



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



In the matter of:)
)
) ISCR Case No. 18-02789
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised under Guideline G. He had ten alcohol-related incidents between 2001 and 2016. He continued to consume alcohol, against medical advice, until at least December 2018. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on September 19, 2016. On May 3, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline G (Alcohol Consumption). Applicant answered the SOR on June 10, 2019, and requested a hearing before an administrative judge (Answer). The Government was ready to proceed on July 31, 2019, and the case was assigned to me on August 9, 2019. On August 21, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 25, 2019, and I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A and B were admitted without objection, and Applicant testified. I received the completed transcript (Tr.) on October 11, 2019, and the record closed.

Findings of Fact

Applicant, 35, is single, and has no children. In 2013, he received a bachelor's degree in information and decision science. He held a top secret clearance with sensitive compartmented information access (TS/SCI) from 2014 until it was downgraded to a TS security clearance in 2016. He has worked as a senior software engineer for a defense contractor since October 2013. (GE 1; GE 2; GE 3 at 16; Tr. 9-11)

Applicant started consuming alcohol in 2000, when he was 15. He would go to parties and drink beer to the point of intoxication. Applicant was charged with unlawful consumption of alcohol by a minor in June 2001, July 2002, and January 2003. These incidents occurred when he was in high school and within 9 months of his June 2002 graduation. He received fines and was placed on supervision for these incidents. (GE 1 at 15; GE 3 at 13; Tr. 23-25)

After Applicant turned 21 in 2005, his drinking increased as he was able to go to bars. He consumed six to eight drinks a night, once or twice a week. Applicant primarily used designated drivers and taxis to get home, but admitted at the hearing that on occasion, he drank and then drove in an impaired state. In September 2006, Applicant was charged with contributing to the delinquency of a minor after he provided alcohol to an underage girl who was at a party at his home. He was unaware that she was underage, but pled guilty, and he was fined, placed on supervision, and required to perform community service. (GE 1 at 38-41; GE 3 at 14; GE 5 at 4; Tr. 24, 26-28)

In April 2008, Applicant's mother called the police, because he was fighting with his brother in their home. The police came to their home and intervened, giving Applicant and his brother verbal warnings. They were both intoxicated, and this contributed to the escalation; however, Applicant denied being arrested and charged with domestic battery. (GE 3 at 22-23; Tr. 24-26)

Applicant was arrested and charged with battery by campus police in August 2011. He went to a bar with friends during an afternoon break from classes and consumed alcohol to the point of intoxication. After returning to campus, he "flung his sandal," which hit another student in the face. As a result of this incident: he was placed on academic probation for six months; he was required to write a letter of apology to the other student; and attend one to two Alcoholics Anonymous (AA) meetings a month for the remainder of the school year. He was 26 at the time of the incident. (Tr. 28-31; GE 1 at 33-34, GE 3 at 7-8; GE 5 at 5; 45)

In October 2011, Applicant received a \$250 ticket for having an open bottle of beer at a parade. He was 27 at the time of the incident. (GE 1 at 34; GE 3 at 11-12)

Applicant was arrested and charged with three counts of battery and damage to property in April 2012. He was at a bar consuming alcohol with friends. After his friends left the bar, Applicant got into an argument with another patron, which turned physical. Applicant testified the fight escalated to the point that he fought three patrons and a

bartender, resulting in him being badly beaten. As the instigator of the fight, he was convicted and ordered to pay a \$350 fine, perform 50 hours of community service, and complete one year of supervised probation. He successfully completed all of these terms and reduced his level of drinking to once a month. (GE 1 at 34-36; GE 3 at 12; GE 5 at 5-7; Tr. 31-34)

In 2014, Applicant's consumption of alcohol increased to three nights a week, as a coping mechanism for a breakup with a girlfriend. In February 2015, Applicant went to a bar and consumed beer and shots of vodka. The next day, which was a Saturday, he took an Uber ride-share to work. After arriving at work, he fell asleep at his desk. His coworkers woke him and could smell alcohol on his breath. A coworker drove him home. As a result of this incident, his supervisor and facility security officer gave him a verbal warning. Applicant knew he was planning to go to the office on Saturday before he consumed alcohol the previous night. (GE 1 at 43-44; GE 2 a 2; GE 3 at 15; Tr. 34-36, 39, 56, 60)

As a result of the February 2015 work incident, Applicant voluntarily went to intensive outpatient alcohol-counseling treatment. According to Applicant, he was diagnosed with "alcoholism." He attended three-hour group-counseling sessions three nights a week after work. As part of the program, he was required to attend two Alcoholics Anonymous (AA) meetings a week. Once a week he was given a urinalysis. (GE 1 at 43-46; GE 3 at 15-16; GE 6; Tr. 35-41)

In March 2015, Applicant was discharged two or three weeks early, against clinical advice. Applicant testified that he left the program early because he was unable to perform his job and attend the nine hours of counseling each week. Additionally, he believed that he did not need the program. At the time of his discharge, it was recommended that he continue to abstain from alcohol and continue treatment. He did not discuss this issue or ask for accommodations from his supervisor, because he was ashamed. (GE 1 at 43-46; GE 3 at 15-16; GE 6; Tr. 35-40)

Applicant abstained from using alcohol from February 2015 until September 2015. After he was discharged from the treatment program in March 2015, he discontinued attending AA meetings. In September 2015, Applicant started consuming alcohol once or twice a week, because he was under stress at work, and he was concerned about company layoffs. He drank to the point of intoxication once or twice a month. (GE 1 at 44; GE 3 at 15-16; Tr. 40-42)

In March 2016, Applicant moved to a new state for work where he had no friends or family. He was lonely and started drinking heavily. A month later, he was arrested and charged with driving while intoxicated (DWI). While Applicant was driving to work at about 7:00 in the morning he struck a parked vehicle. The night before the incident, he watched hockey with a neighbor, and he consumed alcohol until approximately 2:00 or 3:00 in the morning. Applicant admitted he was still intoxicated when he drove to work, and his blood alcohol content (BAC) was .12. As a result of his conviction: Applicant's license was restricted for 12 months; he was required to use an interlock device for six months; pay fines; and attend 25 ASAP classes. In December 2016, Applicant had an

interlock violation. He claimed this was the result of consuming cough syrup. Applicant reported the arrest to his facility security officer (FSO) in a timely manner. (GE 1 at 36-37; GE 2 a 2; GE 3 at 12-13, 15-16; GE 5 at 2, 9; Tr. 41-45; 70)

From September 2016 until April 2017, Applicant went to alcohol counseling twice a week. His goal during this treatment was to completely abstain from using alcohol. His treatment records reflect that he consumed alcohol on New Year's Eve 2016 and at a Super Bowl party in February 2017. Applicant acknowledged in group counseling sessions that he had these "slips" and consumed alcohol. He had several urinalyses that were positive for medications for which he did not have prescriptions, and he had one urinalysis that was positive for alcohol. (GE 3 at 13; GE 5 at 14, 19, 29, 30, 32, 33, 35, 36, 38-40, 43-44; Tr. 36, 45-50)

According to Applicant, the treatment facility recommended that he continue to abstain from alcohol, and he was diagnosed with "alcoholism." Applicant's probation ended in July 2017, and he resumed consuming alcohol in September 2017, despite the treatment facility's recommendation that he continue to abstain from all consumption of alcohol. (GE 5; Tr. 64-66)

Applicant attended a wedding in September 2017, where he consumed alcohol to the point of intoxication. He testified that he consumed one or two shots at the wedding; however, in his January 2019 response to DOD interrogatories, he admitted he was intoxicated. He also consumed alcohol at Thanksgiving and Christmas in 2017. (GE 2 at 1; GE 3 at 3, 15, 23; GE 5; Tr. 50-55)

During his April 2018 background interview, Applicant claimed he quit drinking alcohol in January 2018, and did not intend to consume alcohol in the future, unless he was at a social gathering. In July 2018, he went on a work trip and consumed two beers. He also consumed alcohol at Thanksgiving and Christmas in 2018. At the time of the hearing, he had not consumed alcohol in 2019. He admitted that his most recent period of abstinence was, in part, the result of the DOD interrogatories and SOR. He also loves how his life is "without alcohol controlling it." Applicant attended an AA meeting approximately two weeks before the hearing and once in August, but has not attended any other meetings since April 2017. He attended these meetings upon advice from an attorney. He has never had an AA sponsor, despite recommendations from the 2017 treatment. (GE 2 at 1; GE 3 at 3, 15, 23; GE 5; Tr. 50-55, 57-58)

Applicant characterized his consumption of alcohol since July 2017 as "playing with fire," but claimed he is no longer interested in drinking, and he intends to continue to abstain. In the past when he consumed alcohol, he would almost always drink to the point of intoxication, and he admitted to having a problem with alcohol. Applicant has experienced blackouts, most recently in April 2016. The DWI was a "wake-up call," and he admittedly shrugged off his alcohol issues "for far too long." He admitted that his mother and brother have expressed to him their concerns regarding his consumption of alcohol. (Tr. 14, 61-64, 66, 76)

Applicant obtained an alcohol and substance use evaluation in September 2019 upon the recommendation of an attorney. The evaluation determined that based upon Applicant's nine months of sobriety and responses to various tests, he was a low risk for a substance use disorder for the previous 12 months. Additionally, his urinalysis which was administered the week before the hearing was negative for alcohol. (AE A; Tr. 57-58)

Applicant regularly exercises and seeks out hobby activities as coping mechanisms. He has never had a security issue, and he believes he has made necessary positive changes in his life. Applicant informed his supervisor that he had a DOHA hearing related to the 2016 DWI. In his 2018 performance evaluation, Applicant is described as a key player, hardworking, a subject matter expert, courteous, and professional. (AE B; Tr. 14, 56, 69)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 expresses the security concern pertaining to 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.

The following disqualifying conditions under AG ¶ 22 are potentially applicable:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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;

(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;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Between June 2001 and April 2016, Applicant was ticketed, charged, or investigated for nine alcohol-related incidents. Additionally, in February 2015 he was given a verbal warning for coming to work with alcohol on his breath. As a result of this incident he voluntarily attended intensive outpatient alcohol treatment. According to Applicant, he was diagnosed with “alcoholism,” and he left the treatment early against medical advice. He discontinued attending AA meetings, but abstained from alcohol until approximately September 2015. In April 2016, Applicant was arrested and charged with DWI, he was driving to work prior to the arrest. Once again, he attended alcohol treatment and attempted to abstain. Between September 2016 and April 2017, he violated his probation at least twice by consuming alcohol. Again, according to Applicant, he was diagnosed with “alcoholism” and was recommended to completely abstain from using alcohol. A few months after his probation ended in July 2017, Applicant became intoxicated and continued to drink alcohol a few times a year.

The Applicant’s treatment records from the two facilities do not reflect that Applicant was diagnosed with an alcohol-related disorder; however, at the hearing he acknowledged that he was diagnosed with “alcoholism” and both facilities recommended that he abstain from the use of alcohol. Based upon all of the record evidence and Applicant’s admissions, AG ¶ 22(a), 22(b), and 22(c) apply.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Two 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 good judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and established a 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 had ten alcohol-related incidents between 2001 and 2016. These incidents reflect a pattern of maladaptive alcohol use. Although it has been over three years since his last arrest, Applicant continued to consume alcohol while he was on probation and against medical advice.

After his alcohol treatment in 2015 and 2017, Applicant was able to maintain periods of sobriety for several months. However, he eventually resumed consuming alcohol despite recommendations to maintain complete abstinence. In both instances he stopped attending AA meetings right after he left treatment. This was against the recommendations of the treatment facilities. Additionally, he failed to obtain a sponsor, despite recommendations. Just before his September 2019 hearing, he attended two meetings based upon the advice of an attorney.

Applicant has been sober since approximately January 2019, and he should be commended for this accomplishment; however, given his 20-year history of consuming and abusing alcohol, the passage of time is insufficient to mitigate his past history of alcohol-related issues and the underlying concerns regarding his reliability, trustworthiness, and good judgment.

Applicant's abstinence since January 2019 is not sufficient to mitigate his behavior given his history of alcohol-related incidents, including two while holding a security clearance. AG ¶¶ 23(a), 23(b), 23(c), and 23(d) do not 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 guideline 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 Guidelines G in my whole-person analysis. I also considered Applicant's favorable character evidence.

Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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, Alcohol Consumption: AGAINST Applicant

Subparagraphs 1.a – 1.l: Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge