



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 16-02202
)
Applicant for Security Clearance)

Appearances

For Government: Alison P. O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

12/20/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ I grant Applicant’s clearance.

On 27 September 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline J, Criminal Conduct, Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, and Guideline E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-8, and Applicant exhibit (AE) A.

²DoD acted under Executive Order 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 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the original AG, but I have examined the new AG to ensure that I would not reach a different result if I issued this decision under the new AG. I would not rule differently under either set of AG.

the case to me 14 August 2017, and I convened a hearing on 28 September 2017. DOHA received the transcript 5 October 2017, and the record closed.

Findings of Fact

Applicant admitted the SOR allegations. He is a 30-year-old project manager employed by a defense contractor since July 2005, when he graduated high school. He married in September 2015, and he and his wife have a son, born November 2016. He seeks to retain the clearance he was issued in November 2005.

Applicant used alcohol under questionable circumstances from June 2008 to July 2012, resulting in three incidents indicative of poor judgment. In June 2008, he was charged with operating a vessel under the influence of alcohol (SOR 1.a). He received and completed probation before judgment, and the charge was dismissed. In August 2011, he was charged with driving under the influence of alcohol, when he had a .12% blood alcohol content (SOR 1.c). He was otherwise satisfactorily completing the terms of his sentence when he was again charged with driving under the influence (.12% blood alcohol content), and speeding, in May 2012 (SOR 1.d). Because of this second arrest, Applicant was found to be in violation of the terms of his probation for the August 2011 arrest, and received additional punishment (SOR 1.e). Applicant ultimately completed the sentencing requirements of these arrests, and has been off probation for over three years (Tr. 39, AE A). Applicant's criminal record included a July 2010 driving on a suspended license charge which was nolle prossed (SOR 1.b),³ and a July 2012 citation for possessing alcohol in a campground (SOR 1.e).⁴

Between 2008 and 2010, at a time Applicant was in an apprenticeship program with his employer, Applicant used marijuana 2-3 times with coworkers. Applicant was not aware that he had been granted a clearance in November 2005, but was aware that he had applied for a clearance. Applicant has not used marijuana since 2010, and the coworkers with whom he used marijuana are no longer employed by the company.

Applicant acknowledged that his poor decisions reflect adversely on his judgment, but attributes them to his youth (Tr. 22, 42). However, he notes that since his marriage and the birth of his son, his lifestyle has changed. His wife's family does not engage in the kind of misconduct that punctuated Applicant's youth, and he wants to set a good example for his son and maintain the kind of good image his wife's family has. The vice president of his company, who has known Applicant for over ten years, is aware of his misconduct and recommends him for his clearance (Answer). He also successfully completed a voluntary county outpatient substance abuse program in

³Applicant moved to a new state, and failed to comply with state requirements to transfer his license. His old state license was suspended, which was discovered during a routine traffic stop not otherwise alleged in the SOR.

⁴A park ranger observed a visitor to Applicant's campsite in possession of alcohol, a violation of campground rules. The visitor had left the campsite, but because the campsite was registered to Applicant, Applicant was cited, and paid a fine.

February 2014, a program which included random drug and alcohol screenings, all of which were negative (Answer).

Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁵

Analysis

The Government established a case for disqualification under Guideline J, but Applicant mitigated the security concerns. The dismissed July 2010 driving on a suspended license charge and the July 2012 citation for possessing (constructively) alcohol in a campground lack security significance even under a disqualifying condition which contemplates a pattern of minor misconduct. However, three alcohol-related arrests and a related probation violation constituted criminal conduct. Nevertheless, in this case, even the combination of offenses does not raise any security concerns beyond those considered under Guideline G, and while Applicant violated his probation on his August 2011 arrest, he otherwise satisfactorily completed the court-ordered

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

requirements for that arrest as well as the other two arrests.⁶ Moreover, even if I concluded that the disqualifying conditions were fully applicable, the corresponding mitigating conditions remove any security concerns.⁷ Applicant completed all his sentencing requirements and has an excellent employment record. Moreover, marriage, maturity, and parenthood have had salutary influence on his life outlook. Accordingly, I resolve Guideline J for Applicant.

In similar fashion, the Government established a case for disqualification under Guideline G, by demonstrating Applicant's three alcohol-related arrests between June 2008 and July 2012, the last of which triggered a probation violation.⁸ Although the record does not reflect a formal diagnosis of alcohol use disorder, such diagnosis is not required to raise a security concern.⁹ Nevertheless, I find that Applicant has mitigated the security concerns.

Applicant's last alcohol-related arrest was over six years ago, and he has not consumed alcohol for several years. Thus, ¶23(a) partially applies, in that I concluded that enough time has passed and the conduct is unlikely to recur. However, while ¶22(d)-(g) do not fully apply because there has been no documented diagnosis, and ¶23(c)-(d) do not fully apply because of questions about the nature of Applicant's treatment programs, ¶23(b) fully applies.¹⁰ Moreover, after his May 2012 charge, Applicant took a different approach to his alcohol use problem. In addition to fully complying with the court requirements for education, Applicant voluntarily undertook a substance abuse program with the county, that he completed in 2014.

⁶¶31(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 ; . . . (d) violation or revocation of parole or probation, or failure to complete a court-ordered rehabilitation program;

⁷¶32(a) so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individuals' 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.

⁸However, as with the criminal conduct concerns, the constructive alcohol possession citation does not really have any security significance under alcohol consumption as he was not consuming alcohol, and did not actually possess the alcohol.

⁹¶22(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 . . . ; (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . 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 . . . ; (d) diagnosis by a duly qualified medical professional or mental health professional. . . of alcohol use disorder;

¹⁰¶23(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;

Further, Applicant's character reference finds his reliability and work ethic to be exceptional. I conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G for Applicant.

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug abuse between 2008 and 2010, a period during which Applicant held a clearance, but Applicant mitigated the security concerns.¹¹ Applicant's drug use was essentially experimental, occurred right after high school, and ended over seven years ago. Setting aside for the moment whether Applicant actually knew that he held a clearance, he knew that he had applied for one—which put him on notice of the Government's view of illegal drug use—and it is unlikely his employer tolerated illegal drug involvement. Nevertheless, the drug use was minimal.

Drug involvement mitigating conditions give much support to Applicant. His illegal drug abuse was not recent, was not frequent, and seems unlikely to recur.¹² Applicant's substance abuse program covered both his alcohol and marijuana use. All the use occurred before his marriage and parenthood, and with coworkers who are no longer with the company.¹³ Under the circumstances, I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.

The Government failed to establish a case for disqualification under Guideline E. The conduct complained of—the five criminal charges at SOR 1.a-1.e and the marijuana use at SOR 3.a—are fully cognizable as criminal conduct and drug use, respectively. No critical mass is achieved by combining the two. The disqualifying condition cited by the Government, ¶16(d), is not satisfied.¹⁴ Accordingly, I resolve Guideline E for Applicant.

¹¹¶25(a) any substance misuse; (c) illegal possession of a controlled substance . . . ;(f) any illegal drug use while granted access to classified information or holding a sensitive position;

¹²¶26(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 [Emphasis supplied];

¹³¶26(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;

¹⁴¶16 (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable, judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This included but is not limited to consideration of: . . . (3) a pattern of . . . rule violations.

Formal Findings

Paragraph 1. Guideline J:	For Applicant
Subparagraphs a-f:	For Applicant
Paragraph 2. Guideline G:	For Applicant
Subparagraph a:	For Applicant
Paragraph 3. Guideline H:	For Applicant
Subparagraph a:	For Applicant
Paragraph 4. Guideline E:	For Applicant
Subparagraph a:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge