



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



In the matter of:)
)
) ISCR Case No. 17-01762
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

01/28/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the alcohol consumption and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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 by DOD on June 8, 2017.

Applicant responded to the SOR on July 20, 2017, and elected to have a hearing before an administrative judge. The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on April 25, 2018, scheduling the hearing for June 21, 2018. Without objection on May 1, 2018, I granted Applicant's request for a continuance due to the unavailability of a

witness. An amended NOH was issued on May 3, 2018, rescheduling the hearing for June 14, 2018. I convened the hearing as rescheduled.

I appended to the record as Hearing Exhibits (HE) I, II, and III, respectively, the Government's exhibit list and discovery letter, and Applicant's exhibit list. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through F, which were admitted in evidence without objection.

At Applicant's request, I held the record open until June 28, 2018, for the receipt of additional evidence. Applicant timely provided documentation, which I marked as AE G and admitted in evidence without objection. I marked Department Counsel's email, in which he indicated no objection to Applicant's additional evidence, as HE IV. DOHA received the hearing transcript (Tr.) on June 25, 2018.

Findings of Fact

Applicant admitted all of the allegations with the exception of SOR ¶ 2.a, which he denied. He is 37 years old. As of the date of the hearing, he had never been married and he did not have any children.¹

Applicant graduated from high school in 1999 and earned a bachelor's degree in 2005. He has worked for various defense contractors since 2008. He has worked for his current employer, a defense contractor, since 2016. He has held a security clearance since 2009.²

Applicant started consuming alcohol at age 15. In July 1999, at age 18, he was charged with driving under the influence (DUI) (SOR ¶¶ 1.a, 2.a). This was his first DUI. Though his blood alcohol content (BAC) was under the legal limit, he was convicted of DUI due to a zero tolerance violation for consuming alcohol as a minor. His driver's license was suspended for six months, he was ordered to complete a six-month alcohol program, and he was fined \$100.³

In July 2001, at age 20, Applicant was charged and convicted of underage possession of alcohol. He was in college and he threw a party where alcohol was present. He was sentenced to one year probation, 50 hours community service, and alcohol counseling (SOR ¶¶ 1.b, 2.a). He completed individual alcohol counseling from August to December 2001. During this period, he consumed beer a few times weekly.⁴

¹ Response to the SOR; Tr. at 20, 90; GE 1, 2.

² Response to the SOR; Tr. at 7, 20-22, 44, 63, 78; GE 1, 2.

³ Tr. at 22-23, 42-44, 61-62, 65, 78-81; GE 1, 2, 4, 5, 6.

⁴ Tr. at 23, 42-44, 62-63, 65, 80-81; GE 1, 2, 4, 6.

In December 2005, Applicant was charged with driving while intoxicated (DWI), BAC .15% to .20%, 1st offense. This was his second and last alcohol-related offense while driving. He had a few drinks while watching football at a bar. As he was driving to his parents' home, he hit a patch of ice and his car slid into a ditch. A police officer asked him if he had been drinking and he said "Yes." He was convicted of reckless driving and fined \$250 (SOR ¶¶ 1.c, 2.a). He consumed two to three beers three to four times weekly during this period.⁵

In June 2012, Applicant was disciplined for reporting to work hungover and smelling of alcohol. He had consumed alcohol the night before. This was his first and only alcohol-related incident at work. He was consequently involuntarily terminated from employment in August 2012 (SOR ¶¶ 1.d, 2.a). He consumed six beers daily during this period. He also started drinking hard liquor in October 2010, after his long-term relationship of five years ended; he found himself battling depression; he isolated himself; and he used alcohol as a coping mechanism. His mother testified that she observed Applicant begin to binge drink on the weekends in 2010, which had not been his normal behavior. He also withdrew from participating in family events and he did not answer her telephone calls.⁶

In October 2012, Applicant was charged and convicted of drunk in public (SOR ¶¶ 1.e, 2.a). He was fined \$25. He was walking to his residence from a convenience store when the police stopped him because he was stumbling. When the police asked him if he had been drinking, he said "Yes." The police arrested him, took him to the police station, and advised him to pay the fine, which he did. He consumed two beers daily and more on the weekends from June to October 2012. He was still in denial about his alcoholism.⁷

By March 2014, Applicant's level of alcohol consumption had escalated. He consumed primarily hard liquor, and "more than the average person drinks in a sitting." He asked his mother for help and she took him to the emergency room, where he was held until a bed was available for him at an addiction treatment services program. His BAC was .392%. He disclosed his family history of alcoholism. For the first time and for four days, he received inpatient alcohol treatment. He was diagnosed with alcohol dependence (SOR ¶¶ 1.f, 2.a).⁸

After completing treatment, Applicant was sober for one month. He then resumed consuming alcohol. By his November 2014 background interview, he consumed alcohol approximately two times weekly (SOR ¶¶ 1.g, 2.a). By April 2015, his alcohol consumption had escalated to an average of eight to twelve drinks daily, prompting him to again contact his mother for help. She helped him enroll in a 28-day inpatient alcohol

⁵ Tr. at 23-24, 42-44, 63-65, 78-79, 82; GE 1, 2, 4, 6.

⁶ Tr. at 24, 42-44, 51, 65-69, 83-85, 118-127; GE 1, 2, 4, 5, 7.

⁷ Tr. at 24-25, 42-44, 67-69, 82; GE 2, 4, 7.

⁸ Tr. at 25-27, 42-44, 69-72, 81-83, 118-127; GE 3, 4, 7.

treatment program at an addiction treatment center. He received treatment through May 2015, and he was diagnosed with alcohol dependence, continuous (SOR ¶¶ 1.h, 2.a).⁹

Applicant has been sober since the day he entered the April 2015 treatment program. Though he knew he had an issue with alcohol when he enrolled in the March 2014 treatment program, he had neither accepted that he is an alcoholic nor taken responsibility for such knowledge and his recovery until April 2015. He testified that the day he entered the April 2015 treatment program was:

[A] pivot point for me . . . a moment of clarity, that there was a lot more to my life that I could be doing, and that I needed to ask for help. I found strength in asking for help, that I couldn't find within, and I sought treatment that day.

During his final week at the 2015 treatment program, he was elected the male community representative--a role through which he helped the other men in the program.¹⁰

Applicant complied with the recommendations of his treatment counselor after his 2015 discharge from the treatment program: he attended 90 Alcoholics Anonymous (AA) meetings in 90 days; he obtained an AA sponsor; and he saw a licensed professional counselor weekly. As of the date of the hearing, he was still attending AA daily; he was in daily contact with his AA sponsor; he was also in daily contact as a sponsor for an individual in recovery; and he was seeing his licensed professional counselor weekly to biweekly. In 2016, the counselor diagnosed him with alcohol dependence in full sustained remission. He intended to continue attending AA, remaining active in his AA community, and seeing his counselor, whom he viewed as a coach that has taught him different coping strategies for life's stressors.¹¹

Applicant testified that he learned through both the 2015 treatment program and AA that his previous failure to remain sober hinged on his thinking that he could handle his alcoholism on his own, rather than reach out to others for help. He also learned that "I couldn't drink safely or like other people could, and that I was fully alcoholic" and "there are consequences when I drink." A friend from AA since 2016 testified that Applicant is a "rock... [h]e knows what to do and he does it consistently and he does it always."¹²

Applicant signed a statement of intent in June 2018 to abstain from using alcohol on penalty of losing his security clearance. He testified that he now has a social life, and he enjoys fishing, playing guitar, and reading books. He is also a part of his family's

⁹ Tr. at 25-32, 42-44, 72-74, 88, 116-127; GE 3, 4, 5.

¹⁰ Tr. at 28-39, 41-42, 45-47, 52-60, 73-78, 85-98, 116-138; AE A, D, G.

¹¹ Tr. at 32-39, 41-42, 45-47, 52-60, 75-78, 85-98, 116-138; AE A, D, G.

¹² Tr. at 28-39, 41-42, 45-47, 52-60, 73-78, 85-98, 116-138; AE A, D, G.

lives, talking to his mother often, spending a lot of time with his father, and he values being involved as an uncle to four minor children.¹³

Applicant's supervisor from September 2016 to December 2017 is a retired brigadier general and a former deputy director for a federal government agency from 2014 to 2015. As of the date of the hearing, he was the vice president for a business unit within the company. He testified that he first met Applicant in 2014, when Applicant worked for him as an executive assistant in a contractor capacity until 2015, when the witness left the government agency. He then hired Applicant to work for him at their current company in 2016. He described Applicant as an outstanding performer. He identified Applicant as a high potential employee and gave him a top performance rating in 2017.¹⁴

The witness testified that he first became aware of Applicant's challenges with alcohol in 2014. The witness testified that Applicant's mother also informed him about Applicant's 2015 treatment for alcoholism the day Applicant entered the program, and he observed Applicant's impressive work performance when Applicant returned to work after completing treatment. The witness also testified that he reviewed the SOR, and Applicant was forthright about his issues with alcohol and his efforts to address them. While the witness was aware of Applicant's history with alcohol, he testified that he did not believe that anyone else at work was and that there was some speculation among several individuals at their prior job of Applicant's challenges. The witness testified that he has seen Applicant on numerous occasions in social situations where alcohol is present, and described Applicant as firm in his decision to not consume alcohol. The witness indicated that he had no doubts that Applicant has turned his life around. Numerous professional and social character references describe Applicant as a superb employee and a man of exemplary character, with demonstrated integrity and trustworthiness.¹⁵

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, 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 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

¹³ Tr. at 40-42, 44-45, 47-52, 54, 56, 58-60, 89, 91, 116-127; AE B, C, D, E, F.

¹⁴ Tr. at 44-45, 74, 98-116; AE B, C, D, E.

¹⁵ Tr. at 44-45, 74, 98-116; AE B, C, D, E.

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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern 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 notes conditions that could raise security concerns under AG ¶ 22. The disqualifying conditions potentially applicable in this case include:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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 pattern of excessive alcohol consumption and alcohol-related convictions. He was also terminated from employment in 2012 after reporting to work hungover and smelling of alcohol. He was diagnosed with alcohol dependence when he received inpatient alcohol treatment in 2014, yet he maintained sobriety for only one month before he began drinking again. AG ¶¶ 22(a), 22(b), 22(c), 22(d), 22(e), and 22(f) are applicable.

AG ¶ 23 provides the following conditions that could mitigate security concerns:

(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;

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

Applicant relapsed after he received alcohol treatment in 2014 and was diagnosed with alcohol dependence. As such, AG ¶ 23(c) does not apply. However, Applicant has been sober since his April 2015 entrance into a 28-day inpatient alcohol treatment program. He accepted then that he is an alcoholic, and he took responsibility for such knowledge as well as his recovery. He completed the 2015 treatment program and he complied with the counselor's recommendations upon discharge. He has seen a licensed professional counselor weekly to biweekly since 2015, and the counselor diagnosed him in 2016 with alcohol dependence in full sustained remission. He attended 90 AA meetings in 90 days, he has since attended AA daily, and he intends to continue to attend AA in the future. He has an AA sponsor and he is an AA sponsor for another individual in recovery. I find that AG ¶¶ 23(a), 23(b), and 23(d) are established.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The guideline notes conditions that could raise security concerns under AG ¶ 16. The disqualifying conditions potentially applicable in this case include:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's pattern of excessive alcohol consumption and alcohol-related convictions, his 2012 employment termination after reporting to work hungover and smelling of alcohol, and his relapse one month after his 2014 alcohol treatment and alcohol dependence diagnosis reflect questionable judgment and unreliability. His former supervisor testified that Applicant's history with alcohol is not commonly known by others at work. I find that AG ¶¶ 16(c) and 16(e) apply.

AG ¶ 17 provides the following conditions that could mitigate security concerns:

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

For the same reasons as set forth above in my Guideline G analysis, I find that AG ¶¶ 17(c), 17(d), and 17(e) 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(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 Guidelines G and E in my whole-person analysis.

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 alcohol consumption and personal conduct 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 G: Subparagraphs 1.a – 1.h:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge