



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-00767
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant continued to consume alcohol after being diagnosed with alcohol dependence in 2013 and after receiving inpatient alcohol-detoxification treatment in 2016 for alcohol use disorder, moderate. He continues to drink alcohol against medical advice. Clearance is denied.

Statement of the Case

On October 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, alcohol consumption. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.

Applicant answered the SOR allegations on November 6, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 12, 2019, the Government indicated the case was ready to proceed to a hearing. On March 18, 2019, I scheduled a hearing for April 10, 2019, to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, six Government exhibits (GEs 1-6) and three Applicant exhibits (AEs A-C) were admitted in evidence. Medical records of Applicant's February 2016 alcohol-detoxification treatment were admitted as GE 4 over Applicant's objections. Applicant testified, as reflected in a transcript (Tr.) received on April 30, 2019.

I held the record open for two weeks after the hearing for Applicant to submit additional exhibits. No documents were received by the deadline, and the record closed on April 24, 2019.

Findings of Fact

The SOR alleges that Applicant was admitted for inpatient alcohol-detoxification treatment and diagnosed as alcohol dependence in February 2013 (SOR ¶ 1.a); that he was admitted for inpatient alcohol-detoxification treatment in June 2016, diagnosed with alcohol use disorder, and advised on discharge to abstain from alcohol (SOR ¶ 1.b); and that Applicant continues to consume alcohol despite his treatment for alcohol dependence/alcohol use disorder (SOR ¶ 1.c). When Applicant responded to the SOR allegations, he admitted the alcohol-detoxification treatments but denied that he continues to drink alcohol. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 43-year-old high school graduate, who has worked for a defense contractor since July 2014. (GE 1.) He is currently a nuclear inspector and holds a DOD secret clearance. (GE 1; AE A; Tr. 26-28.) He previously worked as a mechanic for the defense contractor from 2003 to 2006. (Tr. 27.)

Applicant was twice married and divorced before he married his current wife in February 2012. He and his spouse separated in 2017 and were in the process of a divorce as of April 2019. Applicant has a 15-year-old daughter, a five-year-old son, and an 11-year-old stepdaughter. (GEs 1-2, 4-5.)

Applicant began drinking alcohol at age 20. At age 26, he began drinking on a daily basis. He received inpatient alcohol treatment for 45 days in 2004. (GE 3.) From March 2006 to February 2012, Applicant was employed as a parts supervisor. He left the job following a disagreement with the owner's son, and he was unemployed until October 2013. (GE 1.)

On February 20, 2013, Applicant had an argument with his spouse that was overheard on the telephone by her ex-husband, who came over to the house. Applicant

was arrested for a disorderly conduct offense,¹ but the charge was subsequently dropped. He admits that he had consumed alcohol before the offense, although he denies he was intoxicated. (GE 1; Tr. 28.) On February 21, 2013, Applicant went to a substance abuse treatment facility requesting alcohol detoxification and referral to an outpatient treatment program. He was admitted as an inpatient for medically-monitored alcohol detoxification. At intake, he reported that he had consumed whisky the prior evening and that drinking was an issue in his current marriage. His judgment and insight were assessed as poor, and he was diagnosed with alcohol dependence and cannabis abuse. He had been smoking marijuana for the past 1.5 years to as recently as February 18, 2013. After completing the detoxification protocol, Applicant was discharged on February 25, 2013, in improved condition. His prognosis was considered good with follow-up in outpatient treatment and continued involvement in community support programs. (GE 3.) Applicant now claims that he had consumed a couple of beers before his February 2013 arrest; that he was court-ordered to attend a program offered by the facility consisting of once weekly sessions discussing “current issues or this or that;” and that he misunderstood the court order and check himself into the facility instead. (Tr. 29.) Concerning his drinking pattern before that detoxification treatment, Applicant testified, as follows:

I don't know. I mean, that was a while ago. Nothing—I would say a couple of beers, couple of beers at night or—like I've always had—we've always had alcohol in the house, you know. I mean, maybe some—like a rocks glass of Jack Daniels if I'm sitting down after the kids are sleeping or keep a sleeve of nips² in the freezer, grab one or two nips or something like that, but nothing—an excessive consumption. (Tr. 29-30.)

Applicant admitted that he was diagnosed as alcohol dependent. However, he then stated, “They diagnose everybody that's alcohol dependent when they come in there.”³ (Tr. 30.)

Applicant was abstinent until sometime in 2014, when he began drinking one beer per day while working on his old house. According to available medical records (GE 4), by late 2014 or early 2015, Applicant was consuming half to a full fifth of whiskey or the equivalent of 14 nips of alcohol and beers per day, usually in the evenings after work; that drinking pattern persisted for the next 1.5 years; and it was beginning to adversely affect his family life and his work. On June 3, 2016, he was voluntarily admitted for inpatient alcohol detoxification to a substance-abuse treatment facility. Records indicate that he reported more than a 20-year history of alcohol dependence and an inability to stop drinking. He was taking prescribed Ativan for anxiety issues and was aware of health concerns that could arise from combining that medication with alcohol. Applicant was

¹ Applicant indicated on his SF 86 that he was charged with breach of peace in February 2014. (GE 1.) However, medical records from February 2013 show that he had a charge of disorderly conduct pending following his arrest on February 20, 2013. (GE 3.)

² Applicant described a nip as 1.5 ounces of alcohol, “like a shot bottle.” (Tr. 30.)

³ Given Applicant's denial of an alcohol dependency problem, it is likely that he meant to say that everyone that is in the facility for alcohol detoxification is diagnosed as alcohol dependent.

diagnosed with alcohol use disorder, moderate. After a medically uncomplicated detoxification, he was discharged on June 6, 2016. A medical notation in the discharge summary indicates that the hospital was unable to keep Applicant against his will. Applicant was advised by his attending physician to abstain completely from alcohol. He was told that he was at high risk of relapse without continued treatment. Applicant was not interested in a residential program or day program because he wanted to return to work. He expressed some interest in an intensive outpatient program, but then did not participate in an outpatient alcohol-treatment program. (GE 4.)

Applicant disputes the medical records indicating that he was drinking a half to one-fifth of whiskey or combination of beer and liquor per day, stating, "That's not even possible." He testified that if he had an alcohol problem, his inpatient stay would have been a minimum of seven days because of withdrawal symptoms that occur between the fourth and fifth days of detoxification. (Tr. 33.) He claims that he usually had a 12-pack of beer in his refrigerator. He testified that he drank "a couple, two or three beers a day, maybe, like I said, at night, if I'm working on the house, maybe two—two nips. . . . Three nips. I mean, that's like maybe three ounces of alcohol, four ounces, if that." He indicated that he drank as much as two or three beers plus two or three nips during the course of an evening only occasionally when he had a lot to do and was not paying attention to his drinking. (Tr. 34-35.) He could not explain the discrepancy in the accounts of his drinking habits. He was not accompanied by anyone when he sought treatment in 2016. (Tr. 49.)

Applicant asserts that he "pretty much stopped drinking" for a while after his inpatient detoxification. (Tr. 36.) He put off following through with any aftercare. It was not a priority for him. (Tr. 51.)

On November 1, 2016, Applicant sought counseling with a licensed alcohol and drug counselor (LADC) affiliated with a private behavioral health practice. He reported that he had last consumed alcohol about two weeks previously. During a session of November 8, 2016, he indicated that his drinking has been "very bad" and that he used alcohol to self-medicate while dealing with difficult family issues. He and his spouse had separated. (GE 5.) He now claims to have no recall of any specific event that precipitated his counseling. (Tr. 52.) On November 29, 2016, he told the LADC that he last drank alcohol about two weeks before their session. He went to an Alcoholics Anonymous (AA) meeting after having one sip of alcohol. By January 17, 2017, Applicant and his spouse had reconciled. Applicant stopping going to counseling at that time. (GE 5.)

By late April 2017, Applicant and his spouse had separated again. On April 26, 2017, Applicant returned to the private behavioral health practice and began psychological counseling with a licensed clinical social worker (LCSW) for emotional distress caused by his marital separation. At his intake session, Applicant reported that he had last consumed alcohol about a month ago, and that he was attending AA meetings twice weekly. He expressed that he was managing his alcohol use. He denied any use of alcohol as of late July 2017. During a session with the LCSW on August 9, 2017, he reported a decline in his AA attendance. (GE 6.)

On August 29, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded affirmatively to an inquiry concerning whether he had ever voluntarily sought counseling or treatment as a result of his use of alcohol and listed his alcohol detoxification in February 2016 and his counseling with the LCSW, which he indicated started in June 2016. Applicant also reported that he had charges of disorderly conduct and interfering with a police officer pending against him since June 2017 after an argument with his spouse. He stated that the charges would be dropped at his next court date. (GE 1.) A contemporaneous progress note from his treating LCSW indicates that Applicant was "suspected to be intoxicated" on the occasion of his June 2017 arrest. (GE 6.) Applicant testified at his hearing that he was ordered by the court to obtain an alcohol and drug assessment to determine whether he needed treatment, and that no treatment was recommended. (Tr. 22.)

In approximately October 2017, his spouse filed for divorce. By November 2017, Applicant was drinking alcohol socially on occasion, although not when his children were in his home. His therapist encouraged him in early November 2017 to attend AA if alcohol became an issue. (GE 6.)

On December 5, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He reported his ongoing counseling for stress caused by his marital separation and issues with his children. About the argument with his spouse that led to his arrest in June 2017, Applicant explained that he was released by the police so quickly because he was not intoxicated. Applicant was instructed by the court to continue with his mental health treatment, and the charges were dismissed in September 2017. About his alcohol-detoxification treatment in February 2016, Applicant stated that he voluntarily attended a two-day inpatient alcohol-detoxification program in an attempt to prove to his spouse that he did not have alcohol dependency and to repair his marriage. He related that he had alcohol counseling from the behavioral health provider from June 2016 to July 2016 [sic] because he wanted to prove to his spouse that he did not have an alcohol dependency problem. He claimed that he discontinued the treatment shortly after it began because his treatment provider determined that he did not have a condition that warranted further treatment. Applicant described his current alcohol use as moderate, and indicated that he was drinking two to three beers three to four nights per week after work and on the weekends. He also consumed a glass of whiskey at night on occasion. He denied that his drinking had any appreciable effect on his behavior. (GE 2.) Applicant had no answer at his hearing for why he resumed drinking alcohol against medical advice. (Tr. 39.)

As of a session with the LCSW in early January 2018, Applicant was hoping to reconcile with his spouse. He admitted to having consumed a couple of drinks socially not to self-medicate. After a total of 23 sessions with the LCSW focused on his marital issues, Applicant was discharged from counseling on February 1, 2018. The LCSW was leaving the practice, and she was in agreement with Applicant that he was ready for discharge. (GE 6.)

In response to DOHA interrogatories, Applicant indicated on June 15, 2018, that he was drinking two or three beers and one or two drinks of liquor on a weekly basis to as recently as June 10, 2018. He denied that he was currently consuming alcohol to intoxication. He responded “None” to separate inquiries concerning his last date of intoxication and last date of blackout. (GE 2.) At his hearing, he testified that he could recall blacking out from drinking only one time, which was at his bachelor’s party in approximately 2012. (Tr. 56-57.)

In March 2019, Applicant and his estranged spouse stipulated to sharing joint legal and physical custody of their five-year-old son. They agreed that neither Applicant nor his spouse would consume alcohol during access with their son. Applicant has his son three days one week and four days the next week. (AE C.)

Applicant testified at his April 2019 hearing that he obtained alcohol treatment “more to save [his] marriage than anything,” and added that his drinking was always brought up by his spouse’s family as a reason for him and his spouse not to be together. (Tr. 25.) He indicated that there was a break in his counseling after his therapist left the practice, but she returned, and he resumed his therapy, which has continued on a weekly basis. (Tr. 22-23, 37.) He has not attended an AA meeting in 2019. (Tr. 38, 45.) Applicant testified that his present consumption of alcohol is “very limited. . . . Maybe two times a week.” He consumed a couple of drinks over the weekend before his hearing when he had company for dinner. (Tr. 42.) After an argument with his estranged spouse a couple of weekends before his hearing, she complained to the police that he had been drinking around their minor child. According to Applicant, the police performed a wellness check and then left after only four minutes. (Tr. 42-43.) Applicant denies that any drinking was involved, and asserted that circumstances have been manipulated to “make it look really bad for him.” He claims to have no recall of the last time he was intoxicated. (Tr. 43.) He was advised by his physician to avoid drinking alcohol because of his anti-anxiety medication. His explanation for not following that advice is that he takes his anti-anxiety medication on an as-needed basis. (Tr. 58.)

Applicant denies that alcohol has had any effect on his work performance, citing his merit and time increases in his pay over the past 4.5 years. (Tr. 25.) Applicant’s current supervisor has worked with Applicant since June 2015. He attests that Applicant has demonstrated such reliability at work that upper management gave Applicant the responsibility of being a closed area custodian of three areas. Applicant is required to handle classified and sensitive information, and he has done so without any infractions. Applicant’s supervisor has not observed any behavior by Applicant that would cause him to lose trust in him, and he highly recommends that Applicant be allowed to retain his nuclear inspection and security liaison positions. (AE A.)

The supervisor of security services indicates that Applicant’s work as a closed area custodian is in one of the most sensitive areas at their facility. Applicant’s duties in that regard include “protecting and inspecting classified and sensitive information, conducting inventory of classified and sensitive information, maintaining control of classified areas, training employees who work in classified areas and supporting internal and external

security audits.” He attests that Applicant never hesitates to support the security department, and he has become an integral member of their team. Applicant has become “essential” to their daily operations, and he has been dedicated to his job. (AE B.)

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. According to AG ¶ 2(a), 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.” 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.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that 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 articulated 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 began drinking alcohol at age 20. Available medical records indicate that he began drinking alcohol on a daily basis at age 26. By February 2013, when he was admitted for alcohol-detoxification treatment, his alcohol consumption was causing him marital problems. He was diagnosed with alcohol dependence at that time. After a period of abstinence, he resumed drinking in 2014, initially one beer per day. In June 2016, he voluntarily admitted himself for inpatient alcohol-detoxification treatment. He was diagnosed with alcohol use disorder, moderate, and discharged after being safely detoxed three days later. Applicant disputes medical record entries that indicate he was drinking in quantity of a half to a fifth of whiskey per day over the 18 months preceding that admission. He claims that he drank only a couple of beers or nips at a sitting, and that he only occasionally consumed both the beers and nips. He testified that it would not have been possible for him to drink up to a fifth of whiskey per day and report to work. He also disputes the diagnoses of alcohol dependence and alcohol use disorder. He told an OPM investigator in December 2017 that he sought treatment only to prove to his spouse that he does not have an alcohol problem.

However, Applicant testified that he was alone when he sought treatment in June 2016. It is reasonable to infer he provided the information about his drinking to the clinician. Moreover, Applicant's alcohol use was clearly an issue in his marriage, and two providers three years apart diagnosed him with an alcohol problem. There is no recent medical assessment in the record indicating that he does not have an alcohol use disorder. Moreover, Applicant admitted the detoxification treatments and the diagnoses when he answered the SOR. He is either in denial of his alcohol problem or is deliberately minimizing it in an effort to maintain his clearance eligibility. Two disqualifying conditions under AG ¶ 22 apply. AG ¶ 22(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," is established because Applicant was medically diagnosed with alcohol use disorder, moderate, by his attending physician in June 2016. AG ¶ 22(f), "alcohol consumption, which is not in accord with treatment recommendations, after a diagnosis of alcohol use disorder," is implicated. Applicant continues to consume beer and some liquor after being medically advised in June 2016 to completely abstain from alcohol, and after being told by his primary care physician that he should not consume alcohol while taking his anti-anxiety medication.

Under ¶ E3.1.15 of the Directive, Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. AG ¶ 23 provides for mitigation under the following conditions:

(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 and 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 demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant may be drinking less now than he did in the 1.5 years preceding his inpatient detoxification in June 2016. Nevertheless, his continued consumption against medical advice raises security concerns in that it presents a risk of relapse into uncontrolled drinking. Alcohol was involved in his arrest for disorderly conduct in June 2017. At his hearing, he testified about a more recent incident in approximately late March 2019 where his spouse accused him of drinking while he had physical custody of their young son. Applicant denies alcohol was involved on that occasion, and there is no proof to the contrary. At the same time, his present denial of his alcohol problem is the antithesis of a meaningful acknowledgement of his maladaptive alcohol use. AG ¶ 23(c) recognizes that individuals with an alcohol problem are to be encouraged to seek treatment without fear that doing so will cost them their job. Applicant's repeated inpatient detoxifications followed by relapse removes AG ¶ 23(c) from consideration, and makes it difficult to mitigate the alcohol consumption security concerns under AG ¶ 23(d). The absence of any occupational consequences from his drinking does not completely eliminate the security concerns about his alcohol consumption. Applicant testified that he resumed his counseling after his therapist returned to the behavioral health practice, but he presented no corroborating documentation that could enlighten about the nature of his present treatment and progress. His treatment with his therapist has largely focused on his emotional health related to his marital issues and family stress and not on his alcohol abuse. He is not presently attending AA or other community-based recovery program that could assist him to maintain his sobriety. For the reasons noted, the alcohol consumption security concerns are not mitigated.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).⁴ In making the overall commonsense determination required under AG ¶ 2(a), there is no evidence that Applicant ever allowed his abuse of alcohol to negatively affect his work performance. Even so, the Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). At some future date, Applicant may be able to show reform for a sufficiently sustained period to safely conclude that his maladaptive use of alcohol is safely in the past. For the reasons discussed, it would be premature to continue Applicant's security clearance eligibility at this time.

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:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant ⁵
Subparagraphs 1.b-1.c:	Against Applicant

⁴ The factors under AG ¶ 2(d) 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.

⁵ A favorable finding is returned as to SOR ¶ 1.a because treatment is viewed favorably, especially when it is voluntary, and there is no history of treatment and relapse. SOR ¶ 1.b is resolved against Applicant because of the serious relapse triggering the need for detoxification after a diagnosis of alcohol dependence.

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge