



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case: 18-01234 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of excessive alcohol consumption and criminal misconduct. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On September 20, 2016, Applicant submitted a security clearance application (e-QIP). On May 4, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines G (Alcohol) and J (Criminal Conduct). (Item 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 June 8, 2017.

Applicant responded to the SOR (Answer) on June 14, 2018, and July 9, 2018. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel sent the Government’s written case to Applicant on

August 31, 2018, and sent a duplicate copy to an updated address on October 2, 2018. Applicant received a complete copy of the File of Relevant Material (FORM), containing six Items, on October 4, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit anything in response to the FORM within the 30-day period that ended November 3, 2018. DOHA assigned the case to me on January 16, 2019. Items 1 through 6 are admitted.

Findings of Fact

Applicant is 35 years old and is a college graduate. He has worked for his employer, a government contractor, since September 2016. He is unmarried and has no children. (Item 3.) Applicant admitted all of the allegations on the SOR, with clarifications, as stated in subparagraphs 1.a through 1.e, and 2.a. (Item 2.)

Applicant has been involved in five alcohol-related incidents since March 2007, including multiple driving under the influence (DUI) arrests. His first DUI arrest was in March 2007. He was convicted. In April 2011, Applicant was charged with DUI. He was sentenced to 12 months of probation and 48 hours of community service. He completed court-ordered substance abuse treatment and counseling as part of his sentence. Despite his participation in that counseling program, he had a third DUI charge in July 2012. He was sentenced to 40 days in jail, three years of probation, and required to perform 48 hours of community service. He was again ordered to complete court-ordered substance abuse treatment and counseling as part of his sentence. In April 2015, he was arrested and charged with trespassing. He admitted he consumed alcohol as part of this incident. The charge was dismissed after Applicant completed community service and attended additional alcohol classes. Most recently, he was arrested and charged with DUI in October 2017. On December 20, 2017, he pled guilty to DUI and was sentenced to 180 days in jail, with work release. He was placed on 12 months of supervised probation, fined, and required to perform community service. (Item 3; Item 4; Item 5.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “[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.” 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 relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(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 had five alcohol-related arrests between 2007 and 2017. Four of those incidents were DUI convictions, and one was an alcohol-related trespassing charge. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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 has a history of exercising poor judgment when consuming alcohol. Despite completing multiple alcohol counseling classes and serving jail time, he repeatedly continued to consume alcohol to the point of impairment and then get behind the wheel of a motor vehicle. His alcohol use continues to cast doubt on his current reliability, trustworthiness, or judgment. He failed to present sufficient evidence to fully establish any of the mitigating conditions.

Guideline J: Criminal Conduct

The security concern relating to the guideline for 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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. The following applies, as discussed below:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness.

Applicant has been convicted of four DUIs, and admitted consuming alcohol before his trespassing arrest. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; and

(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's criminal history is recent, with his most recent conviction occurring after he completed his 2016 security clearance application. He provided no evidence of rehabilitation or changed behavior. The evidence continues to cast doubt on Applicant's

reliability, trustworthiness, and good judgment. The evidence does not establish mitigation under any of the above conditions.

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.

According to 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 applicable guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with doubt as to Applicant's suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for alcohol consumption and criminal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.e: | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 2.a: | 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge