



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



In the matter of:)
)
) ISCR Case No. 18-01759
)
)
Applicant for Security Clearance)

Appearances

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

March 19, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On November 10, 2015, Applicant submitted a security clearance application (SCA). On July 3, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 4, 2018, and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 11, 2018. I convened the hearing as scheduled on October 2, 2018. The Government offered Government Exhibits (GXs) 1 through 5,

which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibit (AppX) A. DOHA received the transcript of the hearing (TR) on October 12, 2018. Pursuant to repeated requests, the record was left open for five months for the receipt of additional evidence. On January 2, 2019; February 4, 2019; and March 4, 2019, respectively, AppXs B, C, and D were submitted, and received without objection. The record closed on March 4, 2019.

Findings of Fact

Applicant admitted to the one allegation of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since 2004, and has held a security clearance since 2013. (TR at page 18 line 16 to page 21 line 5.)

Guideline G: Alcohol Consumption

1.a. Applicant started drinking alcohol “regularly” in 2006. (TR at page 27 lines 1~6.) Until 2006, his regular consumption would be about “eight drinks” at one sitting. (TR at page 27 line 17 to page 28 line 4.) That consumption “increased both in frequency and in quantity” in “about 2008.” (TR at page 28 lines 5~20.) In 2013, Applicant was diagnosed as suffering from “fatty liver disease,” but Applicant continued to consume alcohol. (TR at page 29 lines 1~24.) His treating physician thought Applicant was drinking excessively; and as a result, “advised . . . [Applicant] to quit drinking.” (*Id.*) However, Applicant continued to consume alcohol.

From September of 2013 until January of 2014, Applicant received treatment for his liver disease. (TR at page 33 line 3 to page 34 line 23.) There he “learned a lot about alcohol, alcoholism, or alcohol addiction.” (*Id.*) As a result, Applicant abstained from alcohol consumption until May of 2014. (TR at page 34 lines 15~23.) He then returned to its consumption, “more than approximately six drinks at the time during the week. On the weekend . . . it was variable but would tend towards more 10 drinks at a time.” (TR at page 37 line 18 to page 38 line 3.) In October of 2015, and again in February of 2018, Applicant was diagnosed as suffering from an “alcohol use disorder, moderate.” (GXs 4 and 5.) However, Applicant continued to consume alcohol until August of 2018, a month after the issuance of the SOR. (TR at page 18 lines 1~8.) In the last seven months, Applicant has been committed to his alcohol abuse recovery, as evidenced by his authored progress reports. (AppXs B~D.)

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 Executive Order 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* Executive Order 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. Three conditions may apply:

- (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;
- (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.

Applicant was diagnosed as suffering from an alcohol use disorder in 2015 and again in 2018, but continued to consume the intoxicant. 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.

Although it appears that Applicant now acknowledges his alcohol abuse problem; with only seven months of sobriety after more than a decade of abuse, it is too soon to say Applicant's abusive consumption will not recur in the future. Alcohol Consumption is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption security concerns.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.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.

Richard A. Cefola
Administrative Judge