



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



In the matter of:)	
)	
)	ISCR Case No. 19-03808
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
 For Applicant: *Pro se*
 09/08/2020

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant has a history of problematic alcohol use as evidenced by six alcohol-related arrests and the termination of his employment in June 2014 for violating his then employer’s policy prohibiting alcohol consumption during duty hours. Although his last incident of alcohol-related misconduct occurred over six years ago, Applicant continues to consume alcohol daily. Clearance is denied.

Statement of the Case

On March 10, 2020, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and personal conduct guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

Applicant answered the SOR, admitting all of the allegations, and requested a decision without a hearing. (Government's Exhibit (GE) 2) The Government submitted its written case on June 5, 2020. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on June 17, 2020, and did not respond. The documents appended to the FORM are admitted as GE 1 through 6, without objection.

Findings of Fact

Applicant, 63, has worked for his current employer, a federal contracting company, as an engineer since at least April 2018. He completed his most recent security clearance application in June 2018. Although it is unclear from the record when Applicant was initially granted access to classified information, he reported on the application that his security clearance was revoked in 2001 for reasons he described as being "a drunk and a liar." Applicant also reported that he was arrested six times for alcohol-related crimes between 1976 and 1999, resulting in four misdemeanor convictions. He also disclosed that in June 2014, he was terminated from a position for violating his then employer's alcohol policy. (GE 3) Applicant's criminal history and 2014 job termination are alleged under the alcohol consumption guideline and cross-alleged under the personal conduct guideline.

During the course of Applicant's four-year military service in the U.S. Army between 1976 and 1979, he was arrested three times for alcohol-related misconduct. His first arrest occurred in March 1976, at age 19 for driving while intoxicated (DWI), resisting arrest, leaving the scene of an accident, and public intoxication. (SOR ¶1.a, 2.a) He was convicted of public intoxication and paid a nominal fine. Applicant was arrested again eight months later in November 1976 for DWI on an Army base. (SOR ¶1.b, 2.a) He was convicted and ordered to spend six weeks in a half-way house. His third DWI arrest occurred on the same Army base in July 1977, but was dismissed. (SOR ¶1.c, 2.a) After being honorably discharged from the Army in 1979, Applicant was arrested again in 1980, at age 23, for disorderly conduct, but the charges were dismissed. (SOR ¶1.d, 2.a) Twelve years later, Applicant was arrested in August 1992 for driving under the influence (DUI) and careless driving. (SOR ¶1.e, 2.a) He was convicted and ordered to serve probation and attend what Applicant described as "DUI School." Applicant's last alcohol-related arrest occurred in November 1999 for DUI, resulting in a conviction. (SOR ¶1.f, 2.a) He was sentenced to 72 hours in jail and one year of probation. He was also ordered to attend 12 weeks of counseling, 48 hours of community service, and to attend meetings sponsored by Mothers Against Drunk Driving (MADD). (GE 3-4)

Applicant's most recent alcohol-related misconduct occurred in 2014. In November 2013, Applicant's supervisor confronted him about returning from lunch smelling of alcohol. Applicant confirmed to his supervisor that he consumed a beer at lunch because it was his preferred beverage. Applicant did not consider his behavior as a "big deal" and told his supervisor that the company should change its alcohol policy. Applicant's supervisor offered him help through the employee assistance program (EAP), which Applicant declined. The supervisor advised Applicant that his conduct was

a direct violation of company policy and warned him, orally and in writing, not to repeat the conduct. (SOR ¶1.g, 2.a) After violating the policy again, Applicant's employer terminated his employment in June 2014. (SOR ¶1.h, 2.a) In the termination letter, the employer informed Applicant that he was being terminated for cause for "lack of adherence to safety and substance abuse policy." Due to the circumstances of his termination, Applicant is not eligible for re-hire. (GE 5)

Since 2014, there is no evidence that Applicant has engaged in any other alcohol-related misconduct. In a March 2019 interview with a background investigator, Applicant admitted consuming four beers every night at home. (SOR ¶1.i, 2.a) He reported that he does not consume alcohol to the point of intoxication. Applicant explained that he limits his alcohol consumption to only four beers to set a positive example for his four children, ages 32, 29, 27, and 22. Aside from his criminal history and his 2014 termination, Applicant does not believe that his alcohol consumption has had a negative impact on his life. (GE 3, 6)

Policies

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 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.

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

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 record establishes the Government’s *prima facie* case. Applicant has a 23-year history of alcohol-related criminal conduct, resulting in six alcohol-related arrests, four convictions, and two alcohol-related incidents at work that resulted in a June 2014 job termination. Applicant’s history of alcohol-related misconduct is also evidence of habitual consumption of alcohol consumption to the point of impaired judgment. Alcohol consumption disqualifying conditions 22(a), (b), and (c), apply.

None of the alcohol consumption mitigating conditions apply. Applicant has misused alcohol for over 40 years with significant consequences. He continued to misuse alcohol after four convictions, at least two alcohol education classes, the revocation of his security clearance, and the loss of employment. Although the record does not contain any evidence that Applicant has been diagnosed with an alcohol-use disorder, his attitude about his alcohol use is disconcerting. Applicant does not believe that his use of alcohol is problematic. The latest available information indicates that Applicant continues to use alcohol daily and that he only limits on his daily alcohol consumption to model appropriate use for his adult children. Given his attitude about his alcohol consumption, the problem is ongoing and continues to cast doubt on his current security worthiness. Also, based on Applicant’s history it is more likely than not that Applicant will engage in alcohol-related misconduct in the future.

Personal Conduct

An applicant’s personal conduct becomes a security concern when he acts in a way that raises questions about his judgment or his ability to protect classified information. The SOR cross-alleges Applicant’s alcohol-related criminal and workplace misconduct, SOR ¶¶ 1.a – 1.g and 1.i, under this guideline. Because that conduct falls clearly within the alcohol consumption guideline, the security implications of that

conduct are most appropriately analyzed under that section. However, one allegation, SOR ¶ 1.h, regarding Applicant's 2014 termination for violating his employer's alcohol use policy is also disqualifying as a violating of a written or recorded commitment made by the individual to the employer as a condition of employment. Personal conduct disqualifying condition 16 (f), applies.

None of the personal conduct mitigating conditions apply. Applicant's policy violation is not minor. He intentionally violated company policy on multiple occasions. He dismissed his employer's policy aimed at ensuring a safe work environment in favor of his personal preferences. Given this behavior, there is concern that Applicant could treat the rules pertaining the protecting and handling of classified information in a similar manner. Accordingly, the circumstances surrounding his 2014 termination continue to raise doubt about his security worthiness.

Whole-Person Concept

Applicant has failed to mitigate the alcohol consumption and personal conduct concerns alleged in the SOR. Accordingly, doubts remain about his current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant's history of alcohol misuse and resulting criminal record is extensive. His decision to drive a vehicle as well as his decision to consume alcohol during duty hours, despite being warned not to do so, suggests a disregard for rules and regulations that is incompatible with the responsibilities and expectations of a clearance holder.

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.i:	Against Applicant
Paragraph 2, Personal Conduct	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge