



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



In the matter of:)
)
) ISCR Case No. 17-02489
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Anthony J. Kuhn, Esq., Tully & Rinckey, PLLC

10/19/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns under Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption). A sufficient period of time has elapsed since his 2014 offense and successful completion of alcohol counseling. Future alcohol-related conduct is unlikely to recur. Eligibility for access to classified information is granted.

Statement of the Case

On May 3, 2016, Applicant submitted a security clearance application (SCA). On October 16, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption). 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 (AG) effective within the DOD on June 8, 2017.

On December 14, 2017, Applicant and his counsel responded to the SOR, and Applicant requested a hearing before an administrative judge. Applicant admitted all of the SOR allegations under Guidelines J and G, with explanations. He submitted 14 attachments with his response, which were also provided at the hearing. On April 16, 2018, the case was assigned to me. On June 1, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for June 15, 2018.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence, which were admitted without objection. Applicant's counsel offered Applicant Exhibits (AE) A through S, which I entered into evidence without objection. DOHA received the hearing transcript (Tr.) on June 26, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 36 years old and employed as a software engineer for a DOD contractor since March 2016. He enlisted in the U.S. Army after graduating from high school, served on active duty from February 2001 to June 2005, was deployed to Iraq for over a year, and received an honorable discharge. Thereafter, Applicant joined the Army National Guard for three years while he was enrolled in college. He earned a bachelor's degree in 2009. He married in 2015, and he and his wife had a baby girl in 2017. Applicant held a DOD security clearance when he served in the military without incident, and a DOD security clearance is required for him to perform specific duties for his employer. (Tr. 7, 14-16, 42; GE 1)

The SOR alleges under Guidelines J and G that Applicant was first arrested in May 2011 for Driving Under the Influence (DUI). Applicant testified that he drank two beers, but the beers were India Pale Ales (IPA), which contained a higher alcohol content. In addition, the craft beer was served in a "larger than normal" 12-ounce glass. His blood alcohol content (BAC) registered over the legal limit. Applicant was ordered by the court to attend DUI Level 1 alcohol counseling. He attended 26 group counseling sessions, 10 individual counseling sessions, which Applicant successfully completed. (Tr. 16-18, 20, 27; GE 2)

Applicant's second DUI arrest occurred in November 2014. He was over at a friend's house to watch a football game and consumed two mixed drinks within two hours. He was pulled over by the police on his way home. Applicant informed the police officer that he had a weapon in his car, and that he also had a valid concealed carry permit. The officer asked him to step out of his car, and discovered an open bottle of vodka in the vehicle, for which he was charged with Open Container. Applicant refused to take the breathalyzer test. Applicant was ordered by the court to attend DUI Level 2 alcohol counseling. He attended alcohol treatment from February 2015 to June 2015. Applicant was diagnosed as alcohol dependent. Applicant successfully completed this treatment program, but despite the diagnosis, the SOR alleges he continued to consume alcohol. The discharge treatment record reflected that "Client has since

demonstrated a clear and established pattern of modified consumption in accordance with treatment recommendations.” (Tr. 18 -21, 44; GE 2; AE P)

Applicant testified that his counselor informed him that he could drink alcohol in moderation upon completion of his Level 2 alcohol counseling program. He never was informed that he had been diagnosed alcohol dependent. After receipt of his SOR, Applicant reported to the same alcohol treatment program he attended following his 2014 DUI arrest. He wanted the program to have access to his records. According to the current treatment records, Applicant’s presenting problem indicated that Applicant “...needs a security clearance and wants an opinion of diagnosis.” Applicant “came to the office for assessment only.” He was evaluated on December 6, 2017, and it was recommend he complete 12 group counseling sessions. He was successfully discharged in February 2018, and his diagnosis was alcohol use disorder, mild, in sustained remission. Applicant testified that his counselor told him that he can continue to drink alcohol responsibly, and that he was not required to attend any other outpatient therapy. The treatment record reflected that “**Client has since demonstrated a clear and established pattern of modified consumption in accordance with treatment recommendations.**” Applicant testified that his last use of alcohol occurred the previous Saturday when he drank one beer. (Tr. 21-22, 24, 37, 39-40; AE Q, R)

Applicant stated that his priorities have changed. It has been nearly four years since his last DUI arrest. Since that time, he married his wife and they had a baby last year. His focus is spending more time with his family, furthering his career and his faith. He does not drink to become intoxicated, he drinks alcohol on occasion for personal enjoyment or for celebrations. He estimated his alcohol use would be slightly more than six times per year. Applicant was deeply remorseful for his alcohol-related arrests, and avowed that he would never allow himself to be in that humiliating position again. (Tr. 23, 25, 32-33, 35, 46-47)

Applicant’s father-in-law testified that he has known Applicant for about seven years, and he finds Applicant to be very trustworthy, honorable, with a committed work ethic. (Tr. 49-52) A co-worker also testified at the hearing for Applicant. He has known Applicant for just over a year, and Applicant was his initial manager at work. He and Applicant operate on the same team and he sees Applicant at work on a daily basis. He stated that Applicant is a great leader on the job, and he has never demonstrated any problems at work. Both witnesses were aware of the adverse issues alleged in the SOR, and despite knowing that adverse information, both witnesses still recommended Applicant for a DOD security clearance. In addition, four character reference letters in evidence also repeated the positive comments about Applicant, as noted above. (Tr. 55-57; AE L-O)

Applicant received numerous decorations, medals and citations for his enlistment in the U.S. Army, and then in the U.S. Army National Guard. He spent over a year of service in Iraq. Applicant received the Army Commendation Medal, Army Achievement Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, and Army Service Ribbon. (AE A, F)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, 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.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 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 J: Criminal Conduct

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which reads in pertinent part:

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

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following two 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 decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

Applicant was arrested in 2011 for DUI, and he was arrested in 2014 for DUI and Open Container. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

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

The evidence shows that a period of nearly four years have passed without Applicant committing any additional criminal violations, which demonstrates that further criminal conduct is unlikely to recur. It is important to note that character reference letters in evidence, as well as both witnesses' testimony, affirm that Applicant is a hard-

working, reliable and trustworthy individual. The passage of time in this case without any repeat alcohol-related offenses is a positive sign of Applicant's successful rehabilitation. AG ¶ 32(a) and (d) both apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for 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 conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(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; and

(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.

Applicant was arrested in 2011 for DUI, and he was arrested in 2014 for DUI and Open Container. During his court-ordered alcohol treatment, Applicant was diagnosed as alcohol dependent. On December 6, 2017, he was diagnosed with alcohol use disorder, mild, in sustained remission. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating condition under AG ¶ 23:

(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.

Applicant was arrested for DUI in 2011 after drinking two IPAs. In 2014, he was charged with DUI and Open Container after drinking two mixed drinks while at a friend's house. He did not believe he was intoxicated and refused a breathalyzer after he was stopped by police. Applicant indicated that since his most recent DUI arrest, his priorities in life have changed. He is now married with a young daughter to care for, he is committed to upward progression at his place of employment, and in his personal faith. Applicant has moderated his use of alcohol in accordance with treatment

recommendations. I have considered all the evidence and find that a sufficient period of time has elapsed since his 2014 offense, and that future alcohol-related conduct is unlikely to recur. AG ¶ 23(a) applies.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline J and Guideline G in my whole-person analysis. I also considered Applicant's military service to our country, favorable character evidence, and letters of recommendation.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the criminal conduct and alcohol consumption security concerns.

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 J: Subparagraphs 1.a-1.c:	FOR APPLICANT For Applicant
Paragraph 2, Guideline G: Subparagraphs 2.a-d:	FOR APPLICANT For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge