



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 19-02871

Applicant for Security Clearance

Appearances

For Government: A.H. Henderson, Department Counsel
For Applicant: *Pro se*

04/28/2021

Decision

MASON, Paul J., Administrative Judge:

Applicant's denial that he has an alcohol abuse problem are belied by the diagnosis of a severe alcohol use disorder and his statements in January 2019 admitting addiction to alcohol. His statements of reduced consumption do not carry much weight given his long history of excessive alcohol consumption. Eligibility for a security clearance is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 4) on March 16, 2018. He provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM) on June 6, 2014 (Item 4), and January 30, 2019 (item 3). After being unable to make an affirmative finding regarding Applicant's security clearance eligibility, on April 10, 2020, the Department of Defense (DOD), Defense Counterintelligence Security Agency (DCSA), issued an SOR detailing security concerns under Guideline G, alcohol consumption. 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 December 18, 2020. The FORM included six items of evidence listed within Section II of the FORM. He received the FORM on January 7, 2021. The FORM recommended he file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response to the FORM, filed on February 3, 2021, is admitted into evidence. I was assigned the case on February 25, 2021.

Rulings on Evidence

In a footnote on the second page of the FORM, the Government advised Applicant that he could make corrections to the June 6, 2014, personal subject interview (Item 5, 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. He had already affirmatively indicated in his response to interrogatories that he agreed that the January 30, 2019 PSI accurately reflected the information he provided to the OPM investigator. He signed the interrogatory responses (Item 3) by indicating the day '7' and year '2020'; however, he did not identify a month. The notary notarized the responses twice, but apparently did not notice that the month was missing on each subscription line. Based on his responses to the January 2019 PSI, I am satisfied that he fully read and comprehended the exhibit. See Item 3 at 9, 11, 13.

Findings of Fact

The SOR alleges various components of Applicant's excessive alcohol consumption, including the nature and frequency of use, an alcohol-related incident in November 2016, a subsequent medical evaluation in June 2017, and a six-page medical assessment from January 2019, including a diagnosis and treatment recommendation by a medical health professional.

Applicant is 64 years old and married to his long-time girlfriend since 2019 (Item 2 at 7; Item 3 at 9) He has owned his residence since 2001. After three years of technical school, he earned an aircraft and power plant license in July 1992, and an associate's degree in applied environmental science and technology in June 2005. Since October 2005, he has worked for his current employer as a preflight tester of refueling cargo tankers. (Item 2 at 9-12) In April 2014, he was investigated by OPM and received an interim security clearance. Applicant seeks a security clearance. (Item 2 at 33-34)

The SOR allegations will be discussed in the order of their occurrence. SOR 1.a – The allegation reads that Applicant occasionally consumed alcohol excessively to an intoxicated level since November 1956. He denied the allegation because he was born in November 1956. See Item 2 at 7. This allegation is found in Applicant's favor as there is no evidence indicating Applicant consumed alcohol since his birth. In addition, the period when Applicant began using alcohol will be appropriately addressed under SOR 1.b.

SOR 1.b – In his answer to the SOR, Applicant denied he consumed alcohol weekly to the point of intoxication. Rather, he claimed that he occasionally drinks to intoxication, but not to the point of "falling down drunk." Applicant stated that the phraseology of SOR 1.b would suggest that he was an "irresponsible drunk." (Answer to SOR)

Applicant's January 2019 PSI provides insight into his historical consumption habits. When he began drinking in his 20s (1976 to 1986), he consumed a case of beer over a weekend at his home or at parties. Subsequently, he switched his drinking preference to a pint of whiskey on the weekends. (Item 3 at 6)

Applicant's consumption frequency did not change during the period of his unalleged 1980 or 1981 alcohol-related offense. (Item 2 at 28-29) Subsequently, his drinking increased to a case of beer and a pint of whiskey over the weekend. Sometimes he drank less and sometimes more.

SOR 1.f – On November 2016, Applicant was arrested for driving while under the influence of alcohol (DUI) after consuming about one-half of a fifth of whiskey on his 60th birthday. He became hungry and drove to a food store. While driving home from the store, he struck the left quarter panel of an oncoming vehicle after misjudging the median line in the road. His blood alcohol content was two or three times the legal limit. Applicant admitted to the arresting officers that he was drunk though he did not feel intoxicated on the way to the store. Applicant reported the arrest to his employer's security official within a month after the arrest. Applicant pleaded guilty to DUI and negligent driving. He was sentenced to one day in jail, a fine, and an alcohol-awareness class and a fine. In June 2017, a chemical dependency professional (CDP) conducted an assessment and found insufficient evidence to conclude that Applicant had a substance use disorder. Applicant completed the awareness class. (Item 3 at 5, 15-16)

An ignition lock system was also installed and required to remain attached to his car ignition for a year. Applicant was scheduled to have the ignition lock removed in September 2018, but the system was not removed at that time because of the sensitivity of the system. He claimed that the system registered violations even though he had not been drinking. The system was not designed to activate until the BAC was .04 or more. (Item 3 at 5) He indicated he had the system removed following the January 2019 PSI, though he did not indicate when. (Item 3 at 9) Applicant completed the alcohol awareness class in 2017. (Item 3 at 5)

Following his driving while under the influence (DWI) arrest and conviction in November 2016, he reduced his drinking to two pints of whiskey occasionally over a weekend from November 2016 to January 2019. Applicant declared that he stopped drinking a few weeks before his January 2019 PSI because of the continuing ignition lock violations propelling his intention to remove the system from his car. (Item 3 at 6-7)

Applicant viewed his drinking as a habit or addiction. He enjoyed the influence of alcohol and would drink until he eventually passed out. He defined the excessive use of alcohol as drinking every night; he considered the habitual use of alcohol as drinking every night and downing a pint of whiskey. Applicant denied drinking nightly, but drank to intoxication when he drank. His drinking has never caused personal or professional problems, but he was concerned about the impact of drinking on his health. Applicant made attempts in the past to stop drinking for varying periods of time, but always resumed. (Item 3 at 7)

After he stopped drinking a few weeks before the January 2019 PSI, Applicant reported that he was drinking between one-half to a pint of whiskey on a weekend basis during November and December 2019. He noted that he only drank on the weekend, abstaining occasionally for a week or a month. (Item 3 at 12-13) In Applicant's February 2021 response to the FORM, Applicant indicated he was consuming alcohol on an infrequent basis on the weekends.

SOR 1.c, 1.d, and 1.e will be addressed together as they involve Applicant's January 2019 assessment, his decision not to participate in recommended treatment, and continuing to consume alcohol.

SOR 1.c – there is no record evidence indicating that Applicant received treatment at the recovery center in January 2019. There is a six-page January 15, 2019 assessment of Applicant by a CDP. She took notes of the history of Applicant's alcohol use. He described his alcohol use in the previous 12 months as occurring on the weekend, but not every weekend. He described himself as a weekend binge user with recurring efforts to reduce his drinking. Applicant was quoted as indicating he was drinking too much. The CDP noted that he continued to use alcohol despite the physical and psychological problems aggravated by use. Though his alcohol use never affected he work, he acknowledged missing a few Mondays because of drinking. (Item 6 at 1-6)

The CDP diagnosed Applicant with alcohol abuse – severe. The primary reasons for the diagnosis were: (1) alcohol consumed in larger amounts than intended; (2) unsuccessful efforts to reduce drinking; (3) interference with social functioning; and, (4) consuming increased amounts of alcohol to reach intoxication. The CDP recommended intensive outpatient treatment including two weekly support meetings. Applicant reportedly wanted to start the treatment in a couple of weeks after the assessment. (Item 6 at 4-6)

Applicant claims he voluntarily went to the center for an assessment and to investigate outpatient therapy “to completely quit drinking any alcoholic beverages.” His decision to visit the center was based on discussions with other coworkers who noticed improved health after they stopped drinking. (Answer to SOR)

SOR 1.d – Applicant denied this allegation because it was only recommended that he seek treatment, and the CDP administrator did not tell him that he had a severe alcohol abuse disorder. In addition, his earlier court-ordered assessment cleared him of any medical condition. That court-ordered assessment was in June 2017, two years earlier. See Item 3 at 15-16. He recalled that the January 2019 CDP administrator contacted him on several occasions to find out when he planned to begin the treatment. He decided not to attend the treatment because the meetings, which met three days a week from six to nine p.m., interfered with his work schedule. The second reason was because of the long distance to the outpatient meetings. Applicant does not believe he has a severe problem with alcohol. A review of the documentation reflects that intensive outpatient treatment (IOP) was recommended. Two weekly sober support meetings were also recommended. (Answer to SOR; Item 3 at 6; Item 6 at 6)

SOR 1.e – Applicant denied this allegation because he was never ordered to attend rehabilitation. He has a drink on the weekends and has not been intoxicated in a long time. (Answer to SOR)

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;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder; and

(e) the failure to follow treatment advice once diagnosed.

Applicant engaged in binge drinking on the weekends since his 20s (1976 and 1986). His drinking remained unchanged up to the unalleged alcohol-related incident in 1980 or 1981. Subsequently, his drinking increased to whiskey and beer on the weekends. Though he made attempts to stop or abstain for differing periods, he always resumed. He viewed his alcohol consumption as a habit or addiction. He did not drink every day, but when he drank, he drank to intoxication. After the November 2016 DUI, he claims he reduced his drinking until he stopped a few weeks before his PSI in January 2019. Coincidentally in the same month, the CDP diagnosed him as having a severe alcohol use disorder, and recommended he begin intensive outpatient treatment program. However, he declined and resumed drinking by November 2019. As recently as February 3, 2021, he was still drinking on occasion. AG ¶¶ 21(a), (c), (d), and (e) apply.

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; and

(d) 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 has a long history serious alcohol use. Though he committed a DUI in November 2016, he continued to consume alcohol at problematic levels. He continues to drink to excess even though he was diagnosed as having a severe alcohol use disorder in January 2019. He failed to follow the treatment advice recommendation of the CDP. Applicant's continued pattern of alcohol consumption casts doubt on his reliability, trustworthiness, and judgment. AG ¶ 23(a) does not apply.

The six-page January 2019 assessment shows that the CDP collected extensive historical information about the scope and frequency of Applicant's alcohol use. At the conclusion of her report, she supplied persuasive reasons for her diagnosis and recommendation for treatment. According to her report, Applicant was willing to participate in treatment.

Applicant did not attend treatment because it was only a recommendation and the CDP did not tell him he had a severe alcohol use disorder. In light of the CDP's repeated efforts to enroll Applicant in treatment, he should have realized that her entreaties were based on the excessive scope of Applicant's alcohol consumption. His claim that the CDP did not tell him about the diagnosis is not credible or relevant to the accuracy and probative value of the diagnosis. Furthermore, the documented medical diagnosis speaks for itself. Because of the passage of almost 18 months, the chemical assessment summary in June 2017 has little relevance to January 2019 assessment. After contrasting the two assessments, it is clear the January 2019 CDP had much more information at her fingertips upon which to support her diagnosis.

Because Applicant does not admit his problem is severe, and has not furnished clear evidence of modified consumption or abstinence in accordance with treatment recommendations, AG ¶¶ 23(b), 23(c), and 23(d) do not apply.

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.

In the late 1970s, Applicant began weekend binge drinking of beer. In the 1980s, he increased his weekend drinking to beer and whiskey. He drank at a fairly consistent level until his DUI in November 2016. Though he claimed he made an attempt to drink less between November 2016 and his PSI in January 2019, there is very little evidence to support his claim. Despite his severe alcohol use disorder diagnosis pronounced by the CDP in January 2019, and his failure to comply with CDP's treatment recommendation, he does not believe he has a severe problem and he continues to consume alcohol. His overall denial and minimization of the overall seriousness of his alcohol disorder has not been mitigated. Having weighed the evidence from a commonsense point of view, Applicant has not overcome the security concerns arising from the guideline for alcohol consumption.

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:

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| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraphs 1.b-1.f: | 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

KEYWORD: Alcohol

DIGEST: Applicant has consumed alcohol to binge levels since he was in his 20s. His drinking increased in the 1980s. He continued drinking at abusive levels after he committed a drinking and driving offense in November 2016. While he stopped consuming for varying periods, he always resumed. Even after he was diagnosed as having a severe alcohol use disorder in January 2019, and received a recommendation for treatment, he declined the treatment and has continued to drink alcohol. Eligibility for access to classified information is denied.

CASENO: 19-02871.h1

DATE: MM/DD/YYYY