



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



In the matter of:)
)
) ISCR Case No. 18-02526
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

09/17/2019

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On November 16, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). 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. On November 27, 2018, Applicant timely submitted a response in which the allegations under Guideline G were admitted.

On March 26, 2019, I was assigned the case. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 2019, setting the hearing for August 22, 2019. The hearing was convened as scheduled.

The Government offered four documents, accepted without objection as exhibits (Exs.) 1-4, as well as one hearing exhibit, noted as Ex I. Applicant offered testimony, presented one witness, and six documents, accepted without objection as Exs. A-F. The transcript (Tr.) was received on August 30, 2019, and the record was closed. Based

on the exhibits, testimony, and record as a whole, I find Applicant mitigated the alcohol consumption security concern raised under Guideline G (Alcohol Consumption).

Findings of Fact

Applicant is a 37-year-old senior consultant who has been in that position working for the same employer since November 2014. He is a high school graduate who obtained his undergraduate degree in 2004. He reports no military experience. He is single and has no children. He completed a security clearance application (SCA) in 2016. He obtained a security clearance in 2013. He has never had a security violation or any alcohol-related incidents at work. (GX 1)

In March 2000, Applicant was charged with consuming an alcoholic beverage while operating a motor vehicle. (1.c) He received a fine (\$520) and one point on his driver's license. (GX 1) At that time, Applicant was under 18 years of age. (Tr.34) He was drinking with friends at a private home. He stated that he was drinking rum. (Tr. 35) He had the bottle in his car when he was stopped.

In December 2004, Applicant was arrested and charged with driving while under the influence (DUI), driving a vehicle while impaired by alcohol, driving a vehicle on a highway at speed exceeding the limit and driving while under the influence per se DWI. (1.b) Applicant pled guilty to the merged charges and received probation before judgment. (GX 4, AX E) He was 22 and had recently graduated from college. (Tr. 36) He was drinking at a bar. Applicant hired an attorney to represent him. He had to complete an eight to ten week alcohol drug treatment program and paid a fine of about \$1,000. (Tr. 39) Applicant recalls he had 32 hours of community service. (Tr. 40)

In August 2017, Applicant was arrested and charged with DWI, driving on a highway at speed exceeding the limit, DWI, and driving or attempting to drive a vehicle while under the influence of alcohol, per se. (1.a) He believes that night he was drinking beer and had perhaps five beers. (Tr. 41) Applicant pled guilty to the fourth charge and received probation before judgment. (GX 2, 3) He received a 12-month probation, which ended on December 21, 2018. (AX E, with attachments) Applicant attended a MADD (victim impact panel) in 2018. (AX D) He believes that night he was drinking beer and had perhaps five beers. (Tr. 41)

Applicant enrolled in and successfully completed a weekend intervention program for alcohol-related offenses in September 2017. (AX A) He received an intense educational/learning experience. He was subject to random urinalysis. It was recommended that Applicant remain sober, attend a minimum of 2 AA-NA meetings weekly and complete a structured, aftercare outpatient program. (AX F) (AX A, with attachments) He successfully completed a 26-week after care program. (AX B, with attachments) The 2018 reports indicate that he made good progress, and was compliant with rules and policies.

Applicant accepted full responsibility for the actions in 2017 and 2004. He was drinking at an establishment and made the irresponsible decision to drive himself home, instead of opting for alternate safe transportation. (Answer) Applicant is remorseful and stated that he had been drinking beer and he was just over the legal limit. (Tr. 29)

Applicant testified that he has taken a hard look and an assessment of his relationship with alcohol. He knew he had to take drastic steps to alter the course of his life. He attended three to four AA meetings a week. He has an AA sponsor and a home group. He has made a commitment to never again place himself, or anyone else at risk from his drinking. He intends to maintain sobriety. (Answer) He stated that he does not drink anymore. (Tr. 31) However, at the hearing, he stated he has not attended any AA meetings lately. (Tr. 45) If Applicant goes to a bar, he drinks water. (Tr.50) His friends understand that he no longer drinks alcohol. (Tr. 51)

Since 2017, Applicant has not had a drink. (Tr. 31) He realized after his involvement with AA and men's groups, combined with abstinence that he did have a problem with alcohol. It was impacting his life and he needed to change. (Tr. 30) He submitted the monthly progress reports from the treatment sessions. Each one noted that Applicant was in full compliance with the plan.

Since the September 2017 DWI, Applicant has had no additional brushes with the law. He recognizes that his troubles were based on poor judgment that needed to be improved. During counseling, he totally refrained from alcohol. He made a pledge to himself to abstain from the use of alcohol in the future. Applicant came to grips with alcohol use as a problem in his life. He has had two convictions in his entire adult life. His employer supports him. He has never received an alcohol diagnosis. (Tr.46)

Applicant presented a witness, who has known him for about five years and is aware of the SOR alcohol allegations. (Tr. 14) He stated that Applicant is a supporting FSO who has technical competence and an ability to manage and supervise a team. The witness, a managing partner of the company, stated that Applicant is trustworthy and reliable in his position. (Tr. 16) He has seen Applicant in a social environment (once a quarter) during an extended period of time on numerous occasions. His observation is "[he] never observed Applicant drinking that much and recently he has not seen Applicant drinking at all." (Tr.16) He observed that Applicant was not drinking alcohol at the Christmas party in 2018. (Tr. 18) Applicant voluntarily disclosed the DUI through the process. (Tr. 20)

Applicant has a girlfriend who lives with him. She has three children. He believes he has a responsibility to be a good role model for them. He spends a significant amount of time with them. (Tr. 51) He has a new perspective concerning alcohol and it's impact on the quality of his life.

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 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.

Applicant's three alcohol-related incidents in 2000, 2004, and 2017 resulted in two convictions, with probation and fines. The 2000 incident involved a fine. These arrests demonstrate his excessive use of alcohol and related poor judgment. They, therefore, 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 security concerns raised under this guideline could potentially be 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;

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; 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 was cited three times for drinking and driving within a 17 year period, with his last in September 2017. They were the result of attending activities where it could be presumed alcohol would be imbibed, and predicted that driving home would conclude the evening. Applicant acknowledges his poor judgment and takes responsibility for his actions. He has completed an alcohol and drug counseling program, an in-patient program, and probation. (AX A, B)

Applicant stopped drinking in 2017. He has come to grips with alcohol consumption as an issue impacting his life. He has a girlfriend who has three children and he wants to be a positive role model for them. A two-year period free of drinking seems to be a reasonable period or benchmark upon which to best assess that

Applicant is in control of his abstinence from alcohol and capable of responsible judgment. AG ¶ 23(b, d) apply.

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.

Under 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 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. I have incorporated my comments under the two applicable guidelines in my whole-person analysis. I also considered Applicant's highly credible testimony, background, age, behavioral changes, and subsequent maturation.

Overall, the record evidence leaves me assured that Applicant's past conduct will not recur. I found him credible. He has support from his employer who has known him for about five years. He successfully completed various programs and attended AA meetings. He has a commitment to remain sober for the sake of his life, his job, and others. He has never had a security violation or alcohol incident at work. I have no questions or doubts about Applicant's eligibility and suitability for a security clearance vis-à-vis alcohol consumption. The evidence persuades me that Applicant has matured sufficiently to comport his behavior with applicable laws and regulations. Consequently, I conclude alcohol consumption security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	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.

Noreen A. Lynch
Administrative Judge