



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



In the matter of:

ISCR Case: 10-08113

Applicant for Security Clearance

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

2/27/12

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On April 12, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for alcohol consumption. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On June 22, 2011, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 14, 2011, he

confirmed that decision in an email to a Department Counsel. On September 22, 2011, Department Counsel prepared a File of Relevant Material (FORM), containing ten Items, and mailed Applicant a complete copy on September 27, 2011. Applicant received the FORM on October 6, 2011, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit additional information or object to anything in the FORM. On January 28, 2012, DOHA assigned the case to me.

Findings of Fact

In his answer to the SOR, Applicant denied the allegations contained in Paragraphs 1.a through 1.c. He admitted the remaining two allegations. Those admissions, along with the admissions contained in the Interrogatories (Items 6,7, 8.) are incorporated into the findings below.

Applicant is 53 years old. He is married and has four adult children. In April 2010 he began working part time as an electrical engineer for a defense contractor. He was unemployed from May 2007 until April 2010 because he resigned from a position to take care of his aging parents. (Item 5 at 14.) During that time, he gave trumpet lessons and played in a band. (Item 6 at 3.) From January 1997 until April 2007, he worked as an electrical engineer for a defense contractor and held a security clearance. (Items 5 at 15, 6.)

Applicant has a history of alcohol abuse that began in college. (Item 10 at 19, 23.) On November 10, 2009, Applicant saw his primary care physician for a physical. He admitted long-term alcohol abuse and sought a referral for alcohol abuse treatment. He told his doctor that he consumed four alcoholic beverages a day. He reported that he suffered from anxiety and depression. (Item 10 at 23-24.) In his answer to the SOR, he admitted that he consumed alcohol at times to excess and to the point of intoxication, from 1975 to February 2010. The record indicated that he admitted consuming alcohol to February 2011. (Item 8 at 3.)

On January 18, 2010, Applicant entered an alcohol treatment program and was initially diagnosed with Depressive Disorder, Panic Disorder, and Alcohol Dependence. The evaluating physician recommended individual therapy, medication evaluation, and an intensive outpatient program (IOP). (Item 9 at 4.) During the intake assessment, Applicant disclosed that he was experiencing sleep disturbances, anxiety, gaps in memory, and blackouts. He consumed six drinks per day, and consumed alcohol the previous day. (*Id.* at 10.) One of the treatment goals was to “establish a state of total abstinence.” (*Id.*) On March 9, 2010, Applicant received a Certificate of Achievement for completing the Intensive Outpatient Addictions Program. He was discharged with a diagnosis of Depressive Disorder, Not otherwise Specified, Panic Disorder, and Alcohol Dependence. At the time of the discharge, he was maintaining abstinence. (*Id.* at 3)

On May 13, 2010, Applicant saw his primary care physician. He admitted that he had remained abstinent until April 2010, when he relapsed because of family social

problems. He related that he had seen a psychiatrist and was prescribed psychotropic medications. (Item 10 at 14.) The primary care physician recommended that he abstain from alcohol and stay in touch with his Alcoholics Anonymous (AA) sponsor. (*Id.* at 16.)

In June 2010 a government investigator interviewed Applicant about his alcohol consumption. Applicant stated that he had a short relapse in March 2010, but had not relapsed since then.¹ Although he attended a couple AA meetings, he was not participating in them because they were time consuming. (Item 6 at 4.)

On September 14, 2010, Applicant met with his primary care physician for a follow-up visit and stated that he was “back to drinking.” (*Id.* at 10.) Applicant reported that members of his family had recently been diagnosed with cancer. (*Id.*) The physician recommended that Applicant follow-up with AA. (*Id.*) On December 7, 2010, Applicant saw his primary care physician for another follow-up visit. He told him that he consumed three to four alcoholic drinks on the weekends and one to two drinks per day during the week. He was not participating in AA. He complained of increased anxiety and depression. (*Id.* at 5.) His physician recommended that he participate in AA and gave him a referral to another psychiatrist. (*Id.* at 8.)

On February 8, 2011, Applicant completed a set of Interrogatories. He indicated that he currently consumed alcoholic beverages, beer or wine. He drank two glasses of wine or two beers on work nights, two or three times a week. He consumed up to four glasses of wine or beer on the weekends. (Item 8 at 2.) He last consumed alcohol on February 5, 2011. He was using alcohol to relax and manage stress. He noted that he was treated by a psychiatrist from January to March 2010, as part of the IOP. (*Id.* at 3.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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.

¹ For purposes of clarification, Applicant related to his physician that he relapsed in April, not March.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.” Section 7 of Executive Order 10865 provides that 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.”

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 an 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.

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.

AG ¶ 22 describes three conditions that could raise a security concern and be disqualifying in this case:

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant habitually consumed alcohol to the point of excess and intoxication from 1975 to February 2010. In early 2010 he entered an alcohol treatment program and was diagnosed as Alcohol Dependent. His health care providers in that program recommended that he abstain from alcohol. In April 2010 he relapsed. By September 2010 he was regularly consuming alcohol. He admitted that he was consuming alcohol in February 2011 when he completed the government's Interrogatories. There is no evidence that he has ceased consuming alcohol since then. The evidence raised the three disqualifications.

After the government raised potentially disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 23 provides four conditions that could mitigate security concerns raised under this guideline:

(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 good judgment;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

None of the above mitigating conditions apply. Applicant has a 35-year history of abusing alcohol, spanning from 1975 to February 2011. Given the frequency and long history of alcohol abuse, his behavior casts doubt on his current trustworthiness and good judgment. AG ¶ 23(a) does not apply. There is no evidence that Applicant recognizes his alcoholism or that he established a pattern of sustained rehabilitation and sobriety, which are necessary to apply AG ¶ 23(b). Applicant was treated in early

2010 and relapsed within a month of leaving treatment. He is not participating in counseling or an aftercare program. AG ¶ 23(c) does not apply. He did not provide evidence to demonstrate a sufficient pattern of abstinence or a favorable prognosis from his physician or psychiatrist. AG ¶ 23(d) does not 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.

According to 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. Applicant is a 53-year-old man, who has worked for defense contractors for over thirty years and held a security clearance during those years. He has abused alcohol most of his adult life, starting in 1975 while in college. On January 18, 2010, he entered an alcohol treatment program. On March 9, 2010, he was discharged from the program with a diagnosis of Alcohol Dependence and was told to remain abstinent. In April 2010 he completed a security clearance application. In either March or April 2010, he relapsed. By September 2010 he was regularly consuming alcohol. As of February 2011 he continues to drink alcohol in spite of recommendations from his treatment program, and primary care physician who suggested he stop drinking alcohol during three office visits. Other than enrollment in the three-month intensive addictions program in 2010 (immediately preceding his application for a security clearance), he has not participated in aftercare programs, such as AA. He presented no persuasive evidence that he acknowledged his alcohol problem or is committed to remaining abstinent. In fact, the evidence is to the contrary. Overall, the record leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising from his alcohol consumption.

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:

Paragraph 1, Guideline G: AGAINST APPLICANT

Subparagraphs 1.a through 1.e: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge