



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



In the matter of:)
)
) ISCR Case No. 19-01064
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 27, 2020

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On November 6, 2017, Applicant submitted a security clearance application (SCA). On May 31, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 12, 2019, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 20, 2019. I convened the hearing as scheduled on October 8, 2019. The Government offered Government Exhibits (GXs) 1 through 6, which were

admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on October 17, 2019. The record was left open for the receipt of additional evidence. On November 15, 2019, Applicant offered Applicant Exhibits (AppXs) A and B, which were admitted without objection. The record closed at that time.

Findings of Fact

Applicant admitted to both allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 46-year-old employee of a defense contractor. (TR at page 15 line 1 to page 19 line 5.) He served in the U.S. Army for eight years, has been employed with the defense contractor since 1998, and has held a security clearance for about “20 years.” (*Id.*) He is single, and has no children. (TR at page 18 lines 8~13.)

Guideline G: Alcohol Consumption

1.b. In October of 2009, Applicant was arrested, charged and subsequently pled guilty to Driving under the influence (DUI). (TR at page 19 line 11 to page 26 line 12, and GX 4.) He was “at a bar,” consuming “a couple of beers and a couple of shots.” (TR at page 23 lines 9~17.) [Later at his hearing, Applicant defined “a couple of beers and a couple of shots” as “five/six beers . . . two/three” shots of alcohol.] (TR at page 29 lines 9~15.) Pursuant to his guilty plea, Applicant paid a \$250 fine, and a 90 day jail sentence was suspended. (GX 4.)

1.a. In May of 2017, Applicant was arrested, charged and subsequently pled guilty to Driving with a Blood Alcohol Content (BAC) of Over .08%. (TR at page 26 line 13 to page 37 line 6, and GX 5.) He was at a friend’s house, attending a barbeque. (*Id.*) Applicant consumed “five/six beers . . . two/three” shots of alcohol. (TR at page 29 lines 9~15.) Pursuant to his guilty plea in September of 2017, Applicant paid a \$1,839 fine, attended counseling, and was placed on probation for three years. (GXs 5 and 6.) He has successfully completed that counseling. (AppX A.)

However, Applicant remains on probation until September of 2020, and he still consumes alcohol. (TR at page at page 26 line 13 to page 37 line 6, at page 37 lines 15~22, and GX 5.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

- (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.

Applicant has two alcohol-related incidents between October of 2009 and May 2017. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Two conditions may apply:

- (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.

None of these apply. Applicant is still on probation as a result of his most recent alcohol-related incident, and he still consumes alcohol. Alcohol consumption is found against Applicant. However, after he completes his probation, and without any further alcohol related incidents, Applicant might be successful in reapplying for a security clearance.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant is well respected in the work place. (AppX B.)

However, overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge