



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 18-01648
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
 For Applicant: *Pro se*
08/07/2019

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 23, 2015. On March 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline G. The DOD CAF acted 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 answered the SOR on April 9, 2019, and requested a decision on the record without a hearing. On May 28, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 11. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on June 7, 2019, and did not respond.

Items 1 and 2 contain the pleadings in the case. Items 3 through 11 are admitted into evidence. The case was assigned to me on June 17, 2019.

Findings of Fact

Unless otherwise indicated by citation to another part of the record, I have extracted these findings of fact from Applicant's SOR answer (Item 2) and his 2015 SCA (Item 3).

Applicant, age 38, is unmarried without children. He enlisted in the U.S. Army in 2003 and served on active duty through at least 2015. During his service, he deployed to Iraq three times. The record does not specify when or under what conditions he separated. The record also does not specify for how long he has worked for his current defense-contractor employer. He was granted DOD security clearances in 2003 and 2011. (Item 3; Item 5 at 4 and 6).

The SOR alleged four incidents of Applicant's excessive alcohol consumption, involving two Non-Judicial Punishments (NJP) under Article 15 of the Uniform Code of Military Justice, in 2003 (SOR ¶ 1.a) and 2006 (SOR ¶ 1.b); and two Driving Under the Influence of Alcohol (DUI) arrests, in 2013 (SOR ¶ 1.c) and 2015 (SOR ¶ 1.d). Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c. He admitted the underlying arrest and conviction, but denied SOR ¶ 1.d on the basis that certain other facts alleged were incorrect.

While on active duty in 2003, Applicant received NJP for drinking alcohol in advanced individual training. The record does not contain any other details about this incident. (Item 11 at 30).

While on active duty in 2006, Applicant became drunk and disorderly, damaged a wall in an unoccupied room, and then became involved in a verbal altercation which turned physical when he pushed and choked another soldier. He received NJP for two offenses: (1) damage to government property, and (2) drunk and disorderly. The resultant actions taken were a letter of concern or counseling (the record does not specify which), a \$429 fine, and a reduction in rank from E-4 to E-3. He was referred to an Army-sponsored substance abuse program, which he completed. He admitted that he became "carried away" while drinking with his friends in the barracks that evening, having recently returned from a deployment. He has not had any physical altercations since this incident. (Item 5 at 4; Item 7; Item 10; Item 11 at 30 and 43).

While on active duty in 2013, Applicant consumed five or six whiskey and cokes at a bar one night between 7:00 pm and 2:00 am. During his drive home, he was stopped by state police at a sobriety checkpoint. After the police officer detected a strong odor of an alcoholic beverage emanating from Applicant's person, three standardized field sobriety tests were administered which indicated he was impaired. He was also administered a breath test which measured a .089 breath alcohol content. He was arrested and charged with DUI. The court later dismissed the charge due to suppression of the evidence from the checkpoint. (Item 5 at 4-5; Item 8; Item 10).

While on active duty in 2015, Applicant consumed two beers at a softball field after a game. While he was driving home, a civilian police officer stopped him for speeding. After detecting a moderate odor of an alcoholic beverage emanating from Applicant's person, the officer administered standardized field sobriety tests, which Applicant failed to perform satisfactorily. A preliminary breath test administered during the arrest also indicated impairment. He was arrested for DUI. While being processed at the civilian police station, Applicant gave two breath samples, which measured .138 and .137 breath alcohol concentrations. He was then transported to the military police station, where he was notified of the suspension or revocation (the record does not specify which) of his on-post driving privileges. Applicant was later convicted of DUI, and sentenced to 10 days in jail (all but one day suspended), fined approximately \$1,960, and ordered to complete 16 hours of DUI education. He completed each requirement. (Item 4; Item 5 at 5-6; Item 9; Item 10).

During a 2015 security clearance interview (SI) with a DOD authorized investigator, Applicant described the facts and circumstances of the 2006, 2013, and 2015 incidents and his alcohol consumption habits in general. He described himself as a social drinker, who generally consumed approximately three beers or mixed drinks at a time. He did not believe that he had a drinking problem and had not been diagnosed as alcohol dependent. He did not intend to consume any alcohol while undergoing his 16 hours of DUI education, which consisted of classes led by a counselor. He had completed 8 hours at the time of the SI. He did plan to resume responsible drinking after completing his hours, but professed a future intent never to drink and drive again. (Item 5 at 5-7).

In April 2016, the DOD CAF sent Applicant a SOR alleging security concerns under Guidelines G and J (Criminal Conduct), due to three of the incidents alleged in the 2019 SOR currently being adjudicated. It did not allege the 2003 incident. In May 2016, Applicant responded to the 2016 SOR. He admitted the substance, but not some of the details, of the alleged incidents, including what, if any, disciplinary or administrative actions were taken by Applicant's command in connection with his 2015 DUI. The record did not specify the outcome of the adjudication of the 2016 SOR or the current status of the DOD security clearances that he was previously granted. (Item 3; Item 5 at 6; Item 6; Item 10).

In Applicant's August 2018 responses to DOHA-issued interrogatories about his alcohol consumption, Applicant reported that he consumed "3-4 beers" two times per month (most recently August 2018), and "2-3 beers" two times per month (most recently July 2018). He had not driven after consuming any amount of alcohol since his 2015 DUI. Instead, he had either used a ride-sharing service or taken a cab. He had stopped going to bars. He concluded his responses with the following statement: "I refuse to let alcohol affect my life." (Item 5 at 9-10, and 12).

In addition to the court-ordered actions Applicant took after his 2015 DUI, he also voluntarily refrained from drinking after his softball games, attended a Mothers Against Drunk Driving victim impact panel, and completed traffic survival school. Applicant's response to the 2016 SOR included the statement: "I have become aware that I have let alcohol be the reason for bad decisions. So, I have established a strong support system

with my friends and family to help me be more responsible.” He declared that with the help of his “strong support system,” DUI incidents will not occur again. (Item 10).

Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander-in-Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. (ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993)). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of

proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b)).

Analysis

Guideline G (Alcohol Consumption)

The concern under this 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.

Applicant's history of excessive alcohol consumption, involving the 2006, 2013, and 2015 incidents alleged in SOR ¶¶ 1.b, 1.c., and 1.d, establish the following disqualifying conditions under this guideline:

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 NJPs alleged in SOR ¶¶ 1.a and 1.b are not themselves disqualifying under Guideline G. Rather, they are the consequences of potentially disqualifying conduct. Because there are no facts in the record that “excessive” alcohol consumption was involved in the incident underlying the 2003 NJP (SOR ¶ 1.a), it does not independently establish any disqualifying conditions. By contrast, the conduct underlying the 2006 NJP (SOR ¶ 1.b) is disqualifying.

The security concerns raised under this guideline have been mitigated by the following applicable factors:

AG ¶ 23(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; and

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

The incidents alleged in the SOR resulted from circumstances not likely to recur. Applicant exercised extremely poor judgment by driving his vehicle after consuming alcohol in 2013 and 2015, and by failing to control his impulses after consuming alcohol in 2006. Since then, Applicant has demonstrated a pattern of responsible consumption of alcohol. He has taken the necessary precautions, by using a ride-sharing service or taking a cab, to avoid driving a vehicle on any occasion that he has consumed alcohol. He stopped going to bars and drinking after his softball games. In over four years, he has not driven a vehicle after consuming alcohol. In over 13 years, he has not been involved in any physical altercations. He has a strong support system to assist in his ongoing efforts. Because he has not been diagnosed with an alcohol use disorder, he is not required to abstain from consuming alcohol. Applicant has demonstrated a sufficient pattern of modified behavior for me to conclude that the questionable judgment and lack of control associated with the incidents of his excessive alcohol consumption in 2006, 2013, and 2015 are behind him.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an 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.

I have incorporated my comments under Guideline G in my whole-person analysis, and I have considered the factors AG ¶ 2(d). Applicant's three tours in Iraq merit special recognition. After weighing the disqualifying and mitigating conditions under Guideline G, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his history of excessive alcohol consumption. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge