



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 21-02130

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: pro se

03/10/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. National security eligibility for access to classified information is denied.

Statement of the Case

On October 28, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, Criminal Conduct, and G, Alcohol Consumption. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant received the SOR and timely requested a decision based on the written record in lieu of a hearing. Department Counsel filed a File of Relevant Material (FORM), dated December 2, 2021, including Items 1-6. Applicant received the FORM on

December 8, 2021. Applicant did not submit a response to the FORM. The case was assigned to me on March 3, 2022.

Findings of Fact

Applicant is 41 years old. He has been an employee for a federal defense company since 1999. He is married and has two children. He graduated from high school in 1998, attended community college, but did not receive a degree, and completed a certificate of completion for a machinist in 2004. He has held his current clearance since 2004. (GX 1) He completed his (SCA) on June 30, 2020. This is his first application for a security clearance. (Item 2)

The Statement of Reasons alleges under Guideline G, SOR 1.a, on or about April 14, 2004, he was arrested for DUI Alcohol. He pled guilty, was awarded 90 days of confinement (suspended), three years of probation, loss of license, and fines; under SOR 1.b, on May 7, 2017, Applicant was arrested and charged with Driving Under the Influence (DUI) Alcohol, drinking while driving, and unreasonable refusal to submit to a breathalyzer test. He pled guilty and was awarded six months of confinement (suspended), three years of probation, loss of license and \$500 in fines. Additionally, his license was suspended for one year and he was assigned one year of ignition interlock

Under SOR 1.c, Applicant was arrested for DUI on August 31, 2019, found guilty and his license was suspended for three years. He was assigned one year of ignition interlock and ordered to attend the Virginia Alcohol and Safety Action Program (VASSP);

Under SOR 1.d, Applicant was diagnosed by (CBH) with Alcohol Use Disorder – Moderate in 2017 and again in 2020; under SOR 1.e, Applicant continued to consume alcohol after the recommendation not to. Applicant admitted to all the SOR allegations. (Items 1, 4, 5, and 6)

Alcohol Consumption

Applicant has been a social drinker since the age of sixteen while in high school. He would typically drink on the weekends (a six pack of beer). He stated that he would have two drinks in a sitting once per week to three times per month. In a 2020 personal subject interview, Applicant stated that he has never had any problem reducing his alcohol consumption. (Item 3) Within the past ten years he has been arrested in alcohol-related-vehicular incidents three times. Applicant admitted the allegations and provided explanations. (Answer to SOR)

In his 2020, subject interview Applicant stated that all of his drinking occurred during social situations, and he never felt impaired. After his first and second DUI, he slowed down his drinking to one time every other week, and he would have three to four beers each time. He told the investigator he would not drink to intoxication. (Item 3) His drinking increased in later years due to a loss of family members (two grandmothers).

(Answer to SOR) He also stated that he had no intent to stop drinking. (Item 3) He understands that he has made some bad decisions. (Answer to SOR)

As to the allegation under SOR 1.c in 2019, Applicant explained to the investigator that he had six to seven beers, but did not feel impaired. He puts his level of intoxication “around a “10”. (Item 3) He felt he could drive after drinking. Applicant took the breathalyzer and field tests. He spent a night in jail and was charged with DUI – 2nd offense. Appearing in Court, he was represented by a lawyer, and he pled guilty. He received 30 days in jail and as noted in the SOR, his license was suspended for three years. He was required to attend ASAP. (Item 3) Applicant is still being monitored under ASAP until December 2022. (Item 3)

He had attended outpatient group counseling. Applicant reported in his DOHA interrogatories that he was diagnosed with Alcohol Use Disorder –Moderate SOR 1.d) and that it was recommended that he abstain from alcohol. In his answer, Applicant stated that he did not know that he was to abstain from use of alcohol. He also completed the interrogatory by stating that he currently consumes alcohol. (Item 3) SOR 1.e

Criminal Conduct

The SOR (2.c) cross-alleges the information alleged in 1.a through 1.c. Applicant admitted to all SOR allegations in SOR paragraph 1.a-1.c.

Applicant also admitted to SOR 2.a, that in 2004, he was arrested for possession of marijuana. (Items 4-6) He received deferred prosecution after supervised probation for 12 months. He admitted that he has been a regular marijuana user since high school. He did not seek treatment. He claimed that he stopped when he wanted to get a security clearance. (Item 3) As to SOR 2.b, in 2018, Applicant was found guilty of not complying with the terms of the VASAP program. He is not currently in any alcohol treatment counseling or meetings. (Item 3)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, 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 relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

(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 or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant admitted that he was found guilty of three DUIs in 2004, 2017, and 2019. He showed poor judgment in all cases. He stated that he has learned his lesson. However, despite spending time in jail and losing his license over the years, he still consumes alcohol. He stated that the later DUIs were due to losing family members.

He attended VASAP; he was diagnosed in 2017 and 2020 for alcohol disorder-moderate. Against recommendations, he is not abstaining from drinking alcohol. He is being monitored by VASAP until December 2022. He also attended an alcohol treatment center who advised that he abstain from drinking. The incidents that involved alcohol are cross-alleged under Guideline J. Applicant admits he misused alcohol but completed alcohol treatment in 2018. The fact that he still drinks and asserts that he was not told that he could not drink, is reason to raise doubt about an established pattern of modified consumption of alcohol. His latest incident was in 2019. These facts establish prima facie support for the foregoing disqualifying conditions, and shifts the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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 does not acknowledge that his drinking has affected his life. He has had three alcohol-related incidents over the years in many years. He did not abide by the recommendation to abstain from drinking. He still consumes some alcohol, although he has modified the amount and frequency. He was vague about when and how much he drinks. It is too early to know if there is an established track record of responsible alcohol use that would not lead to another occurrence. The fact that he continues to drink and asserts that he was never told that he could not drink, is reason to raise doubt about an established pattern of modified consumption of alcohol. His latest incident was in August 2019. He has not mitigated the security concerns raised under the alcohol guideline.

Guideline J: Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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.

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

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

(c) individual is currently on parole or probation.

As discussed under Alcohol Consumption, Applicant has three alcohol-related vehicular incidents. The latest was in 2020, and he has a criminal conviction for marijuana possession. He is still being monitored by the VASAP until December 2022. The evidence establishes the above three disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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 not mitigated the alcohol consumption concerns nor the criminal conduct concerns. His pattern of drinking every few years and his various explanations do not convince me of successful rehabilitation. He has been addressing his alcohol disorder but it is not unreasonable to expect a longer period of time to show that he has fully mitigated the concerns under this guideline. He receives partial credit for his treatment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all the 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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. He has worked at his current employment for many years. He acknowledged that he is honest and trustworthy in his work.

Applicant, however, has had alcohol incidents in 2004, 2017, and 2019. He tried to distance himself from the first two due to circumstances. Every few years, he has found himself in a similar situation. He states that he can drink and has changed his habits and would not drink and drive. He has made great strides, but the record evidence leaves me

