



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



In the matter of:)	
)	
)	ISCR Case No. 17-04097
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2019

Decision

Curry, Marc E., Administrative Judge:

Given Applicant’s long history of alcohol abuse, his diagnosis with alcohol dependence, and his post-diagnosis relapse, it is too soon to conclude he has mitigated the alcohol consumption security concern. Clearance is denied.

Statement of the Case

On February 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G, alcohol consumption, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DOD CAF took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On February 27, 2018, Applicant answered the SOR allegations, admitting all of the allegations. He requested a decision based on the written record rather than a hearing. On

May 3, 2018, Department Counsel prepared a file of relevant material (FORM). Applicant received the FORM on June 8, 2018, and was notified that he could file a response, together with attachments supplementing the information in the FORM, if desired. He did not file a response. The FORM was assigned to me on October 1, 2018.

Findings of Fact

Applicant is a 67-year-old, college-educated man with two adult children. He is currently separated from his wife. He served in the U.S. Navy from 1971 to 1991, retiring honorably. (Item 3 at 10) He has worked for a defense contractor as a senior logistics analyst since 2014.

Applicant consumed alcohol, at times in excess and to the point of intoxication, from approximately 1966 until November 2016. (Item 2 at 1) Over the years, his alcohol abuse has led to multiple alcohol-related charges and arrests. Specifically, in 1978, he was charged with driving while intoxicated (DWI). (Item 2 at 1) The disposition of the charge is unknown from the record. In 2001, he was arrested and charged with DWI and driving under the influence of alcohol (DUI). (Item 2 at 1) The case was placed on the inactive docket. After the arrest, Applicant voluntarily entered an alcohol and substance abuse clinic where he was diagnosed with alcohol abuse. (Item 7 at 1-2) In 2004, Applicant was charged with attempting to drive a vehicle while impaired by alcohol. The case was *nolle prossed*. (Item 2 at 1; Item 4 at 5) In September 2012, Applicant was arrested and charged with DUI, DUI *per se*, and DWI. (Item 2 at 1) Applicant was found guilty of the DWI charge, and all of the other charges were *nolle prossed*. He was sentenced to 60 days in jail (suspended), two years of probation, and court costs. Also, his driver's license was restricted to use to and from work for one year. (Item 4 at 4)

In October 2012, Applicant's attorney referred him to a 28-day inpatient counseling program. (Item 5 at 6) At or about that time, Applicant began attending Alcoholics Anonymous (AA) meetings. Upon completion of the inpatient program, a substance abuse counselor diagnosed him with alcohol dependence. (Item 6 at 122, 124) Upon his discharge in November 2012, the substance abuse counselor noted that Applicant "does not believe he has alcoholism despite the fact of significant negative consequences of his use." (Item 5) Per the discharge recommendations, Applicant was to abstain from alcohol, attend outpatient counseling for relapse prevention, start Antabuse, a medication to control the urge to drink alcohol, and continue attending AA. (Item 2 at 1; Item 5 at 7) The counselor concluded that Applicant's long-term prognosis was good, so long as he accepts that he can never safely use alcohol. (Item 5 at 9)

Applicant attended outpatient treatment from January 2013 to April 2013 on a twice - weekly basis. Some time after the end of the treatment program, Applicant resumed his alcohol consumption. As of November 2016, he was drinking two to three beers per week. (Item 4 at 6) Also at that time, he was no longer attending AA meetings. (Item 4 at 6)

In Applicant's Answer to the SOR, dated February 27, 2018, he acknowledged his pattern of alcohol abuse, and stated that he was no longer drinking alcohol. (Item 2 at 1)

He did not specify how long he had been free from alcohol. He has resumed AA attendance. (Item 2 at 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, “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) Applicant’s history of alcohol abuse has led to multiple charges and arrests, in addition to a diagnosis of alcohol dependence. As recently as November 2016, he was still drinking alcohol, in contravention of a counselor’s recommendation that he abstain. The following disqualifying conditions apply under 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;

(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 acknowledges his pattern of alcohol abuse. He attends AA regularly, and has completed counseling programs. Conversely, a previous attempt to quit drinking alcohol was unsuccessful, as he relapsed after a diagnosis of alcohol dependence in 2012. Moreover, although Applicant noted that he is no longer drinking alcohol, the record is unclear when this latest attempt at abstinence began. Consequently, given the nature and seriousness of Applicant's alcohol abuse, the length of time that he abused alcohol, his relapse, and the fact that he was drinking alcohol at least as recently as November 2016, none of the mitigating conditions apply. Applicant has failed to mitigate the alcohol consumption security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(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.

I considered the whole-person concept factors in my disposition of the disqualifying and mitigating conditions. I conclude Applicant has failed to carry the burden.

Formal Findings

Formal findings for 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge