



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02916
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the alcohol consumption and criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 18, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). Applicant responded to the SOR on May 22, 2021, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2021.

The hearing was convened as scheduled on December 13, 2021. Government Exhibits (GE) 1 and 4 through 10 were admitted in evidence without objection. The objections to GE 2 and 3 were sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. Applicant submitted an email post-hearing that I have marked AE E and admitted without objection.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since about November 2018. He was first granted a security clearance in about 2002, but it lapsed when he was employed by a company that did not require that he hold a clearance. He has a bachelor's degree. He is divorced with three children. (Transcript (Tr.) at 24, 27, 45-46; GE 1; AE C)

Applicant has a history of alcohol-related driving offenses. He was arrested in 2000 in State A and charged with driving under the influence (DUI). He pleaded no contest and was found guilty. He was sentenced to 10 days in jail, with 9 days suspended, and a fine. His driver's license was restricted, and he was required to attend alcohol education classes. (Tr. at 25-26; Applicant's response to SOR; GE 4)

Applicant was arrested in 2011 in State A and charged with DUI. He pleaded no contest and was found guilty. He was sentenced to 10 days in jail, with 7 days suspended, and a fine. (Tr. at 27-29; Applicant's response to SOR; GE 4, 9)

Applicant was arrested in August 2018 in State B after he fell asleep and hit a car that was stopped at a light. The driver of the second vehicle was taken to the hospital with minor injuries. Applicant stated that he was drinking and had taken his sleep medication, and then a friend called and asked to meet at a bar. The investigation revealed that shortly before the accident, Applicant was asked to leave a bar because he was too intoxicated. He was charged with DUI of an alcoholic beverage, causing bodily injury to another; DUI with a blood alcohol concentration (BAC) of .08% or more, causing bodily injury to another; and DUI of a drug, causing bodily injury to another. (Tr. at 34-35; Applicant's response to SOR; GE 1, 5, 6)

In his September 2018 Questionnaire for National Security Positions (SF 86), Applicant wrote:

I will go to court in December 2018. I will plead no contest and accept my punishment. I am responsible for this embarrassing event. The day after my arrest, I contacted Alcoholics Anonymous, obtained a sponsor and have been meeting with him every day since then. I also regularly attend AA meetings and I am working on the 12 steps of recovery. I am convinced that my drinking is a problem. I am determined to never drink again. I know that the results of my drinking could have meant injury or death to an innocent motorist and I am putting into action the steps to avoid this ever happening again. (GE 1)

In July 2019, Applicant pleaded *nolo contendere* to all charges. He was sentenced to 90 days in jail (suspended); probation for three years; 20 days of community labor; completion of a three-month alcohol and drug education counseling program; and \$936 in fines, court costs, and restitution. Terms of his probation included not driving with any measurable amount of alcohol or intoxicating drug in his system; attendance at 12 Alcoholics Anonymous (AA) meetings; completion of a victim impact

panel (VIP); and installation of an ignition interlock device on his car. Applicant completed the alcohol education program and all of the requirements of his probation by December 2019. He remains on probation until July 2022. (Tr. at 23, 35-36, 48-49; Applicant's response to SOR; GE 7)

Applicant was cited in September 2019 in State A with use of a handheld portable device while driving; and driving with license suspended, revoked, or cancelled. He pleaded guilty to use of a handheld portable device while driving; and the charge of driving with license suspended, revoked, or cancelled, was dismissed. He paid a fine of \$174. Applicant stated that the status of his driver's license was unclear, but he knew that he should not be driving. He testified that he "really only [drove] to work and back, grocery store and back." Applicant now has a valid driver's license in State A, but that was issued in January 2021.¹ (Tr. at 47-48; GE 8)

Applicant admitted that he is an alcoholic. He attended intensive 16-week outpatient treatment programs in about 2010, 2014, and 2016. He had periods of sobriety lasting up to six months, but then he resumed drinking. He stated that he had a breakthrough while attending an AA meeting in late October 2019. He finally surrendered to alcohol, and admitted that he lost the fight. He has been sober since November 3, 2019. He currently attends three AA meetings per week; he is a sponsor; and he volunteers at a facility for troubled teens. He sees a psychiatrist who is an addiction specialist. He has taken Antabuse for almost two years. (Tr. at 20-23, 30-32, 37-44, 49-50; Applicant's response to SOR; AE B, D)

Applicant's addiction psychiatrist wrote that Applicant is meeting with him every two to three weeks. He wrote that Applicant has consistently demonstrated that he has a solid foundation in recovery. He concluded:

As is quite frequently the case, and certainly with [Applicant], individuals that find Recovery, emerge an even better version of themselves. Individuals that have known suffering, known struggle, known loss, but have found a way out of the depths, have a unique understanding of life, that fills them with compassion, perspective, and humility. In my professional opinion, having cared for this patient population for nearly 15 years, [Applicant] exhibits all of the characteristics and clinical signs, of someone "living a Life of Recovery." (AE B)

Applicant self-reported his alcohol-related offenses. He requested that I consider the possibility of a "probationary clearance," which is a conditional clearance and is permitted under the adjudicative guidelines. (Applicant's response to SOR; GE 1, 9; AE E)

¹ These charges were not alleged in the SOR and cannot be used for disqualification purposes. They may be considered when assessing Applicant's rehabilitation, in the application of mitigating conditions, and during the whole-person analysis.

Applicant submitted letters, including from his ex-wife, attesting to his excellent job performance and moral character. He is praised for his reliability, honesty, responsibility, trustworthiness, dependability, and integrity. The authors note his commitment to sobriety, his participation in AA, and the positive changes in him since he has been sober. (AE A, C)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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 "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

Guideline G, Alcohol Consumption

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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 was arrested for DUI in 2000, 2011, and 2018. The above disqualifying conditions are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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 is an admitted alcoholic who has been sober since November 3, 2019. He has been in treatment several times; he is now a regular participant in AA meetings; he is on Antabuse; and he regularly sees an addiction psychiatrist who made a strong statement that Applicant is "living a Life of Recovery." Additionally, Applicant was open and honest at his hearing, and I believe he is sincere. However, Applicant was likely also sincere when he made similar statements about his sobriety in his September 2018 SF 86 and then returned to drinking. Relapses are to be expected, but this time does feel different. He has been sober longer than ever before, and I believe he did have a breakthrough.

Nonetheless, I have lingering concerns that are primarily related to Applicant's willingness to violate the law and place others in danger. His most recent DUI resulted in an accident with the other driver going to the hospital. Applicant is still on probation for that offense, but he was willing to drive in 2019 even though he knew there were problems with his driver's license and he should not be driving. I wish Applicant well, but 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." If he continues on his current path, Applicant will once again rate a security clearance. At this time, none of the mitigating conditions are sufficient to overcome concerns about his alcohol use, reliability, trustworthiness, and judgment.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

(c) individual is currently on parole or probation.

Applicant's three DUIs were cross-alleged under criminal conduct. He remains on probation until July 2022. The above disqualifying conditions are applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual 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, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has been sober since November 2019. He has a strong work record and favorable character evidence. However, he also has three DUIs, the last of which involved an accident; he remains on probation; and he drove under questionable circumstances in 2019 while he was on probation. I have unmitigated concerns under the same rationale discussed in the alcohol consumption analysis.

Whole-Person Concept

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G and J in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the alcohol consumption and criminal conduct security concerns. The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the

provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded that it is not appropriate in this case.

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

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.

Edward W. Loughran
Administrative Judge