



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



In the matter of:)
)
-----) ISCR Case No. 18-01129
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

03/15/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On June 19, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct).¹ Applicant timely submitted an undated response in which he admitted all but two allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 7, 2019, setting the hearing for January 24, 2019. The hearing was convened as scheduled.

The Government offered eight documents, accepted without objection as exhibits (Exs.) 1-8. Applicant offered testimony and 10 documents, accepted without objection as Exs. A-J. The transcript (Tr.) was received on February 7, 2019, and the record was

¹ The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

closed. Based on the exhibits, testimony, and record as a whole, I find Applicant mitigated all security concerns.

Findings of Fact

A 40-year-old chemist who has served in his current position for 13 years, Applicant has earned a bachelor's degree. He is considered to be a "dedicated, hardworking, and trusted" member of his work team. (Ex. A) Applicant is married and has one preteen child.

Applicant first began trying alcohol in about 1996 as a teen. Before his more recent incidents involving alcohol, Applicant's only legal infractions took place while he was an undergraduate student: a 1999 arrest leading to the charges of possession of marijuana and possession of paraphernalia and a 2000 arrest for driving under the influence (DUI) that was reduced to reckless driving. Applicant has not used marijuana again since that time, nor does he socialize with those who use it. He has not consumed alcohol to excess since November 2016, and has not had alcohol since June or July 2017.

Many of Applicant's troubles began in 2010. In that year, he and his family suffered multiple devastating tragedies, including the death of his infant daughter, then his mother passed away suddenly a few weeks later. His supervisor later noted that these events led to increased alcohol use and symptoms of depression. (Ex. C) During this time he was cited for driving while intoxicated (DUI), and he was given probation before judgment. He felt the court was too lenient and, on his own initiative, he started a 12-week alcohol program as well as Alcoholics Anonymous (AA) attendance. (Tr. 21) He was not entirely satisfied by either effort. While he continued to imbibe, however, his consumption of alcohol was reduced significantly. A period of leave from work lasting about three months, along with professional counseling, proved to be effective in helping Applicant refocus. (Ex. C)

About two years later, Applicant and his wife had a child. He became protective of the new baby and mindful not to drink to excess. In about November 2016, Applicant drank alcoholic beverages at a friend's home. Feeling intoxicated, he spent the night at the house. In the morning, he began driving home, but fell asleep at a lengthy red light. A concerned citizen saw him asleep and took control of his vehicle, pulling it into a fast food store's parking lot.

Concerned Applicant might have been experiencing some sort of diabetic condition, the citizen asked someone to call for an ambulance. When the police arrived, he was ultimately arrested and charged with driving while impaired by alcohol (DWI), DUI, negligent driving, reckless driving, and failure to obey properly placed traffic control instruments. At the time, Applicant was unaware he was legally impaired and thought he was only tired. He refused a breathalyzer test because it was his understanding that one should always do that. The arrest awakened him to the facts as they were, and he immediately repented his inattentiveness and failure to self-monitor.

On his own volition, Applicant put himself into a three-day inpatient “lockup” program where a patient is subjected to intensive counseling all day. The experience was eye-opening. After receiving a certificate for successfully completing that program, he entered a second program for three months at an outpatient center. There, he found much in terms of self-discovery through batteries of tests and introspection.² (Tr. 25)

During this time, Applicant also returned to AA. He learned that each meeting site had its own character. After checking several of them out, he found a group that was a good fit and where he learned from the stories of others. He started attending about three times a week minimum. He continues attending to date, visiting the site three to six times a week, “like a sponge, to try to get any information I can from them.” (Tr. 26) He attributes his nearly two years of sobriety to these meetings, citing it as one of his largest supports. (Tr. 26) He is also supported by his family, who is expecting a new baby within a couple of months. In addition, he has his own personal desire and conviction to be free from future trouble involving alcohol. Finally, Applicant and his family are becoming increasingly active with their church. Having had his probation abated early and with a support structure in place, he now feels he is on his way to starting over. (Ex. 7)

Applicant told his supervisor in November 2016 that he had suffered a relapse and had actively resumed counseling. He has been open about his issues at work, where his career has been flourishing. With AA still an integral part of his life and while maintain healthy sobriety, Applicant finds he is much more productive at home. He noted that “everything with [his] wife and child has been a million times better.” (Tr. 35) Living without alcohol has brought him closer to his wife, now that time away from home at friends’ homes for barbeques or sports is now spent as a family unit.

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 used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. They are applied 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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. The AG requires that “[a]ny doubt concerning personnel being considered for access to

² Applicant believed he was medically given the diagnosis of alcohol abuse, but does not dispute the SOR’s notation that he was found to be alcohol dependent. (Tr. 28-29)

classified information will be resolved in favor of 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 the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. In addition, 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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline G - Alcohol Consumption

The Alcohol Consumption guideline 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.

While Applicant had no atypical experimentation or trouble with alcohol in school, he had two serious alcohol-related incidents as an adult. In 2010, Applicant was cited for drinking and driving while grieving the recent loss of both his infant child and mother. The 2016 DUI-related incident was ironically the result of his poor assessment of his faculties after responsibly spending the night at a friend’s home following an evening of imbibing. Given these facts, the following Disqualifying Conditions are applicable under AG ¶ 22:

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; and

AG ¶ 22(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 following mitigating conditions are potentially available under AG ¶ 23:

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has established a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

AG ¶ 23(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 first arrest for DUI in 2010 came at a time of tremendous loss, understandable depression, and grief. While those conditions do not absolve Applicant of his conduct, they do help explain how a mature man might find his judgment lapsed and his control temporarily abandoned. When he was given a lighter sentence than he believed he deserved, he sought additional counseling, including some time with AA.

A lapse in 2016 found Applicant harder on himself for his poor judgment than the judicial system. He knew he had failed to control his own actions. On his own volition, he self-admitted to a three-day "lockup" counseling facility, followed by an extended outpatient treatment facility, both of which he successfully completed. It was at this time he returned to AA. This time, however, he actively searched for a meeting site with which he felt more comfortable.

Once found, Applicant thrived in what he considers to be a learning environment where he learns from the stories of others. Today, he continues with AA meetings three or more times a week, finds solace in church attendance, and support at home and work. Today, he relishes his life as a family man and looks forward to the upcoming birth of another child. He has not consumed alcohol to excess since the November 2016 incident, and, with the on-going support of AA, has successfully maintained sobriety since the summer of 2017. Consequently, I find AG ¶ 23(b) and AG ¶ 23(d) apply.

Guideline J – Criminal Conduct

The concern raised by criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant admits he was arrested in college for possession of marijuana and possession of paraphernalia. He also admits that in college he was also arrested for DUI, an arrest that resulted in a conviction for reckless driving. Since his youth, he was arrested and charged with DUI in 2010 and for DWI, DUI, negligent driving, reckless

driving, and failure to properly obey placed traffic control device in 2016. Probation for the latter incident has been curtailed. Such facts raise disqualifying condition:

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment, and

AG ¶ 32(d): there is evidence of successful rehabilitation; including but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has not used marijuana again since he was an undergraduate student in the 1990s. He does not associate with those who do use the drug. As noted in the preceding section, he is no longer suffering from an alcohol disorder, having grown to cut alcohol from his life with reliance on an extensive support network. Meanwhile, his home life has improved and his professional work has shown growth. Therefore, I find AG ¶ 32(d) applies.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(a). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past alcohol issues and criminal conduct I considered his present life, candor at the hearing, and credible explanations.

Applicant is a 40-year-old chemist who has earned a bachelor's degree. He has worked for the same employer for 13 years. He is highly regarded at work by his superiors and peers, as well as within his community. He is married, has a preteen child, and is expecting a baby shortly. He first used alcohol as a teen. In college, he was arrested for possession of marijuana and possession of paraphernalia, and charged

with DUI, although he was found guilty of a lesser offense. He has not used marijuana since that time. Issues with alcohol, however, have recurred.

In 2010, Applicant was in grief over the loss of his infant child and mother, and suffered from related periods of depression. He imbibed, drove, and was charged with DUI. Given probation before judgment and what he considered to be light treatment, he sought additional treatment and attended AA. Neither effort, however, seemed adequate. In 2016, he responsibly spent the night at a friend's house after imbibing. He misjudged his condition in the morning, however, and was again arrested for and charged with DUI, DWI, and related charges while driving home.

Taking full responsibility for his poor judgment and failure to better self-monitor, Applicant sought out, attended, and completed a more satisfactory substance abuse program. More importantly, he took the time to find an AA site where he could truly benefit. He found a good fit and has continued to attend three or more meetings a week, and transitioned from being a cautious imbiber to alcohol-free. Today, AA and his church are cornerstones of his sobriety network, enhanced by the support of his family and colleagues. In anticipation of a new addition to their family, he looks forward to devoting time to his family, rather than drinking with friends during his free time.

Applicant's testimony and demeanor was highly credible. This is especially true with regard to his description of AA, the importance of finding a meeting site or sites that are a good fit for the individual, and his recommitment to his faith. He takes full responsibility for his past poor judgment. He has both the motivation and the support network to maintain his current caution with regard to alcohol. I have no genuine concerns Applicant will fail to continue on his current path. I find Applicant mitigated security concerns under Guideline G and Guideline J.

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-1e:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge