



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



In the matter of:)
)
) ISCR Case No. 18-02726
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant incurred three alcohol-related offenses between 2008 and 2017. Since then, he has largely abstained from drinking. Through successful completion of alcohol counseling, and positive lifestyle changes, he has shown that his alcohol issues are in the past and unlikely to recur. Applicant has mitigated the security concerns arising from his alcohol-related conduct. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

On November 24, 2017, Applicant submitted a security clearance application (SCA). On March 5, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G (Alcohol Consumption). The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 20, 2019, and he requested a hearing before an administrative judge. He admitted all of the SOR allegations. (¶¶ 1.a-1.d) On June 5, 2019, the case was assigned to me. On June 6, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for June 27, 2019. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibit (GE) 1 through 3 into evidence, Applicant offered Applicant Exhibit (AE) A; there were no objections, and all proffered exhibits were admitted into evidence. I held the record open until July 29, 2019, in the event either party wanted to submit additional documentation. Applicant submitted AE B on July, 8, 2019, which I admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 11, 2019, and the record was closed on July 29, 2019.

Findings of Fact

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 52 years old. In March 1990, he enlisted in the U.S. Army. Applicant received serious injuries from a parachute malfunction, and he received an honorable discharge in November 1993 for medical reasons. He earned an associate's degree in 2013. He has never been married and he does not have any children. In October 2014, he was employed by a DOD contractor as a customer service representative serving veterans. (Tr. 12-15; GE 1; AE A)

(SOR ¶ 1.a) Applicant was arrested in March 2008 for driving under the influence (DUI). His driver's license was suspended, he was placed on one year of probation, and required to attend an alcohol education course.

Applicant started drinking alcohol as a teenager. In 1993, his drinking escalated after he sustained the injuries in the U.S. Army. He also used alcohol as a coping mechanism for his Post Traumatic Stress Disorder (PTSD). His choice of alcohol is beer and bourbon. At the time of his first alcohol-related arrest in 2008, Applicant was drinking excessively on the weekends only. He had been at a friend's house drinking, and on his way home he was pulled over by the police. His breathalyzer registered .11%. Applicant admitted that his drinking pattern did not change much after his probation ended, and he eventually started drinking during the week after he left work. He admitted that over time his alcohol increased to daily use. (Tr. 16- 22, 40-41; GE 1; GE 2)

(SOR ¶ 1.b) Applicant was arrested in November 2015, and charged with DUI. Applicant admitted drinking alcohol to excess. He was about 40 miles away from home on a Saturday night, and he was involved in a single car accident while driving home. The police arrived and he refused to take a breathalyzer test. He pled guilty to the DUI charge and he lost his driver's license for three months. He was ordered to attend an alcohol education course. Initially, Applicant changed his drinking pattern and did not go out on the weekends, but over time, he found that he was drinking again on a daily basis. (Tr. 23-27; GE 1; GE 2; GE 3)

(SOR ¶ 1.c) Applicant was arrested in June 2017, and charged with DUI. He was sentenced to two weeks in jail, his driver's license was suspended, and he was required to install an interlock device in his vehicle for 18 months. Applicant was ordered to attend alcohol counseling on a weekly basis for one year. Prior to this 2017 arrest, Applicant ate dinner and had a few drinks on his way home from work. His one-way travel time from his house to his job is an hour-and-a-half drive. The American Legion is about half-way between the job site and his home. He was pulled over by the police for veering over the marked line, and he refused to take a breathalyzer test. The DUI charge was considered a second offense, and he was required to serve 14 days in jail. Applicant stated that his two-week jail sentence caused him to hit "rock bottom." He realized that he could no longer drink alcohol at his current rate. After the 18-month interlock device period had expired, Applicant requested to keep the device in his vehicle. He later received a letter from the state advising him that he needed to return the interlock device, which was removed in December 2018. (Tr. 27-31; GE 1; GE 2; GE 3)

(SOR ¶ 1.d) Applicant received alcohol treatment at a counseling facility from July 2017 to "present" (August 2018), for a condition diagnosed as Alcohol Use Disorder (mild). According to the counselor, Applicant responded well to treatment and maintained total abstinence while enrolled in the program, which was not a requirement. As a result of his progress and meeting all treatment goals, Applicant was released from the program early. (Tr. 31-35; GE 1; GE 2; AE B)

Since the fall of 2017, Applicant reported that he has consumed alcohol less than six times total, and always in a social setting. He no longer drinks and drives. He no longer feels an urge to drink alcohol. He stated that if he thought alcohol was becoming a problem for him, he would immediately report to his alcohol counselor or the Veterans Administration (VA) chaplain. Since 1993, Applicant also received treatment from the VA for PTSD and pain management. He does not take any habit forming prescription medications, and his medical issues are controlled with the medication. (Tr. 34-39)

Applicant's program manager submitted a letter of recommendation. He stated that Applicant is efficient, detailed oriented, and was chosen over his peers to provide training to new customer service representatives. He is a valued employee, and the program manager recommended he be granted a security clearance in order that Applicant can continue to serve our military veterans with his outstanding customer service. (AE A)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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. Instead, recognizing the complexities of human behavior, these guidelines 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 AG ¶ 2(c), 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 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 as to obtaining 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 and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "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

AG ¶ 21 describes the security concern about alcohol consumption, "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."

AG ¶ 22 provides conditions that could raise a security concern and may be disqualifying as follows:

- (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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (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.

The record evidence establishes AG ¶¶ 22(a), 22(c), and 22(d). Appellant was arrested for three offenses involving excessive alcohol consumption from 2008 to 2017, and he has three alcohol-related driving convictions. In 2017, he was diagnosed with alcohol-use disorder (mild), with no recommendation that he abstain from using alcohol during treatment.

AG ¶ 23 lists four conditions that could mitigate security concerns:

- (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 presented information supporting his positive duty performance. His program manager recommended the issuance of his security clearance. Applicant successfully completed an alcohol-related rehabilitation program. He paid his fines; his

driver's license has been reinstated; and he completed his probation. He requested to keep the interlock device on his vehicle after he successfully completed the 18-month court-ordered requirement, but the state did not concur. He takes his job responsibilities seriously, and he is motivated not to engage in future irresponsible and illegal conduct. His program manager's support is an indication he is trustworthy and reliable. He has taken responsible action in changing his lifestyle, and strictly uses alcohol on a limited basis. Future alcohol-related problems are unlikely to occur and do not cast doubt on Appellant's current reliability, trustworthiness, or judgment. Guideline G security concerns are mitigated.

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 the 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. I have incorporated my comments under Guideline G in my whole-person analysis.

Applicant incurred three alcohol-related offenses between 2008 and 2017. Since then, however, he has largely abstained from drinking. He does not drink to intoxication, and he does not drive after drinking. Through successful completion of alcohol counseling and positive lifestyle changes, he has shown that his alcohol issues are in the past and unlikely to recur. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption security 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:

FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge