



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



In the matter of:)	
)	
)	ISCR Case No. 19-01062
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
 For Applicant: *Pro se*
 07/01/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant was arrested for driving under the influence in September 2013 and August 2017. Since then, however, he has moderated his drinking and no longer drives after consuming alcohol. He has also matured and become more responsible. He has established a healthier lifestyle and is pursuing a master's degree to further his career. He also submitted strong whole-person evidence in support of his case. 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 involvement, and the cross-alleged personal conduct security concerns. Applicant's eligibility for continued access to classified information is granted.

Statement of the Case

On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (alcohol involvement). The same facts were cross-alleged under Guideline E (personal conduct). The DOD CAF issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 15, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 12, 2019. On January 14, 2020, DOHA issued a notice scheduling the hearing for February 4, 2020.

The hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant and three character witnesses testified. Applicant submitted Applicant's Exhibits (AE) A through I, which were admitted without objection. AE A through AE F were included with his Answer. I held the record open to allow him the opportunity to submit additional documentation. He subsequently submitted two documents from his alcohol counselor, dated February 6, 2020, and February 14, 2020, respectively. I marked them as AE J and AE K, and they were admitted without objection. DOHA received the hearing transcript (Tr.) on February 13, 2020. The record closed on February 18, 2020.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, and the cross-allegation, SOR ¶ 2.a, with explanations. I have incorporated his admissions and statements into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 35 years old. He was married from 2004 to 2011 and he has a 17-year-old son from this marriage, which ended in divorce. He remarried in 2014. He and his wife have a three-year old daughter. (GE 2 at 5) Applicant graduated from high school in 2002. He served in the U.S. Air Force from 2005 to 2009, and was discharged honorably. He earned an associate's degree in 2013 and a bachelor's degree in 2016. (GE 1) In early 2020, he was accepted into a master's degree program. (AE H) Applicant has held a security clearance since 2005. He has worked for his current employer, a defense contractor, since April 2009, shortly after leaving the Air Force. (Tr. 26-29, 36-38, 67; GE 1) He has an annual salary of \$100,000. (Tr. 73)

In September 2013, Applicant went to a pool hall after work. He consumed a pitcher of beer over the course of the evening. While driving home, he was pulled over by police for having a light out on his car. He failed a roadside sobriety test, registering a blood alcohol content of 0.06. A search of his car revealed a container of marijuana. (Answer; Tr. 30)

Applicant was arrested and charged with driving under the influence of alcohol (DUI) and possession of marijuana. (SOR ¶ 1.a) In March 2014, through a plea

agreement, the DUI charge was dismissed, and the marijuana possession charge was reduced to possession of drug paraphernalia, to which Applicant pleaded guilty. He received a 90-day suspended jail term and two years of unsupervised probation. He was required to attend four meetings of Alcoholics Anonymous (AA), to attend a 48-hour drug rehabilitation program, and to submit to random drug screenings. Applicant completed the requirements of probation in late June 2014. (Answer; AE A; GE 2 at 8, 11; GE 3; Tr. 30-37) He has not used illegal drugs since his 2013 offense. He recognizes that using marijuana, particularly with a clearance, was a very poor decision. (Tr. 41, 54, 67)

Applicant testified that his 2013 arrest occurred in the aftermath of a family tragedy. His sister, who had suffered from a severe mental impairment due to a car accident as a teenager years before, passed away in April 2013 at age 27. Applicant did not pursue grief counseling. He dealt with his grief by self-medicating with marijuana from May to September 2013. He also went out drinking with friends. (Tr. 30-34, 40-41, 46, 68-69) Applicant described his drinking pattern at the time as "severe." He consumed six drinks a day, and "upwards of 10 sometimes on weekends." (Tr. 46)

Applicant abstained from drinking for about six months after his 2013 DUI. He resumed drinking during his honeymoon in August 2014. He limited his drinking somewhat. He would consume two or three beers with dinner a few nights a week and six beers on weekends. He also continued to go out drinking on occasion. (Tr. 46-47, 50-54, 69-70, 74)

In July 2015, Applicant submitted a security clearance application (SCA) to renew his clearance. He disclosed his 2013 offense. (GE 1)

In August 2017, Applicant was out with family members celebrating his wife's birthday. He consumed two or three beers over a three-hour period. While driving home, he drove off the road while looking at his cell phone, striking a telephone pole. Applicant refused to take a roadside field sobriety test, and he was arrested on a charge of DUI. (Answer; GE 2 at 5-6; GE 3; Tr. 55-56) (SOR ¶ 2.a) Applicant does not believe he was intoxicated at the time. (Tr. 74) He acknowledged that, unlike with the 2013 offense, there was no real triggering event for the 2017 DUI beyond his own poor decision making. (Tr. 70)

In February 2018, Applicant was found guilty of DUI. He was fined and received a 60-day suspended jail term and two years of probation. He appealed to the circuit court. (GE 3) In August 2018, Applicant entered a diversion program. He was ordered to pay court costs and fees, to perform 100 hours of community service, to participate in an alcohol evaluation, to attend a victim-impact panel, and to attend four AA meetings. Applicant completed the requirements in April 2019, and the charge was dismissed in June 2019. (Answer; AE B; GE 2, GE 4, GE 5; Tr. 56-60)

As part of the diversion program, Applicant participated in alcohol counseling from November 2018 until April 2019. In his initial screening in November 2018, Applicant was

diagnosed with alcohol abuse disorder under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) by a licensed alcohol and drug counselor. (AE C; Tr. 41-44)

Applicant testified that the counseling program involved weekly group meetings for eight weeks. He had to abstain from drinking during the program. He said he benefited significantly from the program, and credited his participation in counseling with changing his priorities. He became more goal-oriented. (Tr. 47-49) Applicant's counselor submitted a letter of recommendation noting that Applicant completed the program successfully and attesting to Applicant's maintenance of a healthy lifestyle. (AE E, AE G)

After his second DUI, Applicant stopped going to pool halls and started going to the gym. He ceased drinking during the week. He testified that when he drank alcohol outside the home, he would use ride-share programs to return to his home. Applicant is now in a management position at work and knows the potential impact his actions would have on his career. (Tr. 60-62, 71; AE C) He said he was last intoxicated at a party at his house on New Year's Eve in December 2019, when he consumed three or four beers over the course of the evening. (Tr. 74-75)

Applicant participated in court-ordered AA and a few additional sessions. He felt that he did not benefit from his participation in AA. (Tr. 72-73) He had two subsequent appointments with his counselor, but is not currently in alcohol counseling or AA. (Tr. 41-45, 60, 75; AE G)

Applicant feels his alcohol consumption is now under control. He said, "I don't need it" to relax or to "de-stress" (Tr. 63-64) Applicant recognized that it took the second DUI for him to change his outlook. He blamed the first DUI on events in his life and on his drug use. He is now more focused on professional advancement and on his family. He accepts full responsibility for his actions. (Tr. 116-119)

In February 2020, Applicant submitted documentation from his alcohol counselor, who found that Applicant does not meet the diagnostic criteria for any alcohol use or substance abuse disorders under the DSM-5. As a result, no treatment was recommended. (AE J, AE K)

Applicant's father testified that Applicant is a dedicated father and a good son. They are very close. He said he was not aware that his son had a drinking problem. Applicant's father, who served in the Air Force and held a clearance, regards his son as very trustworthy. They do not talk about Applicant's work, but instead discuss their shared interests, like college sports. (Tr. 78-85)

Applicant's wife testified that he is a good father. He is very intelligent and tactful. She is very proud of him for being so driven and goal-oriented. Applicant does not drink to excess. (Tr. 100-104)

Applicant's direct supervisor testified that Applicant has worked for him for 11 years. Applicant informed him about his two arrests when they occurred. Applicant has a great work ethic. He is "a bright and upcoming star." He is trusted and liked in the workplace. Applicant knows what he did was wrong. The supervisor testified that "I would trust him with my life." (Tr. 87-98; AE E, AE F) A coworker of Applicant's provided a letter of recommendation expressing similar sentiments. (AE E)

Policies

No one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."

The adjudicative 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(a), 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, 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.

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following disqualifying conditions are potentially applicable in this case:

(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 an 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) or alcohol use disorder.

Applicant was arrested for DUI in 2013 and 2017. AG ¶ 22(a) applies. At the time of his 2013 DUI, Applicant was drinking six beers a day, and upwards of ten beers on the weekends. This constitutes habitual or binge consumption of alcohol to the point of impaired judgment, and AG ¶ 22(c) applies.

When he was assessed by his alcohol counselor in November 2018, Applicant was diagnosed with alcohol use disorder. AG ¶ 22(d) would therefore apply but for the fact that the diagnosis is not alleged in the SOR. I therefore cannot consider it as disqualifying conduct. Thus, AG ¶ 22(d) does not technically apply. However, I will consider the diagnosis, as well as the more recent update to it, and Applicant's subsequent actions, in weighing mitigation or changed circumstances, whether Applicant has demonstrated sufficient rehabilitation, under the whole-person concept, and in weighing his credibility. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 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.

Applicant incurred DUI charges in 2013 and 2017. Both of them occurred while he had a clearance, and the second happened after he submitted his most recent clearance application, a fact which weighs against mitigation. However, the first DUI occurred during a period when Applicant was grieving the loss of his sister and also dealing with the end of his first marriage.

As Applicant acknowledges, it took the second DUI for him to address his alcohol issues and curtail his drinking to a responsible level. Applicant completed alcohol counseling and now drinks responsibly. He drinks at home, and if he drinks when he is out, his wife drives them home or he uses a ride-share service.

Applicant's diagnosis of alcohol abuse disorder was not alleged as disqualifying conduct, though it is supported by the record evidence. However, Applicant also provided updated documentation from his counselor to show that he no longer has an alcohol abuse disorder. Applicant has also found new hobbies (working out) and has chosen to advance his education by pursuing a master's degree. He also has a wife and a young child. He fully appreciates the responsibility he has to provide for his family. He credibly attested that he has matured significantly and become more responsible and rightly recognizes that, having had two DUIs, he has much to lose by further acts of poor judgment. Applicant also presented strong whole-person evidence from both his family members and his supervisor that support his case in mitigation. Applicant has demonstrated a clear and established pattern of modified consumption and changed behavior. I therefore conclude that Applicant has demonstrated that his alcohol issues are unlikely to recur and are no longer a security concern. He has provided sufficient evidence to mitigate the alcohol-related security issues under AG ¶¶ 23(a) and (b).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

SOR ¶ 2.a is a cross-allegation of SOR ¶¶ 1.a and 1.b. In addition to the DUI offenses, which are addressed above under Guideline G, SOR ¶ 1.a also includes the marijuana possession charge, which was reduced to possession of drug paraphernalia. AG ¶ 16(c) applies, as does the general personal conduct security concern set forth in AG ¶ 15.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(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.

Applicant's 2013 drug-related charges (alleged) and marijuana use while holding a clearance (not alleged) are additional factors to consider under Guideline E. However, like the 2013 DUI, his drug involvement came in the aftermath of his sister's death. The drug use is also now several years ago and long past. AG ¶¶ 17(c) and 17(d) both apply for the same reasons as set forth under Guideline G, above.

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 Guidelines G and E in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's continued eligibility and suitability for a security clearance. I conclude Applicant has mitigated the alcohol involvement and personal conduct 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.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant continued eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge