



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 20-01180

Appearances

For Government:
Andrew H. Henderson, Esquire, Department Counsel

For Applicant:
Pro se

March 4, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 21, 2018. (Item 2.) On October 16, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). The action was taken under 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 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on an unknown date, with explanations, and requested his case be decided on the written record in lieu of a hearing. (Item 1.) In his Answer he admitted allegations 1.a through 1.e in the SOR without reservation. He admitted allegation 1.f, with reservations. Applicant neither admitted or denied allegation 2.a. His silence is viewed as a denial of the allegation. Applicant denied allegations 3.a and 3.b. On December 21, 2020, and March 1, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on April 6, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to submit any additional information. The case was assigned to another administrative judge on July 20, 2021. The case was reassigned to me on July 26, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 34 years old and married. He has an associate's degree. Applicant has been employed by a defense contractor since 2018 and seeks to obtain national security eligibility and a security clearance in connection with his employment. (Item 2 at Sections 12, 13A, and 17.)

Paragraph 1 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he consumes intoxicants to excess.

1.a. Applicant admitted that he has consumed alcohol in excess and to the point of intoxication from about age 21 to at least April 2019. In written responses to interrogatories propounded to him by DOHA, Applicant stated that he last had an alcohol-related blackout in December 2017. He also admitted that he was last intoxicated in December 2019. Applicant further stated that he had stopped drinking for health reasons. (Item 3, Item 4.)

1.b. Applicant admitted he had been arrested in or about March 2009 and charged with Driving Under the Influence (DUI), No Driver's License in Possession, DUI with BAC .08% or More, Speed in a Posted Zone, and No Display of Registration. Applicant failed to appear in court and a bench warrant for his arrest was issued on April 12, 2010. This warrant remains active. (Item 5.)

Applicant was first questioned by a Government investigator in August 2010 about his arrest and bench warrant. He admitted the arrest, but denied knowing about the bench warrant. He indicated at that time that he would “resolve the problem.” (Item 4.)

Applicant was questioned by a different Government investigator in April 2019 Applicant admitted the arrest, but stated he was unsure about a bench warrant. Applicant did admit under further questioning that he was told about the warrant during his 2010 interview. Applicant stated he would talk to his current lawyer, who represented Applicant in relation to allegation 1.f, about the warrant. There is no information showing Applicant has done anything further about this case. (Item 3.)

1.c. Applicant was arrested by military police officers in March 2010 while he was serving in the Marine Corps. At that time Applicant was intoxicated and became belligerent and physical with the officers. According to Applicant, he did not receive any judicial or non-judicial punishment due to this incident. (Item 3, Item 7,)

1.d. Applicant was involved in an alcohol-related incident in May 2010, while still on active duty with the Marine Corps. Applicant was drinking alcohol in the barracks with another Marine, who was under the drinking age. They both became intoxicated and damaged Applicant’s barracks room. Applicant may have received non-judicial punishment for this incident, but the record is unclear. (Item 3, Item 4.)

1.e. Subsequent to the incident in May 2010, Applicant received some form of alcohol counseling. The Report of Investigation (ROI) of the 2010 interview stated:

[Applicant] stated that he was sent to the Substance Abuse Counseling Center (SACC) on [Base One] for a two-day evaluation which concluded he had alcohol abuse or dependence issues ([Applicant] was not sure of the diagnosis). [Applicant] said that the SACC referred him to their alcohol rehabilitation program. [Applicant] reported that he saw a counselor four or five times, but left [Base One] and transferred to [Base Two] prior to completing the full rehabilitation program. (Item 4)

At the time of this interview in 2010 Applicant had applied to resume the program at Base Two, but had not been accepted. No further information was available in the file or provided by Applicant.

1.f. Applicant was arrested in January 2019 and charged with DUI. He stated in his Answer “that case has been cleared and dismissed with prejudice.” This dismissal was based on a legal technicality. Applicant does not dispute the underlying fact that he was driving under the influence when he was arrested. (Item 6.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness. Applicant did not admit or deny this allegation, which stated that the information set forth under allegations 1.b through 1.d, and 1.f, are cognizable under this guideline as well.

Paragraph 3 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has falsified material facts during the clearance screening process. Applicant denied both allegations under this paragraph.

3.a. Applicant filled out a Government questionnaire on December 21, 2018. (Item 2.) Section 22 of the questionnaire asked questions about Applicant's police record. One subpart of the question asked, "Have you EVER been charged with an offense involving alcohol or drugs?" (Emphasis in original.) Applicant answered the question, "No." This was a false answer to a relevant question about Applicant's criminal history involving the use of alcohol.

3.b. Section 24 of the same questionnaire concerned Applicant's use of alcohol. One subpart asked, "Have you EVER been ordered, advised, or asked to seek counseling or treatment as a result of your use of alcohol?" (Emphasis in original.) Applicant answered the question, "No." This was a false answer to a relevant question about Applicant's alcohol-treatment history.

Applicant stated in his Answer, "I did not understand the questions clearly, thus resulting in my answering the questions incorrectly."

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 four conditions that could raise security concerns and may be disqualifying 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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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; and
- (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.

The guideline includes one condition in AG ¶ 23 that could potentially mitigate the security concerns arising from Applicant's alcohol consumption:

- (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.

Applicant has a history of drinking to excess until at least December 2019. He has been arrested twice for DUI, and had two serious alcohol-related incidents while in the Marine Corps. In addition, by his own admission, he was referred to a substance abuse rehabilitation program while in the Marine Corps. He may have stopped drinking for health purposes, but there is no corroborating evidence as to that fact. He has not mitigated the security significance of his long-standing alcohol issues. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 two conditions that could raise security concerns 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; and
- (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.

Applicant had two alcohol-related arrests for DUI in 2010 and 2019. The 2010 arrest resulted in a bench warrant being issued that Applicant had not resolved when the record closed, despite being told by two investigators of its existence. In addition, Applicant was involved in two serious bouts of military-related, alcohol-induced misconduct that resulted in military police involvement on one occasion. Both of the above disqualifying conditions have application in this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of 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's last arrest occurred in 2019, three years ago. The charges in that case were dismissed with prejudice due to a technicality not involving guilt or innocence. Applicant's long history of alcohol-related misconduct has not yet been mitigated by any showing of successful rehabilitation. Applicant's repeated failure to resolve the bench warrant against him is also of concern, particularly since he was twice informed of its existence by Government investigators. Paragraph 2 is found against Applicant.

Paragraph 3 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was arrested for DUI in 2010. This arrest resulted in a bench warrant being issued for him. He also had two alcohol-related incidents in the Marine Corps. In one of them the military police were involved. The Marine Corps referred Applicant to an alcohol rehabilitation program in 2010 that he did not complete. He did not report these facts on his 2018 e-QIP. The above disqualifying condition has application to this case.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsification:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant argued in his Answer, “I did not understand the questions clearly, thus resulting in my answering the questions incorrectly.” This argument is rejected. The questions concerning Applicant’s alcohol-related criminal conduct and treatment are clear. He was obligated to answer them truthfully and he did not do so. None of the mitigating conditions apply to his conduct. Paragraph 3 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for national security eligibility 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 national security eligibility for a security clearance 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. Applicant has not mitigated the concerns regarding his past alcohol use and related criminal conduct, and his falsifications on a Government questionnaire. He has not minimized the potential for pressure, coercion, or duress, and there is a strong likelihood of recurrence. Overall, the record evidence does create substantial doubt as to Applicant’s present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge