



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



In the matter of:)	
)	
-----)	ISCR Case No. 17-03651
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Stephen C. Glassman, Esquire

03/28/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 2, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).¹ On April 19, 2018, Applicant timely submitted a response in which he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2018, setting the hearing for December 6, 2018. The hearing was convened as scheduled.

The Government offered eight documents, accepted without objection as exhibits (Exs.) A-H. Applicant offered testimony and four documents, accepted without objection as Exs. 12-15, and appended with exhibits (pre-marked by Applicant as Exs. 1-11) previously submitted with the SOR Response. The transcript (Tr.) was received on

¹ The action was taken 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 or after June 8, 2017.

December 13, 2018, and the record was closed. Based on the exhibits, testimony, and record as a whole, I find Applicant mitigated all security concerns.

Findings of Fact

Applicant is a 48-year-old male with medical training received in the military. He is currently unemployed with a job offer pending from a defense contractor. Applicant honorably served in the United States military for over 24 years, mostly spent as a special forces medic with a top secret security clearance. He has taken a number of college-level courses and completed a medical certification program. He is currently separated from his third spouse.

In January 2004, when he was serving in the military, Applicant and colleagues were celebrating the completion of a three-year course. Driving in his new Mustang after leaving a bar, he was caught driving 90 miles per hour in a 50 miles-per-hour-speed-limit. He did not realize how fast he was going. His blood alcohol concentration (BAC) level measured at 0.18. and he was arrested for driving while impaired (DWI). He was reprimanded through the military with a general officer memorandum. He was neither ordered to seek, nor sought, treatment or counseling after the incident.

In 2014, around the time he was honorably discharged from the military, Applicant and his now-estranged wife prepared to move to a new state so he could apply to a particular academic program. His wife's ex-husband objected to her taking their children out of state, and a court order made her return them so the ex-husband could continue visitation rights until a hearing could be held. The wife and children returned, but the hearing was postponed. Meanwhile, Applicant remained in the new state until the court finally convened and declared the family could not move the children away. Once reunited, Applicant found it difficult to find a job, although his wife had found work relatively quickly. Having to be at the dictates of his wife's "terrible" ex-husband "broke her spirit. . . . she's never been the same, still now. And she started isolating herself. [She and Applicant] weren't communicating." (Tr. 23) Applicant was unsure what was happening to them and he began drinking alcohol more often.

In January 2016, Applicant went to the basement to remind his 17-year-old stepson not to be "vaping" in the house, and to focus more on his studies than on sitting around playing Internet games with his friends. The stepson ignored Applicant, but continued chatting with his friends. Applicant unplugged the television set the boy was watching. The stepson, a wrestler, jumped on Applicant and the two wrestled. This led to the teen suffering an injury to his lip, which bled. Applicant's wife broke up the fracas. Applicant ultimately left the room, at which point the teenager called the police. Applicant was eventually arrested and charged with assault. Two hours later, he returned home. Considering this to be an internal, domestic issue between stepfather and teen, Applicant wanted to contain or avoid the problem, and pled guilty to simple assault in March 2017. He was sentenced to 45 days in confinement (suspended 12 months), 12 months probation (unsupervised), \$100 fine, and required to complete an

anger management class.² He also completed two months of substance abuse counseling. (Tr. 48-50)

Applicant's effort, however, did not help his eroding relationship with the teen's mother. Applicant and his now-estranged wife separated a week or so later. Living apart and bored from not working, Applicant began to drink more. Then, one night in February 2016, Applicant was bored, alone, and having alcoholic beverages by himself when his spouse asked him to come over. Hopeful at this development, he prepared to go.

Despite the fact he had been imbibing and knew he "wasn't really in a good condition to drive," Applicant got into his car. (Tr. 29) On his way, he was pulled over by police on his way to see her. Applicant was charged with driving while impaired (DWI) with a blood alcohol concentration (BAC) level measured at 0.17. He pled guilty to the charge in March 2017.

Since that time, Applicant does not consider alcohol to be a factor in his life, although he continues to consume alcohol. (Tr. 40) He completed counseling in March 2018, where it was recommended he attend a minimum of two Alcoholics Anonymous (AA) meetings a week in addition to group counseling. He attended "a few" meetings, but "it's difficult to find one that you actually like just because of the people that are in there, so I tried a couple of different ones, recorded it, and that was it." (Tr. 42) He's replaced boredom in his life with enjoying the nature abundant in his current region and in getting to know his biological family, whom he discovered a year ago in the same area in which he now lives. (Tr. 41) These finds have brought joy to his life and have alleviated his boredom. Now, he generally only drinks while watching sports games on television with his brother. He is mindful not to drive after imbibing.

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. They 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 the AG, 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 in making a decision.

² The anger management component was satisfied by visiting a psychologist about multiple issues over a couple of months (March-May 2016), including anger, his marriage, and alcohol. (Tr. 49)

The protection of the national security is the paramount consideration. The AG requires that “[a]ny 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.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. In addition, 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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline G - Alcohol Consumption

The alcohol consumption guideline 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.

Applicant’s alcohol-related DWIs in 2004 and in 2016, when he excessively consumed alcohol to the point of impaired judgment before driving a car, establish the following disqualifying conditions under this guideline:

AG ¶ 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 use disorder; and

AG ¶ 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.

The security concerns raised under this guideline have been mitigated by the following applicable factors:

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;

AG ¶ 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; and

AG ¶ 23(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 acknowledged that he exercised extremely poor judgment by driving a vehicle after having consumed alcohol to the point of intoxication in 2004 and 2016. He has twice experienced the time and expense of being subjected to charges related to drinking and driving. While he still consumes alcohol, he has learned to limit his imbibing to in-home activities where he does not drive after drinking. This drinking is at home watching sports with his new-found brother. He no longer drinks out of depression or boredom. He now fills his idle hours with visiting his newly discovered biological family members and enjoying nature. In short, he has demonstrated a pattern of responsible consumption of alcohol. In the past three years, he has demonstrated a sufficient pattern of modified behavior for me to conclude that the questionable judgment associated with his alcohol consumption and driving is behind him.

Guideline J – Criminal Conduct

The concern raised by criminal conduct is set out in AG ¶ 30:

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.

Applicant's 2016 assault conviction establishes the following disqualifying condition:

AG ¶ 31(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.

The security concerns raised under this guideline have been mitigated by the following applicable factors:

AG ¶ 32(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; and

AG ¶ 32(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.

Applicant no longer lives with the stepson with whom he wrestled in the January 2016 fracas. They apparently resumed the not atypical, often fractious, teen vs. step-parent relationship without further incident. Indeed, at present, their relationship is comparatively distant due to Applicant's separation from the mother. Applicant completed the sentence imposed, and received psychological counseling that addressed a wide-ranging variety of issues, from anger management, family problems, and alcohol. Applicant has demonstrated a sufficient pattern of modified behavior for me to conclude that the criminal conduct and questionable judgment associated the assault at issue is a thing of the past.

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Here, Applicant admits both the 2004 and 2016 DWIs, and that he got into an argument with his stepson in 2016 that resulted in simple assault. This is sufficient to raise disqualifying condition:

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, 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 persona, professional, or community standing. . . .

This guideline provides seven potential mitigating conditions under AG ¶ 17. Two are potentially applicable under these facts:

AG ¶ 17(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; and

AG ¶ 17(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.

With regard to AG ¶ 17(c), Applicant has moderated his drinking since his 2016 DWI. The same period has passed without a recurrence of any criminal activity similar to the 2016 simple assault that occurred with his stepson. Applicant acknowledges the facts and takes responsibility for his actions. He completed all aspects of his sentences, including psychological counseling that addressed several aspects of his then-present problems, such as anger, marital issues, and alcohol. Today, he maintains an even keel, no longer lives with the troublesome teen, monitors his alcohol use, and fills his empty hours with his family and nature. His drinking is now limited to sports time television in the company of his brother. I find AG ¶ 17(c) and AG ¶ 17(d) 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 the three applicable guidelines in my whole-person analysis. I also considered Applicant's highly credible testimony, his past military service while maintaining a security clearance, behavioral changes, maturation, and marital separation.

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

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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge