



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 20-02939

Applicant for Security Clearance

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2021

Decision

MASON, Paul J., Administrative Judge:

Between 2009 and 2018, Applicant committed three alcohol-related incidents. Instead of being prosecuted for the 2009 offense, he was placed in a first-offender program because he had no prior record. He was prosecuted for the 2015 and 2018 offenses and sentenced to probation or some jail time. He has not presented sufficient evidence of reform and rehabilitation to mitigate alcohol-related behavior. Eligibility for a security clearance is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 4) on April 20, 2018. He provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM) on October 31, 2018. After being unable to make an affirmative finding regarding Applicant's security clearance eligibility, on April 10, 2020, the Department of Defense Counterintelligence Security Agency (DCSA), issued a Statement of Reasons (SOR) detailing security concerns raised by his alcohol consumption (Guideline G), and criminal conduct (Guideline J). This case

is adjudicated in accordance with Executive Order 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 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017.

The Government sent a copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, to Applicant on May 28, 2021. The FORM included six items of evidence listed within Section I of the FORM. He received the FORM on June 2, 2021. The FORM recommended he file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response was due by July 2, 2021. DOHA received no response. I was assigned the case on July 7, 2021.

Rulings on Evidence

At the bottom of page one and top of page two, under Section I of the FORM, the Government advised Applicant that he could make corrections to the October 31, 2018 PSI to improve the exhibit's clarity and accuracy. Alternatively, he was advised that if he objected to the entire PSI on the ground that it was unauthenticated by a government witness, it would not be entered into evidence. Applicant did not object, and the exhibit is admitted into evidence as Item 4.

Findings of Fact

Paragraph 1 of the SOR contains three allegations under alcohol consumption (Guideline G). Applicant admitted the alcohol consumption allegations. Paragraph 2 alleges that the alcohol conduct set forth under paragraph 1 also represents criminal conduct (Guideline J). He neither admitted nor denied this paragraph. Therefore, I will assume that he denies the second paragraph of the SOR.

Applicant is 35 years old and has been employed as an information technology (IT) professional for a defense contractor since May 2011. His professional background has been in IT or sales. He is single with no children. He has no prior military service. He has held a security clearance since September 2011. (Item 3 at 11-16, 33)

Applicant began consuming alcohol in 2006 when he was approximately 22 years old. One day in December 2009 (SOR ¶ 1.c), he was drinking four or five drinks with friends at a bar. During his drive home, he was arrested for driving while under the influence of alcohol (DUI), a misdemeanor. Because he had no prior DUI record, he qualified for a first-offender program. He paid a court fine and his driver's license was temporarily suspended. He enrolled in an alcohol education program consisting of 15 classes. He was not assessed or treated for alcohol use. After completing the program, his license was reinstated and the DUI was expunged from his record. (Item 3 at 28; Item 4 at 2)

In April 2015, Applicant consumed an unknown amount of alcohol while socializing with coworkers at a hotel. While driving home, he was stopped and arrested for DUI (SOR ¶ 1.b), a misdemeanor. He was found guilty, fined \$1,000, ordered to perform 100 hours of community service, and complete one year of probation. One of the conditions of probation was completion of 15 alcohol classes in the same program he completed in 2010. He satisfied all terms of probation. He was not assessed or treated for alcohol use. (Item 3 at 28; Item 4 at 2)

Applicant committed his third DUI in April 2018. Before his arrest, he was drinking at a bar celebrating a friend's promotion. During his drive home, he was stopped and arrested for DUI and reckless endangerment, first degree (SOR ¶ 1.a). Both offenses were misdemeanors. (Item 4 at 3) In December 2018, he was found guilty of DUI and sentenced to six months in jail, suspended after four months. He was placed on probation for 18 months (not two years as set forth in SOR) until May 2020. He was found guilty of the reckless endangerment charge. He received a one-year suspended jail sentence and was placed on probation for two years until December 2020. Probation was terminated early in February 2020. (Item 6 at 1-2) (Item 6 at 1)

No evidence was provided to substantiate Applicant's claim of abstinence from alcohol since the April 2018 arrest. He indicated that he made some bad choices and, in the future, he did not intend to drink more than the legal limit for intoxication, nor did he intend to break the law. He did not see a pattern of alcohol abuse because each DUI was preceded by a celebratory occasion in which he did not intend to abuse alcohol. As a precautionary measure, Applicant purchased a breathalyzer in case he has a drink in the future so that he can avoid alcohol-related incidents. (Item 4 at 3)

Though Applicant denied alcohol interfered with his work performance, his social relationships, or his finances, he acknowledged that he would be on leave from his employment beginning in January 2019 to serve probable jail time for the third DUI offense he committed in April 2018. That anticipated leave most likely interferes with Applicant's work performance because he would not be present to carry out his job responsibilities.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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, the applicant is

responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts that he admits or denies. The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Alcohol Consumption

The security concerns of the guideline for alcohol consumption are 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.

AG ¶ 22 describes the condition that may be disqualifying:

(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.

Applicant's three alcohol-related incidents away from work in a nine-year period between 2009 and 2018 demonstrate a lack of judgment, reliability and trustworthiness. On each occasion, Applicant consumed an excessive amount of alcohol, then used poor judgment by driving a car while under the influence. In the most recent DUI, Applicant recklessly endangered other drivers and pedestrians on area roads because of his alcohol-related conduct. Accordingly, the alcohol-related behavior establishes the disqualifying condition AG ¶ 22(a).

AG ¶ 23 describes conditions that could mitigate security concerns including:

(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.

Having weighed the disqualifying and mitigating conditions, I conclude that neither one of the mitigating conditions apply. Though Applicant claims he has not used alcohol since his third DUI in April 2018, he has furnished no independent evidence of a changed lifestyle to infer or suggest an established pattern of sobriety or control over alcohol use. Transporting a breathalyzer kit to be used when he decides to consume alcohol can hardly be considered an effective method of avoiding future alcohol-related incidents. Significantly, during the period from his April 2018 DUI arrest to his discharge from probation in May 2020, his abstinence was obviously influenced by the possibility of incarceration for violating the terms of his probation. AG ¶¶ 23(a) and 23(b) do not apply.

Criminal Conduct

The security concern for criminal conduct is set forth in 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.

The potential disqualifying condition under AG ¶ 32 is:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security decision, but which in combination cast doubt on the individual=s judgment, reliability, or trustworthiness; and
- (b) evidence ... of criminal conduct, regardless, of whether the individual was formally charged, prosecuted, or convicted.

AG ¶ 31(b) applies to Applicant=s admitted 2009 DUI conduct even though he was not convicted of the offense. All three DUI offenses in 2009, 2015, and 2018 raise security concerns about Applicant=s judgment, reliability and trustworthiness.

AG & 32 lists two pertinent mitigating conditions that may be applicable in this case:

- (a) so much time has passed since the criminal behavior happened, or it happened under such 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, remorse or restitution, job training or higher education, good employment record, or constructive community development.

Insufficient time has passed for me to justify with complete confidence that Applicant's alcohol-related criminal conduct is clearly in the past. AG & 32(a) does not apply for the same reasons that were discussed under AG & 23(a).

Applicant receives some mitigation under AG & 32(d) because he complied with the terms of his 2009 first DUI offense by completing the alcohol education classes and satisfying other first offender conditions. Regarding the 2015 and 2018 DUI convictions, he paid the appropriate court fines and served the requisite jail time or completed the alcohol education classes. However, he furnished no character evidence from his job or away from his job that addresses his judgment, trustworthiness or reliability.

Whole-Person Concept

I have examined the evidence under the guideline for alcohol consumption in the context of the nine general factors of the whole-person concept 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 common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 35 years old. Though he did not supply any character evidence concerning his job performance, he has been employed by the same contractor for 10 years.

Applicant's nine-year history of DUI conduct away from work between 2009 and at least 2018, culminating in the commission of a reckless endangerment offense in 2018, indicates poor judgment, unreliability, and untrustworthiness under the alcohol consumption and criminal conduct guidelines. Even though he may not have intended to abuse alcohol on the celebratory occasions in 2015 and 2018, the prior special occasions provided the necessary motivation for him to engage in a pattern of alcohol use to excess, then irresponsibly drive his car when he was under alcohol's influence. Having weighed the evidence from a commonsense point of view, Applicant has not overcome the security concerns arising from the guideline for alcohol consumption and his criminal conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge