



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 19-00583
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: Pro se

January 28, 2020

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 13, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On June 28, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption; Guideline H, Drug Involvement and Substance Abuse; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 24, 2019, and requested a hearing before an administrative judge. The case was assigned to me on September 25, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on November 6, 2019, and the hearing was convened as scheduled on December 3, 2019. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered one exhibit, referred to as

Applicant's Exhibit A, which was admitted without objection. Applicant also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 11, 2019.

Findings of Fact

Applicant is 37 years old, married a second time, and has no children. He has a high school diploma. He is employed by a defense contractor as an Assembler V. He is seeking to obtain a security clearance in connection with his employment. Applicant served in the U.S. Navy on active duty from 2005 to 2008 and was honorably discharged as a Third Class Petty Officer, E-4.

Guideline G – Alcohol Consumption

The Government alleges that Applicant has engaged in excessive alcohol consumption that often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant admits each of the allegations set forth under this guideline. He has been arrested for drunk driving on five separate occasions over the past fifteen years. He was first arrested for Driving While Intoxicated (DWI) in August 2004. He pled guilty to the offense. His two-day jail sentence was extended by an additional 20 days when he reported to jail intoxicated. His second arrest for Driving Under the Influence (DUI) occurred in December 2006. (Government Exhibits 1, 2, 3 and 6.) This time he was arrested with a child passenger in the car. He pled no contest to this offense. His third arrest for DUI occurred in January 2008. (Government Exhibit 5.) Two years later, he was arrested a fourth time for DUI. This occurred on November 2010. (Government Exhibits 1 and 2.) Applicant pled guilty to the lesser offense of Reckless Driving.

Applicant's most recent arrest for DUI occurred in September 2017. (Government Exhibit 4.) He pled guilty to this offense. Applicant explained that on this occasion he went out with a friend to a bar and had some beers. When he left, it was raining and traffic was heavy; and as he was driving onto the freeway on ramp, the cars in front of him stopped and he tried to stop, but was unable to before hitting the car in front of him. Applicant's license was suspended, he was fined \$2,500 and was required to have a two-year ignition-interlock system installed. He was confined for 120 hours, received 60 days house arrest requiring him to wear an ankle bracelet, and then community service. He was also required to complete an 18 DUI program. He was sentenced to five years of informal probation, which will end in December 2022. His driver's license remains restricted as he is only allowed to drive as long as the interlock is on. (Applicant's Exhibits 1, 2, 3, 7, and Applicant's Post-Hearing Exhibit A.)

Applicant has never formally been diagnosed as an alcoholic. He has never attended an inpatient alcohol treatment program. Following his most recent arrest for DUI, Applicant has been sober for the longest period that he can remember, which is

about 30 months. He then returned to consuming alcohol on April 2018. Applicant states that he last consumed alcohol on Thanksgiving when he had a couple of beers. (Tr. p. 50.) He states that he continues to drink, but has reduced his alcohol consumption. He further states that he has also found Alcoholic Anonymous (AA) meetings to be helpful. He has never worked the steps of AA, nor does he have a sponsor, but realizes that it could be helpful to him in the future. At this time, he does not feel that he is ready to start “sharing” at this point. (Tr. p. 50.)

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual’s reliability and trustworthiness.

Applicant admits each of the allegations under this guideline. He has used marijuana from 2008 to at least 2017. In August 2005, Applicant was charged with possession of methamphetamine, a controlled substance. Applicant explained that he was in his car with his friend when he was pulled over by the police for no reason. They searched Applicant’s car and found methamphetamine underneath the passenger’s side seat. Applicant states that the methamphetamine was not his, but his friend’s. Applicant was arrested and spent the night in jail. The next day, he was administered a drug test and it came back clean. Applicant then went to court and believes the matter was dropped. (Government Exhibits 1, 2, and 3.)

Guideline J – Criminal Conduct

The Government alleges that Applicant has engaged in criminal conduct, which raises questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant admits each of the allegations set forth under this guideline. In 2011, Applicant was arrested for driving an unregistered vehicle and on a suspended driver’s license as a result of a prior DUI conviction. (Government Exhibit 8.) He was found guilty of driving without a valid driver’s license. He is currently on probation until 2022.

Applicant states that since he has been working for his current employer, he has worked his way up the ladder at the company. His performance reviews started at “high meets” and as time passed, he was promoted and they now reflect that he “exceeds” his job requirements in every aspect. (Tr. p. 63.)

Applicant believes that his current wife has been a contributing factor in helping him become more mature and responsible. He is now trying to buy a house.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant has a serious drinking problem, as evidenced by his five arrests for Driving Under the Influence of Alcohol. His most recent arrest occurred in 2017. His history of five alcohol-related arrests and convictions shows poor judgment and unreliability.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of the mitigation conditions are applicable. Applicant has tried to abstain from consuming alcohol, but he has been unsuccessful in the long run. After various attempt to stop drinking, he always returns to consuming alcohol, even though it has been problematic for him over the years. Applicant has not taken any action on his own to overcome his alcohol problem. Other than the court-ordered alcohol programs, and related AA meetings, he has not taken his alcohol problem seriously. There is insufficient evidence of rehabilitation. Accordingly, this guideline is found against the Applicant.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains two conditions that could raise a security concern and may be disqualifying:

(a) any substance misuse (see above definition); and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

None of the mitigating factors demonstrate full mitigation. Applicant has used marijuana, from 2008 to 2017, knowing it to be illegal. There is no excuse for this misconduct, and his actions do not show the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Guideline J - Criminal Conduct

The security concern for the criminal conduct guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decisions, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted; and

(c) individual is currently on parole or probation;

AG ¶ 32 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 32 below:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity, compliance with the terms of parole or probation, job, training or higher education, good employment record, or constructive community involvement.

Applicant's five arrests and convictions for drunk driving, his arrest for possession of methamphetamine, his nine-year use of marijuana, his arrest for driving an unregistered motor vehicle, and driving on a suspended license, all call into question his judgment, reliability and trustworthiness. Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant has clearly ignored the law many times and simply lived his life to his convenience. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the integrity, good judgment, and reliability necessary to access classified information. At this time, Applicant does not meet the qualifications for access to classified information.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline G, Guideline H, and Guideline J in my whole-person analysis. While holding a security clearance one is expected to show responsibility and good judgment. Applicant has not demonstrated the level of maturity needed for access to classified information. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. He is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption, Drug Involvement and Substance Abuse, and Criminal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

| | |
|--------------------------------|-------------------|
| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraph 1.a, through 1.e: | Against Applicant |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |
| Subparagraph 2.a and 2.b: | Against Applicant |
| Paragraph 3, Guideline J: | AGAINST APPLICANT |
| Subparagraph 3.a, through 3.c: | Against Applicant |

Conclusion

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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge