

KEYWORD: Alcohol Consumption; Personal Conduct

DIGEST: Applicant provided inaccurate information on his security clearance application regarding his history of alcohol-related offenses; however, the error was due to carelessness and inadvertence rather than an intent to deceive. He has a history of excessive alcohol consumption, as shown by four arrests for alcohol-related offenses between 1984 and 1999. He continues to consume excessive quantities of alcohol on a weekly basis. Despite a record of excellent job performance, Applicant failed to mitigate the security concerns arising from his history of excessive alcohol consumption. Clearance is denied.

CASE NO: 05-11367.h1

DATE: 06/16/2006

DATE: June 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-11367

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant provided inaccurate information on his security clearance application regarding his history of alcohol-related offenses; however, the error was due to carelessness and inadvertence rather than an intent to deceive. He has a history of excessive alcohol consumption, as shown by four arrests for alcohol-related offenses between 1984 and 1999. He continues to consume excessive quantities of alcohol on a weekly basis. Despite a record of excellent job performance, Applicant failed to mitigate the security concerns arising from his history of excessive alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On December 7, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns under the Directive, Guideline G, Alcohol Consumption, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing by letter dated January 9, 2006. He elected to have a hearing before an administrative judge.

The case was assigned to me on February 17, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on April 20, 2006. Department Counsel introduced Exhibits 1 through 8. Applicant provided Exhibits A through K and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on May 3, 2006.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.a, 1.f, 1.g, and 2.a, but admitted the remaining factual allegations in the SOR. (Answer to SOR, January 9, 2006.) Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in January 1958. (Ex. 1 at 1.) He was graduated from high school in 1976. (Tr. at 22.) Between 1976 and 1977, he attended college. (Ex. 1 at 2.) Thereafter, he worked in a series of jobs from April 1978 until May 1981. (Ex. 4 at 6.)

Applicant enlisted in the U.S. Navy in May 1981. (Ex. 1 at 4.) He served as a radio communications operator aboard a submarine and held a Top Secret/Special Background Investigation clearance. (Tr. at 18-19; Ex. 4 at 3.) While in port in Scotland in about 1984, he met his future wife. (Ex. 7 at 1.)

In January 1984, civilian police arrested Applicant and charged him with Driving Under the Influence of Alcohol (DUI). (Ex. 5.) A civilian court found him guilty of the offense and sentenced him to forfeit his \$212.00 bail. (Ex. 5 at 3.)

In December 1984, local authorities stopped Applicant for a driving infraction and noticed the smell of alcohol. (Ex. 6 at 2.) Applicant refused to take the blood-alcohol test. The civilian authorities did not file formal charges against him. (Tr. at 46.) Instead, they delivered him to the U.S. Navy shore patrol, who turned Applicant over to his commander. (*Id.*) The Navy did not take judicial or nonjudicial action against him, but required him to complete an alcohol education program. (Tr. at 47.)

Applicant left the U.S. Navy in May 1987. (Ex. 1 at 4.) He began working as an electronics technician for a series of companies. (Ex. 1 at 2.) During that time, he successfully held a Secret clearance. (Tr. at 19.)

His future wife came to the U.S. in the summer of 1987 and they were married in November of that year. (Ex. 1 at 3; Ex. 7 at 1.) A child was born of the marriage in Scotland in November 1988. (*Id.*)

Applicant's marriage was turbulent; they argued regularly. (Ex. 7 at 2.) After a particularly loud dispute in 1994, Applicant left the home and remained permanently separated from his wife. (Ex. 7 at 2.) His wife and daughter moved into an apartment and Applicant paid their rent and living expenses. (*Id.*) His employment was not steady; he was furloughed several times, and resorted to using his credit cards to meet expenses. His mortgage holder initiated foreclosure action. In September 1994, Applicant filed for bankruptcy protection. (*Id.*)

Because of the break-up of his marriage, his financial hardship, and employment problems, Applicant began consuming substantial quantities of alcohol on almost a daily basis. (Ex. 7 at 4.) He admitted experiencing "blackouts." (Ex. 7 at 4.)

In October 1994, the local police stopped Applicant while he was driving home after drinking in a bar. (Ex. 7 at 3.) Authorities charged him with DUI. A court found him guilty of the offense and sentenced him to pay a \$300.00 fine and court costs, and restricted his driving privileges for one year. (*Id.*) The court also required him to complete an alcohol safety course, including attending meetings of Alcoholics Anonymous (AA). (Tr. at 32, 51-52.)

In October 1999, Applicant went to a bar and drank four or five beers. (Ex. 7 at 3.) While driving home in heavy rain, his car stalled and he began walking along the street. The local police arrested him and issued a citation for public intoxication. (*Id.*) Applicant was not required to appear in court; he mailed in his payment of a \$50.00 fine. (*Id.*) He informed his security manager of the incident. (Tr. at 33.)

In July 2000, Applicant completed an SF 86, Security Clearance Application. (Ex. 3.) Question 24 on the form asked whether Applicant had ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered, "No." (Ex. 3 at 7.) Question 26 inquired whether, within the previous seven years, he had been arrested for, charged with, or convicted of any offenses not otherwise reported on the form. (Ex. 3 at 8.) Applicant reported the DUI in October 1994, but did not include any other offense.

In November 2002, Applicant began working for a new government contractor. (Ex. 7 at 1.) He submitted another security clearance application on November 26, 2002. (Ex. 1; Ex. 2.) He recalled receiving the form electronically-including his previous responses-and being asked to update it. (Tr. at 36, 42.) Applicant reviewed the form, signed it, and submitted it. (Tr. at 42-43.) He again answered "No" to Question 24 concerning his history of alcohol-related charges, but reported the 1994 DUI conviction in response to Question 26. (Ex.1 at 6.)

He was finally divorced from his wife in about 2002. (Ex. 7 at 1.)

In January 2004, a security investigator interviewed Applicant. (Ex. 7.) He related his history of alcohol consumption and indicated he consumed alcohol about four to five times each week. He drank about six beers per sitting during the

week, and about ten beers per sitting on the weekend. (Ex. 7 at 4.) Applicant indicated he did not drink before operating a motor vehicle.

In November 2005, in response to government interrogatories, Applicant indicated he continued to consume alcohol almost everyday, and usually drank six to eight beers each day. (Ex. 8 at 2.) He denied drinking alcohol before going to work, but admitted instances where he went to work on a weekend "feeling the effects." (Ex. 8 at 3.) He denied any alcohol-related incidents since his arrest for public intoxication in October 1999. (Ex. 8 at 4.)

At the hearing in April 2006, Applicant admitted to occasional overindulgence in alcohol, but denied that it ever affected his duty performance. (Tr. at 19.) He indicated he still drinks alcoholic beverages four to five times a week, four to five beers per sitting, on the average. (Tr. at 26, 27.) He testified that he drank to the point of intoxication-with impaired judgment-about once each weekend. (Tr. at 29-30, 38.) Applicant denied any intent to deceive the government by failing to report his alcohol-related arrests; he stated the omission of the report of the alcohol-related incidents was a simple oversight on his part. (Tr. at 33-34.)

Applicant has held a security clearance for about 20 years. His supervisors praise his duty performance and integrity. (Exs. A, B.) His project leader indicates he possesses the qualities necessary to hold a security clearance. (Ex. B.) Applicant received numerous accolades for his work aboard U.S. Navy vessels in the past, and his assistance to the government. (Exs. D, E, F, G, H, J and K.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, § 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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 security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) "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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

The adjudicative guidelines at issue in this case are Guideline G, Alcohol Consumption, and Guideline E, Personal Conduct. I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline G, Alcohol Consumption

The security concern under Guideline G, Alcohol Consumption, is that "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." (Directive, ¶ E2.A7.1.1.)

Under ¶ E2.A7.1.2.1 of the Directive, "[a]lcohol-related incidents away from work, such as driving under the influence . . . or other criminal incidents related to alcohol use" may raise security concerns. The available evidence establishes Applicant was arrested three times for driving under the influence of alcohol, resulting in two convictions. He was also arrested for public intoxication resulting in a citation and a fine. The evidence raises this potentially disqualifying condition.

