



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



In the matter of:)
)
) ISCR Case No. 19-01188
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*
03/31/2020

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of excessive alcohol use, marked by three driving under the influence (DUI) of alcohol arrests, and an alcohol-related offense. His most recent alcohol-related offense occurred in 2016. He successfully completed an alcohol treatment program and has established a pattern of modified consumption of alcohol. Alcohol consumption security concerns are mitigated. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 19, 2018, seeking the continuation of a clearance required for his position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 17, 2019, alleging security concerns under Guideline G (alcohol consumption). Applicant answered the SOR on July 1, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on November 27, 2019, and issued a notice of hearing on January 31, 2020, setting the hearing for February 28, 2020. At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant offered two exhibits

(AE 1-2), and all exhibits were admitted without objection. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on March 9, 2020.

Findings of Fact

Applicant is a 50-year-old employee of a federal contractor. He is a 1987 high school graduate, and has completed some college courses, but not enough for a degree. He married his first wife in 1999 and divorced in 2003. He married his second wife in 2004 and divorced in 2018. He has no children.

Applicant has been working as a network analyst-technician for federal contractors since 2005. He was hired by his current employer and security sponsor in October 2015. Applicant testified that he was first granted a secret clearance in 2006 while employed with a federal contractor and detailed to a federal agency. In 2012, his clearance was upgraded to top-secret and he has held it to present. He stated that, except for the allegations in the SOR, he has never had any other security issues or concerns.

In his responses to Sections 22 (Police Record) and 24 (Use of Alcohol) of his 2018 SCA, Applicant disclosed a history of alcohol-related offenses. The background investigation provided additional details about the security concerns alleged in the SOR.

In substance, the SOR alleges that Applicant was arrested and charged with driving while under the influence of alcohol (DUI) in 1989, 2006, and 2016; arrested in 2009 for an alcohol-related domestic violence offense; diagnosed with alcohol abuse in 2016; and has continued to consume alcohol notwithstanding his diagnosis of alcohol abuse and recommendation that he abstain from alcohol consumption.

In his SOR answer, Applicant admitted the allegations in SOR 1.a – 1.e, with some clarifications. He denied the allegation that he continues to consume alcohol. (SOR 1.f) At his hearing, he admitted that while in counseling he was advised to remain abstinent. He was abstinent during his treatment periods, but after treatment, he continued to consume alcoholic beverages in moderation. Applicant repeatedly stated that he was not aware of receiving an alcohol abuse diagnosis. His SOR admissions, and those at the hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

1. Applicant admitted that he was arrested and charged with DUI in December 1989. He has no additional recollection of the offense or its disposition.

2. In January 2006, Applicant was charged with driving an all-terrain vehicle (ATV – four wheeler) while under the influence of alcohol. He explained that he was fixing the ATV and drank about six or seven beers. He took the ATV for a ride on the side of the road to charge its battery. He was stopped by a police officer and charged with DUI. The charge was later downgraded to a misdemeanor. Applicant was adjudged probation before judgment in May 2006. He successfully completed the court-mandated alcohol

counseling program from June to September 2006, and two-year unsupervised probation.

During a September 2006 interview with a government investigator, Applicant stated that he would consume three-to-four beers, two-to-three times a week. His future plans were to limit his alcohol consumption to a few beers at home, and no drinking and driving.

3. In December 2009, Applicant was arrested and charged with domestic violence (second degree assault). He explained he discovered his wife was sending improper pictures of herself to another man. He was upset, and took the laptop from her. At the same time, she grabbed the laptop to stop him from taking it, and during the struggle, she cut herself and reported the incident to the police. He stated he had consumed three-to-four beers before the incident, but was not intoxicated. Applicant and his wife reconciled. She failed to appear in court to testify against him, and the charge was dismissed.

4. In April 2016, Applicant was stopped by a police officer, refused to take a breathalyzer test, and was charged with DUI. The charge was downgraded to a misdemeanor after Applicant agreed to serve 15 days of confinement. He pleaded guilty to the offense and was placed on unsupervised probation for three years (until August 2019). (SOR 1.d; GE 2)

5. The court required Applicant to attend alcohol counseling. He successfully participated in the 12-week substance abuse treatment program between July and December 2016. (SOR 1.e; GE 3) The counseling services report (dated December 9, 2016) states that Applicant was first evaluated in July 2016. His breathalyzer test was negative for alcohol use and his urinalysis test was negative for illegal substance use. He completed the Michigan Alcohol Screening Test (MAST) and it was "indicative of an alcohol problem." The Chemical Dependency Screening Test (CDST) suggested no apparent problem with chemical substances. The report further stated that Applicant successfully completed his treatment in December 2017, and that "he reports sincere motivation for total abstinence from alcohol use in the future." (GE 3)

There is no record evidence to support the conclusion that Applicant was diagnosed with "alcohol abuse" (as alleged) or with an "alcohol use disorder" as outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The counseling services report states that the MAST test was "indicative of an alcohol problem;" however, the counselor failed to articulate a diagnosis. I find that the government's evidence is insufficient to establish that Applicant was diagnosed with alcohol abuse.

Applicant was interviewed in July 2018 by a government investigator concerning his 2016 DUI. Applicant told the investigator he believed the recurrence of a similar incident was unlikely because he was now consuming only a few beers at home.

6. SOR 1.f alleged Applicant continues to consume alcohol, notwithstanding his diagnosis, and a recommendation that he abstain from alcohol. Applicant admitted that he continues to consume alcohol, but in moderation. Concerning the recommendation that he abstain from alcohol, Applicant admitted he was required to remain abstinent while attending counseling-therapy, which he did. There is no evidence in the record file to establish that Applicant was counseled to remain abstinent as part of his aftercare treatment. As stated above, I find that the government's evidence is insufficient to establish that Applicant was diagnosed with alcohol abuse.

I note that Applicant filed for Chapter 13 reorganization in January 2017. The bankruptcy court discharged his dischargeable debts in April 2018.

At hearing, Applicant presented three favorable reference statements from a team lead and two coworkers. The references consider Applicant to be highly skilled, knowledgeable, competent, dedicated to the mission, dependable, efficient, and reliable. He is considered to have contributed highly in the daily functions of the business. He is a very reliable source in obtaining information, researching issues, and physical relocations. Applicant has excellent rapport with other member of the team and he willingly shares his experience with younger employees. He is also considered to be trustworthy and a man of his word.

Applicant expressed remorse for his alcohol-related misconduct. He understands that he needs to control his alcohol consumption. He acknowledged that he made some mistakes in the past, and now is paying for them. Applicant stated that life is a learning experience. He believes that he has learned the hard way, and he is trying to reestablish normalcy in his life. He promised to be more responsible in the future.

Applicant testified that he has been abstinent only while attending counseling or treatment. After that, his plan has been to consume alcohol in moderation. In his response to May 2019 DOHA interrogatories and at hearing, he stated that he consumes about five beers a week. He stated that he has not been arrested or involved in any alcohol-related misconduct after April 2016. Before the 2016 DUI, he was consuming six beers every two days or every day, about five days a week (Tr. 38-40)

Applicant testified that after his 2016 DUI, he reduced his alcohol consumption. He currently consumes about three beers every two days, and may have none on some days. He stated that he has further reduced his alcohol consumption over the past year because he is having medical issues, including high blood pressure, and he does not believe that consuming alcohol is helping him. He has been monitoring how much alcohol he consumes. He averred that he only consumes alcohol at home. He believes that he has faced and resolved the pertinent issues in his life. He has been drinking moderately after his 2016 DUI, he divorced in 2017, and filed for Chapter 13 bankruptcy protection to resolve his financial problems.

Applicant believes he has made lifestyle changes to stop him from consuming excessive amounts of alcohol. He is now living with his mother and helping her with the

maintenance of her home. She provides him with the emotional support he needs. He believes that he has been working hard in his recovery. He is committed to consuming alcohol in moderation and has established healthy habits. Applicant is concerned about not getting his clearance, losing his job, and not being able to provide financial support for his mother. (Tr. 61-62) Applicant does not want to fail or let his mother down.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter 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 those who must protect national interest as their 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.

"[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

The concern under this guideline 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.

Applicant has a history of alcohol abuse covering the period from December 1989 through April 2016. His three DUI arrests (1989, 2006, and 2016), and another alcohol-related offense (domestic violence) demonstrate that he has consumed alcohol excessively and to the point of impaired judgment. The record establishes the following disqualifying conditions under AG ¶ 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 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.

AG ¶ 23 provides for mitigating conditions that may be applicable to this case:

- (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;
- (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; and
- (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 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's most recent DUI offense occurred in April 2016, and there is no evidence of any subsequent alcohol-related misconduct. After the 2006 and 2016 DUIs, Applicant successfully participated in alcohol counseling-treatment programs. I considered that Applicant relapsed in April 2016, after participating in an alcohol counseling program in 2006. However, he has eliminated some of the stresses in his life that precipitated his drinking such as his marital problems (resolved through a divorce in 2018), and his financial problems were resolved by the bankruptcy discharge.

After the 2016 DUI, Applicant has made lifestyle changes to reduce his alcohol consumption and prevent any further DUIs. He is now residing with his mother. She provides him with the environment and support he needs to continue drinking in moderation. Also, she depends on his help, and he does not want to fail or let her down. Applicant also noted that he now suffers from medical problems that are aggravated by his alcohol consumption. He has curtailed his consumption of alcohol to prevent further health issues.

Moreover, Applicant loves his job. He is very concerned about his eligibility for a clearance and being able to continue working for his employer. I believe that it is unlikely that Applicant will engage in any future alcohol-related misconduct. He credibly promised to avoid any further alcohol-related incidents. More importantly, as a result of the clearance process, he clearly understands that his eligibility for a clearance and his job depend on him continuing to drink alcohol in moderation.

Applicant's references consider him to be extremely knowledgeable, dependable, dedicated, reliable, punctual, trustworthy, and a great asset. He displayed leadership by mentoring and training new employees. I find that Applicant has demonstrated a sufficient pattern of modified behavior for me to conclude that the questionable judgment associated with his alcohol-related misconduct is behind him.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline G in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 50, has been working for federal contractors since 2005, and for his employer since 2015. He has held a clearance since 2006. His character witnesses

described him as an excellent employee who is trustworthy, reliable, and dedicated to mission accomplishment.

Applicant should have been more responsible consuming alcohol and obeying the traffic laws. Notwithstanding, I believe that after 2016, he has demonstrated a pattern of modified behavior and rehabilitation. Applicant is fully aware of the security concerns raised by his alcohol consumption and related criminal behavior. He promised to consume alcohol in moderation and to obey the traffic laws to ensure that he continues to be eligible for a clearance. He understands that if he is involved in any additional alcohol-related misconduct his clearance eligibility could be denied. The alcohol consumption security concerns are mitigated.

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.f:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge