



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



In the matter of:)
)
) ISCR Case No. 18-00953
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant incurred four alcohol-related offenses between June 2012 and June 2015. Since then, however, he has largely abstained from drinking. Through marriage, fatherhood, and overall maturity, he has shown that his alcohol issues are in the past and unlikely to recur. Applicant has mitigated the security concerns arising from his alcohol-related conduct. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) in February 2017. On September 10, 2018, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol involvement. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 Security

Executive Agent Directive 4, National Security Adjudicative Guidelines (AG), (December 10, 2016), effective June 8, 2017.

Applicant answered the SOR on October 6, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 3, 2019. On February 1, 2019, DOHA issued a notice of hearing scheduling Applicant's case for February 20, 2019.

Applicant's hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified but submitted no exhibits. I held the record open to allow him the opportunity to submit additional documentation. He subsequently submitted three character letters, which were marked as Applicant's Exhibit (AE) A through C and admitted without objection. The record closed on March 8, 2019. DOHA received the hearing transcript (Tr.) on March 6, 2019.

Findings of Fact

Applicant admitted all four allegations in the SOR (§§ 1.a- 1.d), with an explanation. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 29 years old. He and his wife were married in November 2014. They have a four-year-old son, and at the time of the hearing, were expecting another child. Applicant has attended some community college, and has some technical training. He served as a helicopter mechanic in the United States Marine Corps Reserve (USMCR) from April 2009 until March 2017. He served about two years on active duty, providing humanitarian post-disaster relief in Haiti in 2010, and was also on active duty until mid-2012 for various training duties. He was discharged honorably as a sergeant (E-5). (Tr. 21-22, 45, 47-51, 73, 83-84; GE 1, GE 2)

After holding several other civilian jobs, Applicant began working in the defense industry in late 2015. He was hired by his current employer in January 2017, in the field of aviation maintenance. Since July 2017, Applicant has worked in Afghanistan, a month at a time, followed by a month off at home. (Tr. 45-46, 62; GE 1) Applicant commented at hearing that he loves working on helicopters and that it is the only job at which he excels. This is his first application for a security clearance. He earns an annual salary of about \$125,000. (Tr. 21-23, 76; GE 1)

Applicant began drinking at age 18. He would often become intoxicated on weekends. (Tr. 23-25) In June 2012, when he was 22 years old, Applicant was outside with friends after drinking at a bar and they were "being loud." The police were called, and Applicant was "rude to the officer." Applicant allegedly "blacked out" and was unable to recall the incident the next day. He was detained and cited for public swearing and intoxication, and was fined \$25. (SOR § 1.a) (Tr. 26-27, 51; GE 1 at 42-43; GE 3) During

his detention, Applicant was screened by an assessor for alcohol and mental health issues. He was advised to stop drinking. (Tr. 27-28, 55-57)

In November 2013, Applicant was driving home from a party when he was pulled over for speeding. He had consumed several drinks, and the officer smelled alcohol in the car. After a field sobriety test, Applicant was arrested and charged with driving while intoxicated (DWI) and speeding. In about March 2014, he was found guilty, fined, and ordered to attend Alcoholics Anonymous (AA) meetings and alcohol safety awareness program (ASAP) classes. The court also ordered that an ignition interlock system be installed in his car. His driver's license was restricted for six months, and he was placed on two years of probation. (SOR ¶ 1.b) (Tr. 29-33, 51-53; GE 1 at 43-44; GE 3)

In October 2014, Applicant failed an ignition interlock test. He was charged with being non-compliant with the ASAP program. He pleaded not guilty, asserting that the positive ignition test was caused by cologne. In February 2015, he was tried and found guilty. He was fined and ordered to spend two days in jail. He was also referred to an alcohol program for an alcohol assessment and appropriate substance abuse treatment. (SOR ¶ 1.c) (Tr. 31-33, 51-53; GE 1 at 44; GE 3) As he did during his court case, Applicant asserted during his hearing testimony that the ignition interlock results were caused by cologne. He said he had not been drinking at the time. (Tr. 53)

Applicant entered the outpatient alcohol treatment program in March 2015. He asserted in his intake interview that he had not had any alcohol since November 2013. He completed a substance abuse screening assessment, and he was diagnosed as suffering from alcohol dependence. (GE 4 at 91, 102) The diagnosis is not alleged in the SOR.

Applicant was referred to a 16-week substance-abuse class. (GE 4 at 23, 91) Applicant signed an acknowledgement that he was to abstain from alcohol consumption during the treatment program. (GE 4 at 33; Tr. 37) He attended group counseling sessions through AA about twice a week. (Tr. 65-67)

In June 2015, while in the alcohol treatment group program, Applicant went to visit a friend in another state who was experiencing a mental health crisis. They went to a bar, and Applicant had three beers and a mixed drink over several hours. Applicant got into a fight, and punched another patron in the face. He was charged with public drunkenness and harassment, and fined. (SOR ¶ 1.d) (Tr. 37-38, 53-55; GE 1 at 45; GE 3)

Applicant did not disclose the incident at his next AA group counseling session. (GE 4 at 53-75, 81) He said at hearing that he did not disclose the incident at the time because he had been embarrassed about it. (Tr. 38-39, 55)

Applicant was discharged successfully from the group program in August 2015. (GE 4 at 79) He was to attend additional counseling sessions for recovering addicts at his family's church, similar to an AA program. Applicant did not follow through with those

sessions because he was concerned about the program's confidentiality, due to the program's location. He has not participated in additional AA meetings since then. (Tr. 39-41, 68-70)

Applicant has significantly curtailed his drinking. He said the last time he consumed any alcohol was on New Year's Eve 2018, when he consumed one large beer at a party at his in-law's house. He did not drive that evening. (Tr. 41-44, 58-61, 78-80; GE 2 at 2, 17)

Applicant has not sought an alcohol assessment from a medical provider to update his 2015 diagnosis of alcohol dependence. He has not had any offenses or arrests since June 2015. (Tr. 71)

Applicant disclosed his offenses on his SCA. He acknowledged his misconduct, but said he had stopped drinking and had dedicated himself to caring for his wife and son. (GE 1 at 52)

At hearing, Applicant acknowledged his wrongdoing and poor decision-making. He blamed his prior actions on "young, immature stupidity." He said he has matured significantly since he has had the responsibility of raising a young family. He testified that he knows he has "too much to lose" by consuming alcohol again. He and his wife recently purchased a home, and he was recently promoted at work, in a job that requires a clearance. Tr. 21-23-44, 71-77)

Applicant keeps no alcohol in his house. The people he and his wife socializes with now are young parents. He no longer drinks at bars. When he is home from Afghanistan, Applicant works in his garage restoring a car, and manages child care for his son, since his wife works. (Tr. 71-77) Alcohol is not available in Afghanistan, so there is no opportunity for him to drink when he is working there. (Tr. 46-47, 63, 70)

Applicant's wife wrote a supportive reference letter, in which she attests to her husband's growth and maturity as a husband and father. He is hardworking, dependable, and honest. Applicant's supervisor in Afghanistan attested to his maturity, professionalism, and integrity. He is a dedicated professional, and is entrusted with releasing aircraft as "safe for flight," a serious responsibility upon which lives depend. The supervisor wishes there could be "ten more just like him." A personal friend attested to Applicant's character as a husband, father, and proud veteran. (AE A, AE B, AE C)

Policies

No one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." (484 U.S. at 531)

The adjudicative 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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 as to obtaining 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 an applicant may deliberately or inadvertently fail to 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

The security concern for alcohol consumption is set forth 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 several conditions that could raise security concerns under AG ¶ 22. The following disqualifying conditions are potentially applicable in this case:

(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 an 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) or 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.

As alleged in the SOR, and admitted, Applicant incurred four alcohol-related offenses between June 2012 and June 2015. AG ¶ 22(a) applies.

Following an ignition interlock violation in October 2014, Applicant was ordered to participate in alcohol treatment. He was diagnosed with alcohol dependence in March 2015. He was also ordered to attend AA and alcohol safety awareness classes. During his treatment and counseling, he was to abstain from alcohol. In June 2015, he consumed alcohol at a bar with a friend, and also got into a fight with another patron, leading to his most recent alcohol-related offense. Applicant consumed alcohol following his diagnosis of alcohol dependence, and against treatment advice to abstain. AG ¶¶ 22(e) and 22(f) therefore apply.

Applicant's diagnosis of alcohol dependence itself, while supported by the record evidence, is not specifically alleged in the SOR. I therefore cannot consider it as disqualifying conduct. Thus, AG ¶ 22(d) does not technically apply. However, I can consider the diagnosis, and Applicant's subsequent actions, in weighing mitigation or changed circumstances, whether Applicant has demonstrated sufficient rehabilitation, under the whole-person concept, and in weighing his credibility. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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;

Applicant incurred four alcohol-related offenses in three years, from June 2012 to June 2015, when he was in the Marine Corps. His most recent such offense occurred after a diagnosis of alcohol dependence. While he completed the alcohol treatment

program successfully, he did not inform the treatment providers and counselors about his June 2015 arrest. He also did not participate in AA or aftercare, as recommended. This evidence weighs against mitigation, though, as noted, it is not alleged in the SOR.

Applicant has, however, largely abstained from alcohol since then. He last consumed alcohol on New Year's Eve 2018, when he had one large beer at a party at a family member's home. He has no criminal arrests or citations, alcohol-related or otherwise, since June 2015, almost four years before the hearing. There is no record evidence of subsequent instances of intoxication.

When Applicant is working in Afghanistan every other month, he benefits from a mandatory alcohol-free environment. When he is home on leave, he is a dutiful and responsible husband and father. He does not consume alcohol, nor does he appear to socialize with those who do. He has therefore demonstrated a clear and established pattern of modified consumption or abstinence.

By his own admission, Applicant has had a checkered past, and has had difficulty exercising good judgment and impulse control when he consumes alcohol. However, he credibly attested that he has matured significantly since his Marine Corps days, and rightly recognizes that as a husband and young father with a six-figure income, he has an increased responsibility to his family, and cannot afford to squander his new-found professional opportunity. With this maturity, Applicant has largely abstained from alcohol since the events alleged in the SOR. I therefore conclude that Applicant has demonstrated that his alcohol issues are unlikely to recur and are no longer a security concern. He has provided sufficient evidence to mitigate the alcohol-related security issues under AG ¶¶ 23(a) and (b).

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 the 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. I have incorporated my comments under Guideline G in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's continued eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol involvement 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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant continued eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge