

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant is 45 years old and works as a technical writer for a federal contractor. He has a history of alcohol abuse and alcohol related criminal charge that extends from 1981 to 2004. Although he submitted evidence of numerous accomplishments, he did not present any evidence of alcohol rehabilitation or treatment to mitigate the security concerns raised by his alcohol consumption and criminal conduct. Clearance is denied.

CASE NO: 05-07724.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07724

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old and works as a technical writer for a federal contractor. He has a history of alcohol abuse and alcohol related criminal charge that extends from 1981 to 2004. Although he submitted evidence of numerous accomplishments, he did not present any evidence of alcohol rehabilitation or treatment to mitigate the security concerns raised by his alcohol consumption and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 27, 2005, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On November 30, 2005, Applicant filed an Answer, admitting the allegations contained in the SOR, and elected to have the case decided on the written record in lieu of a hearing. On January 26, 2006, Department Counsel prepared a File of Relevant Material (FORM), and mailed Applicant a copy on January 27, 2006. Applicant had 30 days from the receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on February 1, 2006. On February 16, 2006, DOHA received additional information to which Department Counsel did not object. These materials are marked Applicant Exhibit (AX) A. This case was assigned to me on March 2, 2006.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following additional findings of fact:

Applicant is 45 years old. Since August 2003, he has worked as a technical writer for a federal contractor. In January 2004, he filed a security clearance application. [\(1\)](#)

Applicant admitted all allegations contained in the SOR under Guideline G. (¶ 1.a) From May 1981 to May 2004, he has consumed alcohol, at times to excess and to the point of intoxication. (¶ 1.b) In May 1981, he was arrested and charged with Driving Under the Influence of Liquor. He was found guilty of a reduced charge of Public Intoxication and ordered to pay a fine and court costs. (¶ 1.c) In December 1988, he was arrested and charged with Driving While Under the Influence of Liquor. He pleaded guilty to Public Intoxication and ordered to pay a fine and court costs. (¶ 1.d) In June 1992, he was charged with Driving Under the Influence of Liquor and pleaded guilty. He was ordered to pay restitution, a fine and court costs, attend DUI education, and undergo an alcohol evaluation. (¶ 1.e) In December 1994, he was arrested and charged with Driving Under the Influence. The charges were dropped. (¶ 1.f) In June 1995, he was arrested and charged with Driving Under the Influence. He was ordered to surrender his driver's license. (¶ 1.g) In October 2000, he was charged with (1) Driving Under the Influence, (2) Failure to Obey Traffic Control Device, and (3) Fleeing to Elude Police Officer. He pleaded guilty to Counts (1) and (2), and was sentenced to serve two days in jail, placed on 12 months of supervised probation, and fined. Count (3) was dropped. (¶ 1.h) In May 2004, he was arrested and charged with Public Intoxication. He was ordered to pay a fine.

Applicant also admitted all allegations under Guideline J, including, that in May 1982, he was arrested and charged with Resisting an Officer. He was found guilty of a reduced charge of Disorderly Conduct and ordered to pay a fine and court costs. (¶ 2.b)

In his January 2005 statement, Applicant admitted his May 2004 arrest occurred after he completed his SCA. He stated, "I currently do not drink any alcohol because I now have physical ailments, gout/arthritis, and [the] use of alcohol would cause me further complications." [\(2\)](#)

Applicant submitted evidence of numerous awards, degrees, achievement, personal references and letters of recommendation. [\(3\)](#) He did not submit any evidence documenting participation in any form of alcohol treatment or rehabilitation programs since the last arrest in May 2004, or from any other time, including those mandated by the court.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. 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

clearance." *Id.*

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline G - Alcohol Consumption: A security concern arises when excessive alcohol consumption leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information.

Guideline J - Criminal Conduct: A security concern may exist when a pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

The qualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and conclude the following with respect to the allegations set forth in the SOR:

Guideline G: Alcohol Consumption

The Government established its case under this guideline. Two of the disqualifying conditions apply: (1) 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*). From 1981 to 2004, Applicant was arrested seven times and convicted six times for conduct related to alcohol consumption. (2) AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant admitted that he has a 20-year history of habitually consuming alcohol to the point of intoxication.

I considered all four of the Alcohol Consumption Mitigating Conditions (AC MC) and conclude that none applies. (1) Applicant has a history of alcohol problems spanning 20 years and demonstrating a pattern of abuse, such that AC MC E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*) does not apply. (2) Based on his admission that he continued to abuse alcohol up to May 2004, AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*) is not applicable. (3) Applicant provided extensive evidence of many impressive achievements and accomplishments over the last 25 years. However, the evidence is given little weight because the alcohol related charges also occurred during those years (up to May 2004), confirming the absence of sobriety, which is the operative factor under AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). (4) 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) is not applicable. He did not provide any evidence in support of this condition. Accordingly, Applicant failed to mitigate the security concerns raised by his alcohol consumption, and the allegations under Guideline G are decided against him.

Guideline J: Criminal Conduct

Based on the evidence, the Government established its case under Guideline J, specifically, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). Applicant admitted the allegations of criminal conduct noted in the SOR, which consisted of multiple lesser offenses.

I reviewed all of the mitigating conditions under this guideline, in particular, three of them, and conclude none of them applies. (1) Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), does not apply because the last conviction occurred less than two years ago, which is sufficiently recent in time. (2) As there are eight incidents of criminal conduct, CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), is not applicable. (3) Despite those convictions, the most recent occurring two years ago and during the security clearance process, he did not submit any substantive evidence addressing his alcohol problems or corroborating his January 2005 statement that he no longer consumes alcohol; thus, CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), cannot apply. Accordingly, Applicant failed to mitigate the security concerns raised by his criminal conduct, and the allegations under Guideline J are decided against him.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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 as follows:

Paragraph 1: Guideline G (Alcohol Consumption) 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

Paragraph 2: Guideline J (Criminal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c. 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.

Shari Dam

Administrative Judge

1. Item 4 at 1.
2. Item 5 at 2.
3. AX A.