



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



In the matter of:

Applicant for Security Clearance

)
)
) ISCR Case No. 14-04067
)
)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: Norman D. Fleming, Personal Representative

08/04/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline G (alcohol consumption). Eligibility for access to classified information is granted.

Statement of the Case

On January 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G. DOD took that action 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 (AG) implemented on September 1, 2006.

On February 23, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 20, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 24, 2015, and the hearing convened as scheduled on May 12, 2015. At the hearing, the Government offered

exhibits (GE) 1 through 3. The prehearing guidance issued to Applicant was attached to the record as Hearing Exhibit (HE) 1. Department Counsel's email to Applicant on May 7, 2015, was attached as HE 2 and her list of exhibits as HE 3. Applicant testified, called two witnesses, and offered exhibits (AE) A through D. The record was held open until May 26, 2015, to provide Applicant the opportunity to submit additional information. Applicant timely submitted AE E through L. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 20, 2015.

Findings of Facts

Applicant is a 34-year-old employee of a defense contractor. He has been working in his current job since April 2013, but for different employers. He completed about two years of college and continues to take courses. He served on active duty in the Army from 2001 to 2013, attained the grade of staff sergeant (E-6), and received an honorable discharge. He is married. He has held a security clearance for about 12 years.¹

The SOR set forth three Guideline G allegations. These asserted that Applicant received in-patient alcohol treatment in 2008, 2010, and 2011. As part of his last treatment, he was ordered to abstain from alcohol consumption, failed to so do, and was disenrolled from the treatment program. In November 2012, he was administratively separated from the Army for alcohol rehabilitation failure. In his Answer, Applicant admitted each SOR allegation. His admissions are incorporated as findings of fact.²

Applicant served in the Special Forces. He deployed to Afghanistan from June 2002 to June 2003; to Iraq three times: January 2005 to January 2006, April 2007 to February 2008, and August 2008 to January 2009; and to Germany from December 2009 to June 2010. He was stationed in Korea from October 2011 to March 2013. As early as 2008, he was treated for post-traumatic stress disorder (PTSD).³

In an interview with an Office of Personnel Management investigator, Applicant stated that he drank alcohol with friends on the weekends and would be "buzzed" after drinking up to six beers in an evening. He indicated that he started drinking heavily after returning from his first deployment. He would often drink a liter of vodka over a weekend by himself. He has never been arrested or charged with an alcohol-related offense. His consumption of alcohol did not affect his work, but impacted his family life because he spent less time with his family. He did not consume alcohol during deployments, but would begin drinking heavily again upon his return. He indicated that he used alcohol to cope with nightmares and sleeplessness.⁴

¹ Tr. 17-18, 29, 31-33; GE 1, 2; AE G.

² SOR; Applicant's Answer to the SOR.

³ Tr. 60; GE 2.

⁴ Tr. 29-47, 66-69, 72; GE 2.

Applicant knew his alcohol consumption was excessive. In 2008, he referred himself for treatment and identified himself as an alcoholic. He received in-patient alcohol treatment for three or four weeks. During this hospitalization, he also received treatment for PTSD.⁵

As part of his treatment in 2008, he was prescribed Antabuse, but stopped taking that medication after about one week. Following that treatment, he began drinking again. His continued alcohol consumption did not impact his work performance. In Germany in 2010, he referred himself for alcohol and PTSD treatment. He was medevaced to the United States for in-patient treatment. After completing that treatment program, he did not consume alcohol for about a year.⁶

When stationed in Korea, Applicant started drinking again because of the peer pressure. In December 2011, he referred himself for treatment again. As part of this treatment program, he was assigned a counselor, ordered to abstain from alcohol consumption, and received random blood alcohol tests. He was taking medication to help him refrain from consuming alcohol. In November 2012, he failed a blood alcohol test. In March 2013, he was processed for an administrative discharge for alcohol rehabilitation failure and received an honorable discharge.⁷

Applicant testified that he has not consumed alcohol since departing Korea in December 2012. His wife's testimony confirmed that he stopped consuming alcohol over two years ago. Since his discharge, he has attended only a few AA meetings. He indicated that did not get much from those meetings. He relies on his wife and friends for support. He indicated that he does not intent to consume alcohol in the future and knows doing so would negatively impact his personal life. He felt a great deal of relief after leaving the military because he no longer had to deploy and could spend more time with his family. Without the stress of deployments, he indicated that he will be able to abstain from consuming alcohol.⁸

Applicant's manager testified that Applicant is an exceptional performer. He lauded Applicant's leadership and technical skills. Applicant was recently elevated to a site lead and oversees a team of six employees. The manager became aware of Applicant's alcohol problem after he invited him out for a drink and Applicant stated that he would go but would not drink alcohol. The manager is convinced that Applicant is committed to abstaining from alcohol consumption.⁹

⁵ Tr. 69-77, 79-80; GE 2.

⁶ Tr. 64-65, 74-91; GE 2.

⁷ Tr. 60-65, 91-98; GE 2.

⁸ Tr. 26-28, 60-64, 98-109; GE 2, 3. Applicant's wife testified that she may have seen her husband consume alcohol after his return from Korea but before his discharge from the Army. See Tr. 35.

⁹ Tr. 47-58; AE A-D, L.

Applicant's performance appraisal for 2014 reflected an overall rating of "exceeded expectations." In the Army, Applicant was awarded two Joint Service Commendation Medals, two Army Commendation Medals, a Joint Service Achievement Medal, and three Army Achievement Medals.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

¹⁰ AE G.

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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 notes several conditions that could raise security concerns under AG ¶ 22. Four are potentially applicable in this case:

- (a) alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

In the past, Applicant identified himself as an alcoholic, and he drank excessively, e.g., often consuming a liter of vodka over a weekend. Although he has never been arrested or charged with an alcohol-related offense, he acknowledged that his excessive drinking led to problems in his personal life and to his discharge from the military. He received in-patient alcohol treatment on three separate occasions and had relapses following each of those treatments. The record does not establish that he was ever diagnosed as an alcohol abuser or as alcohol dependent; however, he was ordered not to consume alcohol during his last treatment. Each of the above disqualifying conditions applies.

Two alcohol consumption mitigation conditions under AG ¶ 23 are potentially applicable:

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

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant is well aware that he has an alcohol problem. He referred himself three times for alcohol treatment. His military deployments were a factor that contributed to his excessive alcohol consumption, but that factor no longer is an issue for him.

Applicant has not consumed alcohol for over two years. He is well along in his recovery. He knows that further consumption of alcohol will negatively affect him and is committed to abstinence. His wife, family, and coworkers are supporting him in his recovery. His alcohol problems are unlikely to recur and no longer cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) apply.

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(a):

(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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served in the Army for 12 years. He deployed on a number of occasions to combat zones as a member of the Special Forces. He is a valued employee of a defense contractor. He not consumed alcohol for over two years and is committed to abstaining from alcohol. He has a support system with his wife, family, and coworkers. A major stressor in his life was related to his military deployments. Now that he is no longer in the military that stressor is eliminated and he is better able to cope without the use of alcohol. Record evidence supports a determination that his alcohol problems are unlikely to recur.

Overall, the record leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the alcohol consumption security concerns.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge