



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



In the matter of:)	
)	
)	ISCR Case No. 18-01886
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2019

Decision

Gregg A. Cervi, Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA)¹ on May 12, 2016. On August 10, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a statement of reasons (SOR) alleging security concerns under Guideline G.² Applicant answered the SOR on August 31, 2018, and requested a hearing.

The case was assigned to me on November 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2018,

¹ Also known as a Questionnaire for National Security Positions (SF86).

² The DOD CAF acted 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

scheduling the hearing for January 22, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified. The record was held open to permit Applicant to submit documentary evidence in mitigation. Applicant Exhibit (AE) A was submitted and admitted without objection. DOHA received the hearing transcript (Tr.) on January 31, 2019.

Findings of Fact

Applicant is a 61-year-old staff engineer currently employed by a government contractor since 2005. He previously worked for various government contractors from 1979 to 2005. He received a bachelor's degree in 1979. Applicant is twice divorced, and is currently unmarried. He has held a security clearance since 1980.

The SOR alleges Applicant was charged with public intoxication in 2008; driving while intoxicated (DWI) in 2011; and DWI 2nd offense in 2016. Additionally, the SOR alleges he has consumed alcohol, at times in excess and to intoxication, from 1975 to at least May 2018. Applicant admitted the criminal charges, with some explanations, and denied the consumption allegation because it is overbroad.

In November 2008, Applicant was intoxicated after drinking at a bar. He was cited for public intoxication as he walked to his car. The bar was about five miles from his home, but he testified that he was only going to sit in his car to sober up. He pleaded no contest, and was found guilty and fined.

In May 2011, Applicant was drinking after work at a restaurant bar with some coworkers. He drove to a fast-food restaurant and was stopped for a traffic violation. He failed a sobriety check and a breathalyzer test found that he had a .12% blood alcohol content (BAC). He pleaded guilty in October 2011, and was sentenced to probation for 18 months, required to attend an alcohol awareness class, and abstain from alcohol. He admitted to making a poor decision to drive while intoxicated. In 2014, Applicant was diagnosed with diabetes.

In March 2016, Applicant was drinking with a friend at dinner. He was intoxicated and caused an accident as he drove home. He was arrested and his BAC tested at .13%. He claimed his low blood-sugar levels caused tunnel vision that contributed to the accident, along with the alcohol. He was placed in a pretrial diversion program, required to use an ignition interlock device for two years, and attend Alcoholics Anonymous (AA) meetings. Applicant completed three AA open meetings per month for one year, and the ignition interlock was removed in March 2018. He admitted to making a poor decision, but he did not feel intoxicated. He also claimed his weight loss, no food, and low blood-sugar levels while drinking contributed to the events that evening. He admitted that he has consumed alcohol to intoxication on occasion over the past 40 years, and has at times, driven while intoxicated without being caught.

Applicant now drinks about once per week, and drinks to intoxication once every four-five weeks. He does not drink at home, and uses a car service when drinking

elsewhere. He does not believe he has an alcohol problem and has not been evaluated for an alcohol disorder. He attended AA open sessions but not the 12-step program, and he does not follow their advice to abstain from drinking. He provided a statement from a long-term friend who has socialized with him. His friend stated that Applicant mostly declines to drink alcohol with them at dinner, and on the evening he was stopped for his last DWI, the friend said he “appeared to be carrying himself quite well” about an hour before. His friend attested to Applicant’s honesty, intelligence, and change in direction about drinking alcohol.

Law and 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.” *Id.* 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.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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.” Exec. Or. 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. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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. See, e.g., 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; see, AG ¶ 1(d).

Analysis

Guideline G, Alcohol Consumption

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. The following 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 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 a history of excessive alcohol consumption and a resulting pattern of alcohol-related criminal conduct. The above disqualifying conditions apply.

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;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; 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's history, as detailed in the findings of fact, indicates a pattern of alcohol-related criminal incidents between 2008 and 2016. He has admitted to a history of alcohol use to intoxication, and has not substantially changed his behavior or seriously considered medical treatment or personal counseling. He attended court-ordered AA open meetings and completed use of an ignition-interlock device as part of his diversion program. He has not adopted the AA 12-step program or stopped consuming alcohol as they recommend, and does not believe he has an alcohol problem. He has not sought a medical evaluation, diagnosis, or prognosis to favor application of mitigating conditions. He continues to consume alcohol, at times to intoxication.

The record is devoid of substantial evidence of a change in behavior and efforts to ensure that no further alcohol-related incidents will occur. I am not convinced that Applicant recognizes the potential problem with his alcohol use, or that his alcohol consumption is under control and that further alcohol-related incidents are unlikely to recur. None of the mitigating conditions fully apply, and Applicant has not proffered sufficient evidence of rehabilitation and a change in lifestyle to overcome concerns about his established pattern of excessive alcohol use.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline G in my whole-person analysis. Applicant has a long-history of holding a security clearance, but also a long history of alcohol consumption that has led to the exercise of questionable judgment. His history of alcohol-related incidents and his failure to show credible rehabilitation and a changed lifestyle, remain an ongoing concern. He has not carried his burden to show that mitigating conditions should apply to ameliorate the Government's 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge