

Applicant responded to the SOR on January 3, 2019. He elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 5, 2019, and interposed no objections to the materials in the FORM. He timely supplemented the FORM with additional information about his alcohol consumption on March 5, 2019. Applicant's submission was accepted without objection as Item 7. The case was assigned to me on March 22, 2019.

Summary of Pleadings

Under Guideline G, Applicant allegedly was involved in five alcohol-related incidents between July 1984 and March 2016. Allegedly he was (a) employer-referred to an alcohol treatment facility following his fall in March 2016, as a condition of his return to work; (b) received treatment at the treatment facility for diagnosed alcohol use disorder-severe from July 2016 to September 2016; and (c) evaluated by a licensed clinical psychologist in October 2018 and was diagnosed with alcohol use disorder-moderate.

In his response to the SOR, Applicant admitted all of the allegations in the SOR with explanations. He claimed the three alcohol-related incidents between 1984 and 1994 are aged. He claimed that the partial withdrawal symptoms he experienced in the alcohol treatment facility in March 2016 were caused by a combination of prescribed sleep aid Ambian and high doses of pain medication. Further, he claimed that all of the group members being treated at the alcohol treatment facility were required to attend meetings convened by Alcoholics Anonymous (AA).

Findings of Fact

Applicant is a 57-year-old engineering manager for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (Items 3-4) He earned a bachelor's degree in May 1997 from an accredited university and a master's degree from another respected university in engineering management in January 1999. (Item 3) Applicant reported no military service. Since October 2000, Applicant has worked for his current defense contractor as an engineer in various capacities, most recently as an engineering manager. (Items 3-4)

Applicant's alcohol history

Between 1984 and 1994, Applicant was involved in four alcohol-related incidents. (Items 2-4) In two of the incidents (1984 and 1986), he was charged with drinking in public. In September 1989, records confirm that he was arrested and charged with driving while intoxicated (DWI). In court, he was ordered to complete alcohol education classes in a state-sponsored alcohol safety action program (VASAP), which he completed. And, in

October 1994, he was arrested and charged with DWI, reckless driving, and refusal of a blood-alcohol content (BAC) test at the scene. Appearing in court, he was ordered to complete alcohol education classes at his state's VSAP. (Items 2-4) Applicant is credited with completing this program.

In March 2016, Applicant was hospitalized after he fell and broke both legs. (Items 4-5) Hospital personnel noted that Applicant displayed symptoms of alcohol withdrawal while he was hospitalized. (Items 4-5) While receiving physical therapy for a little over two months (July 2016 to September 2016) at a local treatment facility, he was out of work and receiving disability benefits. (Items 4-5) While in outpatient treatment at this facility, he told treatment providers that he would regularly consume six to eight measured drinks nightly during the weekdays and up to a pint of hard liquor and beer on weekends. (Item 5) A licensed substance abuse provider at the facility diagnosed him with alcohol use disorder-severe and mandated him to participate in six weeks of group therapy and submit to random drug and alcohol testing for a year after the incident. (Items 5-6) During treatment he was mandated to attend Alcoholics Anonymous (AA) meetings and remain abstinent. After treatment ended, facility providers recommended that he continue to adhere to an abstinence regimen. (Items 5-6). With this advice, Applicant still continued to drink after completing his outpatient treatment regimen, albeit at a reduced rate. (Item 6)

Because his March 2016 accident involved alcohol, Applicant's employer required that he attend alcohol-related counseling before he would be permitted to return to work. Applicant, in turn, was evaluated by a licensed clinical psychologist in October 2018. (Item 6) After taking personal history from Applicant and administering tests to him, Dr. A diagnosed Applicant with alcohol use disorder-moderate. (Item 6)

Based on her evaluation and diagnosis, Dr. A assigned a poor prognosis without sustained abstinence by Applicant. (Item 6) By Applicant's own accounts in his March 2017 interview with an investigator from the Office of Personnel Management (OPM), and in his more recent 2018 evaluation session with Dr. A, he continues to drink, albeit in reduced amounts. (Items 4 and 6) To what extent he continues to drink is unclear, and cannot be answered without more updates from Applicant.

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and

mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Alcohol Consumption

The Concern: 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 ¶ AG 21.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a

security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant comes to these proceedings with a considerable history of alcohol-related incidents over a 34-year period dating to 1984. Between July 1984 and October 1994, he was arrested for four alcohol-related offenses and pled guilty to three. Principal security issues raised in this case center on Applicant’s alcohol-related offenses covered by Guideline G, and his more recent treatment and evaluation by licensed mental health providers following a fall in March 2016.

Alcohol Consumption concerns

Applicant’s completion of a employer-directed alcohol treatment program in July-August 2016 followed his recurrent alcohol-related incidents over a 25-year period. His history of alcohol-related incidents and ensuing diagnoses and qualified prognoses by licensed clinicians raise concerns over his risk of future alcohol abuse and warrant application of several disqualifying conditions (DCs) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶¶ 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 abuse disorder,” 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,” and DC 22(d), “diagnosis by a duly qualified mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder,” fully apply to the facts of Applicant’s case.

Applicant’s completion of an employer-directed treatment program in July 2016 and employer-referral for alcohol evaluation in October 2018 included both diagnoses and prognoses. Professional evaluators at the outpatient health clinic and Dr. A’s facility diagnosed Applicant with alcohol use disorder that ranged from severe (the health clinic evaluator’s assessment to moderate (Dr. A’s diagnosis). Both evaluators assigned poor

prognoses for so long as Applicant elected to continue drinking. At this time, it is not clear how much alcohol Applicant consumes weekly, or his frequency of use.

Based on Applicant's long history of alcohol-related arrests, the more recent findings of his substance abuse alcohol evaluators, and his own acknowledgments of his continued consumption of alcohol, albeit at reduced rates, none of the potentially available mitigating conditions are available to Applicant. At this time, it is too soon to make safe predictive judgments about Applicant's ability to avoid abusive drinking in the future.

Whole-person assessment

Applicant's lengthy civilian service with his employer (over 18 years) is respected and appreciated. Endorsements from his current employer and from others who know him were not provided and cannot be evaluated for probative value. Considering the record as a whole, safe predictions cannot be made at this time about Applicant's ability to avoid alcohol-related incidents in the foreseeable future and abstain from drinking in compliance with his professional evaluators. Alcohol concerns are not mitigated.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a through 1.g: Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, conclusions are warranted that it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

