



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



In the matter of:)	
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)	ISCR Case: 17-04355
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

January 11, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On May 10, 2016, Applicant submitted a security clearance application (e-QIP). On January 26, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after June 8, 2017.

Applicant answered the SOR on May 2, 2018. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 2, 2018, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant on August 3, 2018, and received by him on August 23, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. Applicant did not object to Items 1 through 11, and they are also admitted into evidence. Hereinafter, they are referenced as Government Exhibits 1 through 11.

Findings of Fact

Applicant is 36 years old. He is employed by a defense contractor as a Protective Security Officer. He is seeking to retain a security clearance in connection with his employment. Applicant began working for his current employer in September 2015.

Guideline G – Alcohol Consumption

The Government alleges that the Applicant has engaged in excessive alcohol consumption, which 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 admits each of the allegations set forth in the SOR under this guideline. (Government Exhibit 4.) He has a history of alcohol abuse that began in about 2001 at the age of 20, when he joined the Army. His alcohol abuse has continued over the past fourteen years, until at least 2017. He has been arrested for Driving While Intoxicated (DWI) on three occasions. In 2001, Applicant was arrested in North Carolina and charged with Driving While Intoxicated. Applicant was stopped at a DWI check point and found to be intoxicated with a blood alcohol content of .18%. (Government Exhibit 6.) The charges were eventually dropped due to the fact that Applicant was serving in the military and had moved out of the state. Applicant was arrested in January 2008 in Washington D.C., and was charged with Driving While Intoxicated and Speeding. Applicant was pulled over while driving for going 80 mph in a 35 mph zone. Prior to driving, Applicant has been drinking at a bar. Applicant was also found to be intoxicated. In July 2008, he was convicted of Driving While Intoxicated and placed on one years of supervised probation. In 2009, while still on probation for his 2008 offense, Applicant was arrested in Virginia and charged with Driving While Intoxicated 2nd Offense within five years. Applicant was pulled over on his way home from a party because he was driving 90 mph. He refused a breathalyzer and was arrested and charged with Driving Under the Influence (DUI), Reckless Driving, and Refusal. Applicant was convicted of DUI and Reckless Driving. He was sentenced to 180 days in jail with 160 days suspended. About this same time, he was also charged in Maryland with Violation of Probation from his 2008 DWI case and required to service approximately 20 days in jail in Maryland. (Government Exhibits 8 and 10.)

Since 2009, Applicant has worked as a Security Guard. In 2015, Applicant was terminated from his employment as a Security Guard for misconduct – being under the

influence of alcohol at work. (Government Exhibit 9.) Applicant admits that he blacked out and was delusional on the day in question, although he attributes his condition to high blood sugar. Applicant was reported to his supervisor that Applicant was drunk at work. The following day, Applicant returned to work and was asked to resign. Applicant refused to resign because he claims that the allegations against him were false. Instead, he sought representation by a union representative. (Government Exhibit 4.) At the conclusion of the investigation, Applicant was terminated.

Guideline E – Personal Conduct

The Government alleges that the Applicant has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations which can raise questions about his reliability and trustworthiness.

Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP), dated May 10, 2016. (Government Exhibit 5.) Section 22, regarding police records, asked him if he had ever been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that crime, and incarcerated as a result of that sentence for not less than 1 year? Had he ever been charged with any felony offense? Had he ever been convicted of an offense involving domestic violence or a crime of violence against your child dependent, cohabitant, spouse, former spouse, or someone with whom he shares a child in common? Had he ever been charged with an offense involving firearms or explosives? Had he ever been charged with an offense involving alcohol or drugs? Applicant answered, “NO”. This was a false answer. Applicant failed to list any of his arrests set forth in the SOR subparagraphs 1.b., 1.c., and 1.d., discussed above.

Section 13A of the same application, regarding employment activities, asked about his reason for leaving prior employment. (Government Exhibit 5.) Applicant wrote that he was terminated: accused of being inattentive on post. This was also a false answer. Applicant failed to list that he was terminated for being under the influence of alcohol at work. In addition, the arrests discussed above also show poor personal conduct, poor judgment, and unreliability.

Applicant states that he failed to disclose his alcohol-related arrests in his 2016 E-QIP because he misread the relevant question and thought he was only required to disclose incidents that occurred within seven years of the date of this e-QIP submission. (Government Exhibit 4.) With regard to his employment termination, Applicant states that he thought the termination letter that he signed indicated that he was being terminated for being inattentive on duty. (Government Exhibit 4.) This argument holds no merit. First, Applicant does not provide any documentation in support of this claim. Second, Applicant was well aware of his alleged intoxication at work by the fact that he challenged the claim against him and forced an investigation into the matter. His argument is not credible. Applicant clearly falsified information on his security clearance

application in May 2016, by failing to disclose any of his alcohol-related arrests and by providing a false reason for his employment termination in 2015.

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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

- (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; and
- (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 evidence shows that Applicant's three arrests, charges and convictions for Driving While intoxicated as well as his termination from employment show poor judgment, unreliability and untrustworthiness. These incidents raise security concerns under AG ¶¶ 22(a), 22(b), and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption 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 good 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 or 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.

None of the mitigating conditions are applicable here. Applicant failed to introduce sufficient evidence of rehabilitation. Although his last alcohol-related arrest occurred in 2009, he was terminated from his employment for being intoxicated as recently as 2015. Given the extensive nature of his drinking problem, more time without drinking is needed to show the Government that he will not return to his old habits. ¶ 32 does not provide full mitigation.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

From the evidence provided, Applicant deliberately failed to disclose his arrest history and real reason he was terminated from his prior employment on his security clearance application. The fact that he did not list these facts in response to questions on his on his security clearance application indicates behavior that shows questionable judgment, unreliability, and untrustworthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 Guideline G and Guideline E in my whole-person analysis. At this time, there is no strong evidence in the record to show that the Applicant is now sober or will remain sober for any sustained period. He has failed to present sufficient evidence of rehabilitation to overcome his heavy burden to mitigate his history of alcohol abuse and personal conduct. Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.

