probation for six months with his license impounded for sixty days in another. In the most recent case in October 2003, he was sentenced to 30 days in jail (suspended) with a fine for public drunkenness.

Applicant indicated he will make positive changes in his behavior supportive of sobriety, asserts that he has learned to live by the rules, and is willing to totally abstain if necessary to keep his security clearance. He asked for my recommendations regarding his future conduct.

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:

The government alleges security concerns under Guideline G. This relates to excessive alcohol consumption leading to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. (E2.A7.1.1) The incidents involving alcohol clearly indicate a pattern of activity. Mitigating conditions that might be applicable include the fact that the last offense occurred a number of years ago and there is no evidence of a recent problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

Applicant elected to submit his case on the record so there is no opportunity to evaluate the sincerity and efficacy of his responses to the allegations in the FORM to which he has taken exception. Applicant has no other issues that would indicate security concerns and asserts that such factors should be considered as mitigation. However, it is not necessary for the government to allege multiple issues to establish sufficient security concerns to justify denial of a security clearance.

Applicant indicates he would be willing to totally abstain if he could keep his security clearance, but such an anticipatory statement is not sufficient to warrant the grant of a clearance. While there may have been some changes in his behavior over the past three years, he admits that he continues to drink. The 11-year period over which the four alcohol-related offenses occurred, the fact that the most recent arrest and conviction occurred only a little over three years ago, and the lack of substantive evidence to justify application of the mitigating conditions leads to the conclusion that no mitigating conditions are applicable.

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.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that Applicant has offered no evidence to counter the proof offered by the government and his admissions of the conduct alleged that could disqualify him from holding a security clearance. It is premature to rule in his favor at this time since insufficient time has elapsed since his last offense. It is not clearly consistent with the national interest to grant a security 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

Subparagraph 1.e.: Against Applicant

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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