Paragraph E2.A7.1.2.2 of the Directive states it may be disqualifying where there is evidence of "[a]lcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job." Paragraph 1.g of the SOR alleges Applicant reported to work under the influence of alcohol. Apparently, this allegation was derived from Applicant's statement in his answer to Interrogatories that there were instances when he came to work on the weekends "feeling the effects." (Ex. 8 at 3.) Applicant later explained that he meant that he came to work feeling groggy or sleep-deprived. I note that in his answers to the Interrogatories Applicant denied ever drinking alcohol before work, and that none of the other evidence of alcohol problems suggests it was a problem at work. I find the available evidence does not raise this potentially disqualifying condition.

The Directive, ¶ E2. A7.1.2.5, indicates "[h]abitual or binge consumption of alcohol to the point of impaired judgment" may be disqualifying. The evidence indicates Applicant drinks four or five beers about four or five times a week, and drinks alcohol to the point of intoxication about every weekend. I find the evidence shows the habitual consumption of alcohol to the point of impaired judgment.

The Directive also sets out conditions that could mitigate security concerns arising from excessive alcohol consumption. Under ¶ E2.A7.1.3.1 of the Directive, it may be mitigating where the "alcohol-related incidents do not indicate a pattern." The "alcohol-related incidents" in this case are the four arrests discussed above. The incidents reflect a pattern of excessive use of alcohol in hazardous circumstances (i.e., before driving) extending over a long period. Although Applicant has not operated a vehicle under the influence of alcohol since 1999, he continues to consume excessive quantities of alcohol on a regular basis. I find this potentially mitigating condition does not apply.

Paragraph E2.A7.1.3.2 provides that it may be mitigating where the "problem occurred a number of years ago and there is no indication of a recent problem." Applicant's alcohol-related incidents occurred a number of years ago, but his excessive consumption of alcohol is recent. This potentially mitigating condition is not raised in this case.

Finally, ¶ E2.A7.1.3.3 of the Directive states that "[p]ositive changes in behavior supportive of sobriety" may be a mitigating factor. Applicant has reduced his average alcohol consumption somewhat, but it remains sufficiently high to preclude application of this potentially mitigating condition.

Guideline E, Personal Conduct

The security concern under Guideline E, Personal Conduct, is that "[c]onduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information." (Directive, ¶ E2.A5.1.1.)

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Applicant's answer to Question 24 on his November 22, 2006 Security Clearance Application was not accurate. The requested information related to his history of alcohol-related offenses; thus, it was material and relevant to his security worthiness. The only issue is whether Applicant provided the inaccurate information inadvertently or deliberately, with an intent to mislead the government.

Applicant maintains he provided the inaccurate information accidentally, without intent to deceive the government. The available evidence tends to demonstrate that this was a matter of inadvertence rather than a deliberate intent to conceal. It appears he received the form already completed-it was an electronic copy of his earlier submission in July 2000. There are multiple innocuous errors on the form, tending to show a careless approach to its review. This includes the omission of his employer from March 2002 until November 2002 (Ex. 7 at 1); the omission of his daughter from Question 9, his report in Question 26 of a conviction that was more than seven years old, his omission of the level of security clearances in Question 31, and his report of a bankruptcy more than seven years old in response to Question 33. Finally, it is incongruous that he would report his 1994 DUI conviction in response to Question 26 (where it was not required) if he were attempting to conceal his record of alcohol-related offenses. Similarly, it would not make sense for him to report a bankruptcy when he was not required to do so, if he were attempting to conceal adverse information. I find the available evidence does not raise a potentially disqualifying condition under Guideline E.

The "Whole Person" Concept

I carefully considered all the facts and circumstances, including the potentially disqualifying and mitigating conditions, in light of the "whole person" concept. Applicant is a mature individual with many years of service to the Department of Defense, both as a servicemember and as an employee of a DoD contractor. His current supervisors commend his duty performance and character. The available evidence shows Applicant had a serious problem with excessive alcohol consumption in hazardous situations for many years. (Directive, ¶ E2.2.1.1.) Although Applicant was required to complete an alcohol education course on two occasions, he continues to consume excessive amounts of alcohol on a regular basis. For this reason, Applicant has not shown successful rehabilitation or other behavioral changes indicating that there is little likelihood of recurrence of problems from his alcohol consumption. (Directive, ¶ E2.2.1.6, ¶ E2.2.1.9.) I conclude Applicant has not mitigated the security concerns arising from his history of excessive alcohol consumption.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR 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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For 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.

Michael J. Breslin
Administrative Judge