



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



In the matter of:)
)
) ISCR Case No. 18-00088
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 23, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). The action was taken 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on April 26, 2018, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 28, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on August 31, 2018. Applicant did not respond to the Government's FORM. The case was assigned to me on December 10, 2018. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection. Other than his Answer to the SOR, admitted into evidence as Item 3, Applicant failed to submit any additional documentation.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 37 years old. As of his 2015 security clearance application (SCA), he had never been married and he did not have any children.¹

Applicant obtained his general education diploma in 2001. He attended college in 2006, 2012 to 2015, and re-enrolled as of his 2018 response to the SOR, but he had not yet earned a degree. He served honorably in the U.S. military from 2001 to 2009, during which time he deployed to the Middle East, Central and North America, and Iraq. He received numerous medals for his military service. He previously worked overseas for two U.S. defense contractors from 2010 to 2013, and he was unemployed from 2013 to 2015. He has worked as an engineer for a defense contractor since 2015, and he received a promotion and recognition awards between 2016 and 2018. He was first granted a security clearance in 2003.²

Applicant has consumed alcohol, at times in excess and to the point of intoxication, since age 16. He drank two to three beers once to twice yearly until July 2002, when he turned 21 years old. He acknowledged that his heavy alcohol abuse started during his military service. He then drank four to five beers or hard liquor drinks on the weekends at social gatherings. Before his April 2016 driving under the influence (DUI) conviction, further discussed below, he drank between five and fifteen beers on the weekends. He described his drinking habits during his 2017 background interview as moderate, stating that he drank occasionally. In January 2017, he drank three beers and three glasses of champagne. In February 2017, he drank two beers with dinner. In June 2017, he drank two beers. As of his 2018 response to interrogatories, he last drank three glasses of champagne in December 2017.³

In April 2000, Applicant was charged and convicted of DUI. He was 18 years old. He was at a friend's sister's house and he drank two to three beers. He did not believe he was intoxicated and he drove his friend home. He was pulled over by a police officer and administered a breathalyzer. Though his blood alcohol content (BAC) was .04%, the officer arrested him because he was a minor. He was fined and his driver's license was suspended for one year.⁴

¹ Items 1, 3, 4.

² Items 3-5.

³ Items 1, 3-6.

⁴ Item 1, 3-6.

In September 2013, Applicant was charged and convicted of DUI. He had been watching football at his cousin's house, where he drank six to seven beers. He did not believe he was intoxicated, attempted to drive home, and got into an accident. He was arrested, administered a breathalyzer, and his BAC was .16%. He was fined, ordered to take a drug and alcohol awareness course, and his driver's license was revoked for three months. He complied with the court's sentence and his driver's license was reinstated in February 2014. Applicant stated during his 2015 background interview that he had no future intentions of drinking and driving.⁵

In April 2016, Applicant was charged with DUI. He was with friends watching a hockey game at a sports bar. He drove to the bar but planned to take an Uber home. He drank seven to eight beers and three to four shots of hard liquor over three hours. He drove to a friend's house nearby, with the intention of sleeping off the alcohol before driving home later. En route, he realized he was too drunk to drive so he pulled into a residential neighborhood to sleep. He was arrested after a resident reported an unknown parked car in the neighborhood, and the officer smelled alcohol on him. He was sentenced to one year of supervised probation, one year of a suspended driver's license, fined, 50 hours of community service, and DUI and victims awareness courses. He was also ordered to attend counseling and treatment.⁶

Applicant attended an outpatient program consisting of 24 group counseling sessions, two individual sessions, and 12+ Alcoholics Anonymous (AA) meetings from May to August 2017, when he completed the program. A discharge summary record reflects:

[Applicant] accepted the consequences of his alcohol use and understands the risks of continued use of any mood altering substance . . . He appears sincere about remaining substance free.⁷

His discharge diagnosis reflects an Axis I diagnosis of "Alcohol Abuse (In Remission) – F10.10," states that his prognosis is "Good, if [Applicant] follows recommendations," and recommends that Applicant abstain from all mood altering drugs and continue AA attendance.⁸

In his October 2017 background interview, Applicant stated that he did not believe he had an alcohol dependence issue, but he considered himself an alcoholic based on information he obtained from the counseling sessions. Though he stated that he does so only rarely, he acknowledged in both his 2017 background interview and his 2018 response to the SOR that he still consumed alcohol. He decided to decrease his

⁵ Items 1, 3-6.

⁶ Item 1, 3-6.

⁷ Item 1, 3-6.

⁸ Item 3.

alcohol consumption because he learned from the counseling sessions that alcohol could negatively impact him. He sold both of his vehicles and decided to bicycle or Uber wherever he goes. He stated that he previously drank alcohol to feel happy and relieve work stress, but realized that he could exercise and listen to music instead. He did not provide evidence of continued AA attendance. He stated that his DUIs are common knowledge among his family and friends.⁹

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(c), 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, 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.

⁹ Item 1, 3-6.

Section 7 of EO 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* EO 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; 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.

Applicant has a pattern of excessive alcohol consumption and alcohol-related incidents away from work. AG ¶¶ 22(a) and 22(c) are applicable.

AG ¶ 23 provides the following relevant 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; 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's pattern of excessive alcohol consumption and alcohol-related incidents did not happen under unusual circumstances that are unlikely to recur, are recent, and are not mitigated by the passage of time. Though Applicant was diagnosed upon discharge from treatment in 2017 with alcohol abuse in remission, he was recommended to abstain from all mood altering substances and continue AA. Yet, he admitted that he still consumed alcohol and he did not provide evidence of continued AA attendance. AG ¶¶ 23(a), 23(b), and 23(d) are not established.

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 Guideline G in this whole-person analysis. I considered Applicant's honorable military service and his deployments overseas.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the alcohol consumption 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.c:

AGAINST APPLICANT
Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge