



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 19-00266
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

04//3/2020

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not intentionally provide false statements in response to questions in his security clearance application. Additionally, his positive change in personal and professional circumstances, combined with the moderation of his alcohol usage and with the passage of time since any adverse conduct, are sufficient to mitigate the security concerns about his use of alcohol, his criminal conduct, and his personal conduct. His request for a security clearance is granted.

Statement of the Case

On July 13, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is

clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On July 31, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for alcohol consumption (Guideline G), criminal conduct (Guideline J), and personal conduct (Guideline E). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on November 25, 2019, and convened the requested hearing on January 28, 2020. Department Counsel proffered Government Exhibits (GX) 1 – 6, which were admitted without objection. Applicant appeared as scheduled and testified. I received a transcript of the hearing (Tr.) on February 6, 2020.

Without objection, I held the record open after the hearing to receive additional relevant information from Applicant. (Tr. 48 – 51) The record closed on February 14, 2020, after I received Applicant's post-hearing submissions and Department Counsel's waiver of objection thereto. They have been admitted without objection as Applicant Exhibits (AX) A – E. The emails that forwarded those exhibits to me are included in the record as Hearing Exhibit (HX 3). HX 1 is the Index of Government Exhibits. HX 2 is a copy of Department Counsel's Discovery Letter, dated November 15, 2019. (Tr. 15 – 25)

Findings of Fact

Under Guideline G, the Government alleged that Applicant consumed alcohol, at times to excess, from the time he was a teenager until at least 2016, and that he still consumes alcohol (SOR 1.a). It was further alleged that between 2006 and 2013, he was arrested on six occasions for driving while intoxicated (DWI) and other charges incidental to his DWI arrests (SOR 1.b – 1.g).

Under Guideline J, the Government alleged that between June 2001 and August 2012, Applicant was cited, charged, or arrested 11 times for various moving violations, failure to appear in court, and driving on a suspended license (SOR 2.a – 2.k); and that in March 2018, Applicant was cited for speeding, to which he pleaded *nolo contendere* (SOR 2.l). Additionally, the DWI arrests alleged at SOR 1.b – 1.g were cross-alleged as criminal conduct (SOR 2.m).

Under Guideline E, the allegations at SOR 1.a – 1.g (SOR 3.a) and at SOR 2.a – 2.m (SOR 3.b) were cross-alleged as adverse personal conduct (SOR 2.m). Additionally, it was alleged that Applicant falsified his answer to the first question in e-QIP Section 24 (*Alcohol Use*) by listing a DWI arrest in January 2007 but failing to list all of the DWI arrests delineated in SOR 1.b – 1.g (SOR 3.c).

In response to the SOR, Applicant denied SOR 3.c, but admitted all of the remaining SOR allegations. He also provided an attached statement in which, inter alia, he explained his denial of SOR 3.c. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 36 years old and employed as a software engineer for a large defense contractor. He grew up in State A, where he earned a Bachelor of Science degree in computer science and mathematics in May 2016. In June 2017, Applicant was hired by his current employer while completing graduate studies and working on a dissertation for his Master of Science degree in computer science. He became a full-time employee the day he received his Master's degree in December 2017. Applicant established an excellent academic record in college, graduating magna cum laude. As a graduate student, he compiled a 3.75 GPA. In June 2017, Applicant moved from State A to State B, his current residence, to accept the defense contractor position he now holds. During the summer of 2014, Applicant held a security clearance required for his internship with a federal agency. (GX 1; GX 2; AX B; Tr. 7, 9, 48).

As alleged in SOR 1.a, Applicant began consuming alcohol, at times to excess, as a teenager. Between high school and July 2013, his use of alcohol resulted in the convictions for DWI and related charges delineated in SOR 1.b – 1.g. Applicant last used alcohol to excess in June 2016, but he still consumes alcohol in moderation in social settings. He never has been diagnosed with any alcohol use disorder, such as being alcohol dependent. His DWI sentences have not resulted in more than a few days in jail awaiting initial court appearances, and he has completed court-ordered alcohol safety awareness classes on multiple occasions. Those classes included evaluations of his alcohol use and did not result in any clinical diagnoses. (Answer; GX 1 – 5; Tr. 32 – 41, 52 – 55)

As alleged at SOR 2.a – 2.l, Appellant committed numerous traffic violations, ranging from simple speeding to reckless driving between 2001 and 2018. He also was cited for various technical infractions, such as improper insurance, and defective equipment and devices. On four occasions, Appellant was charged with failure to appear in response to traffic citations. On four other occasions, he also was charged with driving on an expired or suspended driver's license. Applicant did not commit any such violations between 2012 and March 2018, when he pleaded *nolo contendere* to driving 55 mph in a 45 mph zone in State B. That most recent traffic violation occurred in State B, six years after his last violation in State A. Although all of the SOR 2.a – 2.l allegations involved violations of law, none of them resulted in arrest as alleged. Only the allegation at SOR 2.m, which cross-alleged the DWIs addressed in SOR 1.b – 1.g involved conduct for which Applicant faced possible incarceration. In early 2017, when Applicant was first being considered for his current job, he did not own a car or hold a valid driver's license because of his many traffic violations before 2012. To have his State A driving privileges restored, Applicant researched and satisfied all outstanding requirements in State A before moving to State B. (Answer; GX 1; GX 2; GX 4 – 6; Tr. 36, 47 – 48)

Applicant denied that he intended to falsify his answers to e-QIP Section 24 (*Use of Alcohol*) questions by omitting adverse information about his DWIs. When he submitted his e-QIP, Applicant disclosed as required by Section 22 (Police Record) nearly all of the non-DWI traffic offenses that occurred in the seven years preceding the e-QIP. In that same section, Applicant also listed the DWI offenses alleged at SOR 1.f and 1.g. At e-QIP Section 24, he stated that alcohol had a negative impact in the previous seven years due to multiple DWIs between 2007 and 2013. The only DWI he did not disclose was the oldest offense from December 2006. Applicant claimed that, at most, he misunderstood what was required in Section 24. (Answer; GX 1; GX 2; Tr. 25, 27, 41 – 42)

Applicant was candid and forthright in his testimony. In response to the adverse information presented by the Government, Applicant admitted the accuracy of the allegations. He also acknowledged that before his last DWI arrest in 2013, he behaved irresponsibly by drinking too much and generally disregarding rules and regulations about driving and other societal norms. He had matriculated at a state university in the fall of 2002 but left after a semester. By contrast, Applicant described two events in 2013 as a turning point in his life. Although he re-enrolled in college in the spring of 2013, his risky lifestyle and poor choices continued. But the day he was released from jail after his May 2013 DWI arrest, he learned his infant cousin had died suddenly. A few months later, when Applicant was arrested for his last DWI, he had been drinking at a party celebrating his great grandmother's 100th birthday. She died soon after and Applicant claims he realized he had to change his life for the better. (Answer; GX 1; GX 2; Tr. 26 – 29)

After July 2013, Applicant's alcohol use declined markedly and he was last intoxicated in June 2016. Applicant has not driven after having anything to drink since his July 2013 arrest, but he admits that before then he drove drunk on a number of occasions without being stopped. Applicant still consumes alcohol, albeit, on infrequent social occasions and only in moderation. He also avers that he leads a more active lifestyle characterized by physical fitness activities, and that his job and his volunteer work are not conducive to a lifestyle that includes more than moderate and responsible drinking. (Answer; GX 2; Tr. 29 – 35, 38 – 41)

After re-enrolling in college, Applicant established a superior academic record and graduated on time with a 3.5 cumulative GPA. He compiled a 3.75 GPA for his post-graduate degree. During his undergraduate career, Applicant's academic record qualified him as an ambassador in the White House Initiative on Historically Black Colleges and Universities (HBCU). Currently, he is a member of the National Black Engineers Association and volunteers as a mentor to middle and high school students in State B. In the workplace, Applicant has earned more than ten awards for his technical expertise and teamwork. He also logs significant hours of his own time through company-sponsored volunteer programs. He has a reputation for integrity, reliability, and professionalism. After initially being granted interim access to classified information, Applicant demonstrated that he was able and willing to protect such information. (AX A – E; Tr. 32, 42 – 47)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See *Egan*; AG ¶ 2(b))

Analysis

Alcohol Consumption

The adverse information about Applicant's consumption of alcohol and alcohol-related misconduct reasonably raised the security concern stated at 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 consumed alcohol, at times to excess, for about nine years. During that time, he was arrested and convicted of alcohol-related crimes six times. This information requires application of the following AG ¶ 22 disqualifying conditions:

(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.

By contrast, Applicant's use of alcohol now is infrequent and moderate. He was last intoxicated almost four years ago, and he has not been involved in any alcohol-related misconduct for almost seven years. He has never been diagnosed as alcohol dependent or as having any other alcohol use disorder. Further, Applicant's positive changes in his personal and professional life are not conducive to the same level of involvement with alcohol in which he engaged up until 2016. This information requires application of the following AG ¶ 23 mitigating conditions:

(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; and

(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.

The record evidence as a whole regarding Applicant's past use of alcohol, and the more recent changes in his lifestyle that are conducive to more moderate social alcohol

consumption, support a conclusion that he is unlikely to engage in alcohol-related misconduct, or to abuse alcohol in the future. All of the foregoing is sufficient to support a conclusion that Applicant has mitigated the security concerns under this guideline.

Criminal Conduct

Between June 2001 and March 2018, Applicant was cited for numerous traffic violations, some as serious as reckless driving, and with various technical violations of state traffic ordinances. He also was charged with failing to appear in response to various citations. Along with his six DWI arrests and convictions, the Government's information reasonably raised a security concern about criminal conduct that is expressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

More specifically, the record requires application of the following AG ¶ 31 disqualifying conditions:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I also have considered the following AG ¶ 32 mitigating conditions:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's alcohol-related misconduct between 2007 and 2013, as well as his lengthy record of lesser traffic-related offenses, are not in dispute. However, Applicant has not engaged in such misconduct or poor judgment in almost seven years. His

drinking, which was at the heart of his most serious offenses, is no longer a security concern. The other offenses alleged under this guideline reflected his unwillingness or inability between 2001 and 2012 to abide by basic legal obligations. Since 2013, Applicant's circumstances have undergone a significant and positive transformation. I am mindful of the need to avoid examining facts in a piecemeal fashion; however, the record evidence as a whole shows that Applicant's traffic violation in March 2018 should not be viewed as a continuance of the misconduct and poor judgment he demonstrated up to July 2013. Since 2013, Applicant has earned two degrees through superior academic performance, and he has relocated to State B for his current work in the defense industry. Applicant has excelled in his work and he has become active as a volunteer and example for local students. Finally, Applicant's lifestyle is characterized by his engagement in productive activities that augment his professional life in a way that makes it unlikely that he will commit even the most minor of criminal offenses. All of the foregoing supports application of the mitigating conditions listed above. I conclude the security concerns under this guideline are mitigated.

Personal Conduct

Applicant denied the allegation that he falsified his answers to e-QIP Section 24 (Use of Alcohol); however, to be disqualifying it must be shown that his omissions were deliberate and intended to conceal the facts or to mislead the government about those facts. To that end, I have considered AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

I conclude from all of the information probative of Applicant's intent at the time he completed his e-QIP that he reasonably believed his answers were truthful. Available information shows that Applicant did not improperly answer the questions in e-QIP Section 24 (Use of Alcohol) as alleged at SOR 3.c. At worst, he may have misinterpreted what information the question required. While the only specific DWI he listed in Section 24 was his first offense in 2007, Applicant disclosed that alcohol had a negative impact on his life between 2007 and 2013. From his description of the ramifications from those charges, it is reasonable to conclude that he was referring to all of his DWI arrests. Earlier in the e-QIP (Section 22 – Police Record), he had already listed all of the DWIs that had occurred in the preceding seven years. His oldest DWI fell outside that time frame. He also disclosed most of the other offenses addressed under the Criminal Conduct section of the SOR. The record evidence as a whole shows that Applicant did not intend to conceal any relevant or material information when he submitted his e-QIP. Any security concerns raised by the Government's information about Applicant's truthfulness are resolved for Applicant.

Nonetheless, information about Applicant's long record of misconduct and misuse of alcohol, as cross-alleged in SOR 3.a and 3.b reasonably raised a security concern about personal conduct stated, in relevant part, at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

More specifically, information supporting the SOR allegations about Applicant's abuse of alcohol and alcohol-related criminal conduct, as well as the 12 other allegations of lesser criminal conduct and violations of traffic ordinances, require application of the following AG ¶ 16 disqualifying conditions:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent, or other inappropriate behavior; and (3) a pattern of dishonesty or rule violations.

In weighing the scope of Applicant's misconduct, because of the evidence reflecting Applicant's change of circumstances after 2013, I specifically exclude from this discussion Applicant's 2018 traffic citation. In assessing the security significance of Applicant's conduct up to July 2013, as well as his use of alcohol since then, I find applicable the following AG ¶ 17 mitigating conditions:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

For the same reasons provided in support of mitigation under Guidelines G and E, I conclude Applicant's information is sufficient to mitigate the security concerns under this guideline.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The information probative of these factors is significant. Applicant's past misconduct, alcohol use, and criminal conduct are no longer indicative of his current judgment, trustworthiness, and reliability. I also note Applicant's candid testimony and his acceptance of responsibility for his past actions. A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for a security clearance that were raised by the Government's information have been resolved.

Formal Findings

Formal findings 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.g:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.m:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a – 3.c:	For Applicant

Conclusion

It is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge