

Applicant responded to the SOR on September 7, 2017, and requested a hearing. The case was assigned to me on March 20, 2018. The Government's case consisted of five exhibits that were admitted without objection (GEs 1-5). Applicant relied on one witness (himself) and 21 exhibits that were admitted without objection (AEs A-U). The transcript of the proceedings (Tr.) was received on June 14, 2018.

Summary of Pleadings

Under Guideline G, Applicant allegedly was arrested and charged with multiple alcohol-related offenses between August 1984 and January 2016. Alleged offenses are as follows: (a) Driving Under the Influence (DUI) and possession of marijuana in January 2016; (b) open container in April 2015; (c) DUI in March 2005; and (d) DUI in August 1984.

Under Guideline E, Applicant allegedly (a) received an administrative separation from the Army in May 2005 for misconduct and testing positive for cocaine in November 2004, for which he was awarded non-judicial punishment (NJP) for both this offense and his March 2005 alcohol-related offense.

In his response to the SOR, Applicant admitted each of the alcohol-related allegations with explanations. He claimed the state of the offense covered by allegations covered by SOR ¶ 1.a was mistaken. He claimed the charges covered by SOR ¶ 1.b were reduced to an open container citation that produced a fine of \$96 with all other charges dismissed. He further claimed to have voluntarily enrolled in an alcohol outpatient program as the result of his April 2015 open container offense and continues to live a very healthy and regimented life. Applicant claimed also to have addressed mental health issues with Veterans Affairs (VA) personnel.

Addressing the remaining allegations covered by Guideline G, Applicant claimed to have paid the \$200 fine associated with the citation issued in connection with the alleged April 2015 open container incident. He claimed responsibility for poor judgment in connection with his March 2005 DUI offense and satisfied all of the court-imposed requirements in connection with his conviction, inclusive of AA meetings, community service, and fines. And, he claimed he paid the ordered fine and completed the ordered drivers course program in satisfaction of the court's requirements in connection with his August 1984 DUI offense.

Responding in detail to the allegations covered by Guideline E, Applicant provided detailed explanations of the circumstances associated with his May 2005 administrative separation from the Army. He claimed responsibility for his 2005 DUI incident, and for his award of NJP and his ensuing administrative separation from the Army.

Finally, Applicant offered regrets for his past actions and claimed credit for his ongoing efforts to limit his alcohol consumption to infrequent drinking. Applicant claimed he has been administered numerous urinalyses with negative results. He claimed he has enjoyed good success with his work and has been actively committed to

warehousing and logistics work for over 25 years. Applicant adopted his SOR response as part of his testimony.

Findings of Fact

Applicant is a 53-year-old logistics analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in February 1988 and divorced in September 1999. (GEs 1-2; Tr. 30) He has no children from this marriage, but he has a nephew that he has mentored since childhood, who recently earned his bachelor's degree and is pursuing a Ph.D. (AE G; Tr. 74-75) Applicant earned an associate's degree with honors in July 2008 and a bachelors degree in human resources with honors in December 2013. (AEs M-N; Tr. 49-50)

Applicant enlisted in the Army in October 1992 and served 12 years of active duty (including two tours of duty in Iraq). He received a general discharge under honorable conditions in May 2005 for cited misconduct attributable to a positive drug test for cocaine in November 2004. (GEs 1-2 and AEs G and K; Tr. 33, 52-53) Like his father before him, Applicant enjoyed his military service. (Tr. 53-55)

Since October 2015, Applicant has been employed by his current contractor. (GEs 1-2 and AE K) Applicant's responsibilities involve managing and tracking Government-furnished equipment. (AE K) He reported brief unemployment between September 2015 and October 2015 and prior employment with federal contractors, interspersed with periods of unemployment. (GEs 1-2 and AE K) Applicant has held a security clearance since April 2007 and currently retains one. (GEs 1-2; Tr. 37, 85)

Alcohol-history

Between August 1984 and January 2016, Applicant was involved in four alcohol-related incidents. His most recent incident occurred in January 2016. (GEs 1-3 and AE A; Tr. 40, 65) He was arrested by city police for DU), first offense, after refusing a breathalyzer test at the scene. (Tr. 65-66) Possession of marijuana and open container were added charges. Applicant had consumed quite a bit of alcohol the previous night before his arrest. He could not provide any information on the source of the marijuana and open container found in his truck. (GE 2) In court, he initially pled not guilty to all charges. (AE D) in his March 2016 court appearance, he entered a guilty plea to the open container charges and was fined \$250. (GEs 2-3 and AE B and D; Tr. 40, 66) The remaining charges of DUI and marijuana possession were dropped. (GE 2) Applicant promptly reported his January 2016 incident to his employer. (GE 5; Tr. 39-40)

Records confirm that Applicant was cited in April 2015 for open container while riding as a passenger in a vehicle driven by an unidentified individual. (GEs 2-3 and AE

D; Tr. 41-42) Applicant was issued a citation for open container after officers on the scene found an open beer in the vehicle. (GEs 2-3; Tr. 63) Applicant was subsequently convicted and fined for the misdemeanor offense, which he paid. (GEs 2-3 and AE D; Tr. 42) No evidence of drinking was produced at the scene.

Years prior to his April 2015 alcohol-related incident, Applicant was involved in two other alcohol-related incidents. (GEs 2-3 and AE D) In March 2005, he was arrested and convicted of DUI. (GEs 2-3 and AE E; Tr. 44) He was fined \$1,153 and was ordered to complete 80 hours of community service and participate in an Army substance abuse program. Applicant was also placed on probation for six months. (GEs 12 and AE C; Tr. 61-62) Applicant complied with the court's orders and attended voluntary alcohol counseling sessions. (GE 2 and AE E; Tr. 44-45).

Worthy of note, Applicant's counselors made no diagnostic finding of alcohol dependence. (AE E; Tr. 58) And in August 1984, Applicant was arrested for DUI after being stopped by police for speeding. Appearing in court, Applicant pled guilty to DUI and paid the ordered fine. (GEs 2-3)

Between March 2005 and April 2015, Applicant encountered no other alcohol-related incidents. Since his January 2016 alcohol-related incident, he consumes very little alcohol (two to three beers at most) and has never abused alcohol. (Tr. 47-48, 81) And, since March 2017, he has maintained sustained abstinence. (Tr. 48, 69, 76, 81-82)

Applicant self-referred himself to an alcohol-treatment facility in March 2016 for a substance abuse screening inventory (SASSI) evaluation. (AE C; Tr. 43-44, 69) Applicant's screening was evaluated by a masters-level therapist, and he received an SASSI assessment of low probability. He was advised as a precaution to enter the facility's Phase I DUI program in September 2017. (AE H) He is credited with completing the program's prescribed 20 sessions that consisted of individual therapy sessions and attendance of 15 twelve-step meetings with Alcoholics Anonymous (AA). (AEs I, K, and R; Tr. 71-72)) While enrolled in the program, he addressed issues related to impact of alcohol addiction, and voluntarily submitted to random drug screens. (AEs H; Tr. 68-69) These drug screens produced negative results for both illegal substances and alcohol. (AE I; Tr. 80) Based on his demonstrated progress in the program, he was assigned a good prognosis.

Applicant continues to attend regular AA meetings and is committed to avoiding future alcohol abuse. (AEs R-S; Tr. 47-48, 70-71, 76-78, 82-84) Although he does not have a sponsor, he regularly attends his scheduled weekly mixed meetings and sometimes leads the meetings. (Tr. 83-84) In his AA meetings, he recites the serenity prayer, drinks the traditional black coffee, and still works the 12 steps. (Tr. 85-86)

In his November 2017 statement of intent, Applicant certified his intent to never abuse alcohol again with the understanding that should he engage in future alcohol abuse, he consented to the automatic revocation (even if not covered required by the

regulations) of his security clearance. (AE S; Tr. 49-50) Applicant's stated intentions impress to be sincerely made and are accepted.

Drug-related issues

In May 2005, Applicant was administratively separated from the Army for cited misconduct, after testing positive for cocaine in November 2004, and following his March 2005 DUI incident. Applicant denied any knowing ingestion of cocaine, attributing it to his consuming spiked drinks at a party containing cocaine ingredients. Still, he admitted to his command that he ingested cocaine before he was tested. (GE 4; Tr. 56-57)

After admitting his wrongful use of cocaine before testing positive for the substance, Applicant was awarded NJP by his command in January 2005. (GE 4 and AE E; Tr. 32-33) Punishment consisted of reduction in rank and assignment to 45 hours of extra duty. Applicant accepted the test results and ensuing administrative separation and general discharge without contesting the results with appeals or other means. (GE 2; Tr. 59-60)

Before testing positive for cocaine, Applicant had never knowingly used or possessed illegal drugs of any kind. (GE 2; Tr. 70) And, since his 2004 positive drug test, he has avoided use and possession of all illegal substances. (Tr. 70)

In his November 2017 statement of intent, Applicant certified his intent to never use illegal drugs again or associate with anyone who uses illegal drugs with the understanding that should he ever violate illegal drug use laws and policies, he consented to the revocation of his security clearance. (AE S; Tr. 49) Applicant's stated intentions impress to be sincerely made and are accepted.

Endorsements, certifications, evaluations, and awards

Applicant is highly regarded by his current and former supervisors, coworkers, and friends who know him and have worked with him. (AEs G and L; Tr. 45-46) Aware of his clearance issues, they attested to his solid work ethic, reliability, and trustworthiness. (AEs G and L; Tr. 46)

Applicant's employment credits include strong performance evaluations and documented clearances and certifications of course completions in unit level logistics, leadership development, and combat lifesaving. (AE Q) Past performance evaluations (2015-2016) credit him with meets and exceeds requirements in all rated categories. (AE U)

Among his decorations, medals, citations, and ribbons he received in recognition of his military service, and noted in his DD 214 Certificate of Release and Discharge are the following: Army Commendation Medal (4th award), Army Achievement Medal, (3rd award), Presidential Unit Citation, (Army-Air Force); Army Good Conduct Medal (4th award); National Defense Service Medal (2d award); Global War on Terrorism

Expeditionary Medal; Global War on Terrorism Service Medal; and Non-Commissioned Officer's Professional Development Ribbon. (AE G; Tr. 60)

Policies

The AGs list guidelines to be used administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(d) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Alcohol consumption

The Concern: 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 ¶ 21.

Personal Conduct

The Concern: 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 and sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . ." AG ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant presents with a history of alcohol-related incidents (four in all) spaced over a period of 32 years. Between August 1984 and January 2016, Applicant pled guilty to four separate alcohol-related incidents ranging from open container to DUI offenses. Principal security issues raised in this case center on Applicant's alcohol-related offenses covered by Guideline G and incorporated under Guideline E.

Additional security concerns are raised over his administrative separation that resulted from his testing positive for cocaine use in November 2004.

Alcohol consumption concerns

Applicant's problems with recurrent alcohol-related incidents over a 32-year period raise concerns over his risk of future alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DCs) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶¶ 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, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol abuse disorder," and 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder."

Applicant's completion of a self-referred alcohol counseling program in 2017 followed his last open container conviction in March 2016. Still, Applicant felt enough concern about his slip in January 2016 to self-refer himself to an outpatient counseling program. After continuing his pre-January 2016 pattern of occasional drinking for the ensuing 14 months, he made the decision to cease drinking altogether in September 2017, and with the support of AA and continued alcohol counseling, he has maintained his abstinence from alcohol since March 2017.

Based on the findings of the court considering his March 2016 incident and the sustained progress he has demonstrated in avoiding abusing drinking since March 2016, with sustained abstinence since March 2017, he may take full advantage of the following Guideline G mitigating conditions: MC ¶¶ 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," and 32(d) "the individual has successfully completed a treatment program along with required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations."

Applicant's circumstances and subsequent proactive steps he has taken since his last alcohol-related incident in 2016 are sufficient to facilitate safe predictions that he will avoid any abusive drinking in the foreseeable future. Each of these cited offenses are cross-referenced under Guideline E and are considered to be alcohol-related for purposes of Guideline E analysis.

Personal conduct concerns

Additional security concerns not expressly covered by Guideline G, are raised under Guideline E, and require separate addressing. Applicant's administrative separation from the Army in May 2005 following a long and distinguished military career with the Army was precipitated by his testing positive for cocaine in November 2004 and later receiving NJP based on his command's finding of misconduct. Disqualifying

conditions covered by personal conduct that are applicable to Applicant's testing positive for cocaine are twofold: DC ¶¶ 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of " . . . (3) a pattern of dishonesty or rule violations"

Mitigation is available to Applicant. Applicable mitigating conditions under Guideline E covering Applicant's 2005 administrative separation from the Army based on his prior testing positive for cocaine and receiving NJP are as follows: MC ¶¶ 17(c), "the offense is so minor or, 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," and 17(d), ""the individual has acknowledged the behavior and obtained counseling to change the behavior or taken 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," apply to Applicant's situation. Passage of time since his isolated positive drug test in November 2004 exceeds 14 years and provides enough time to mitigate this drug-related offense under Guideline E.

Whole-person assessment

Applicant's lengthy civilian service with DoD (over 14 years) is respected and appreciated. Endorsements from his current and former supervisors, coworkers, and friends who know and have worked with him document his strong character, trust, and reliability.

Applicant's credits include strong performance evaluations and documented clearances and certifications of course completions in unit level logistics, leadership development, and combat lifesaving. Past performance evaluations (2015-2016) credit him with meets and exceeds requirements in all rated categories.

Applicant's recognized service contributions and letters of appreciation when considered in conjunction with the positive steps he has taken to mitigate security concerns associated with his lengthy history of alcohol-related offenses and isolated and aged positive drug test for cocaine are enough to dispel concerns about risks of recurrent abusive drinking. Considering the record as a whole, safe predictions can be made at this time about Applicant's ability to avoid alcohol-related incidents and illegal drug use in the foreseeable future. Alcohol and personal conduct concerns are fully mitigated and warrant favorable conclusions to be made in connection with the allegations covered by Guidelines G and E.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraphs 2.a-2.b : For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

