



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



In the matter of:)
)
) ISCR Case No. 21-00710
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: William Henderson, Personal Representative

05/04/2022

Decision

DORSEY, Benjamin R., 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 June 18, 2021, 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). Through his Personal Representative, Applicant responded to the SOR on October 21, 2021, and requested a decision based on the written record in lieu of a hearing. In his response to the SOR, Applicant provided documents labeled as Exhibits A through J.

DOHA Department Counsel submitted the Government's written case on December 13, 2021. A complete copy of the file of relevant material (FORM), including exhibits identified as Items 1 through 7, was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Through his Personal Representative, Applicant responded to the FORM on February 25, 2022, attaching documents labeled as enclosures 1 through 3

and Exhibits AA through HH. The case was assigned to me on March 17, 2022. The Government exhibits (Items) and Applicant's exhibits (AEs) and enclosures (Enclosures) are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR (SOR ¶¶ 1.a-1.d, and the cross allegation, SOR ¶ 2.a) with brief explanations. His admissions and explanations are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since December 2017. He was granted a DOD security clearance in January 2019. He earned a bachelor's degree in 2002 and a master's degree in 2005. He has never been married and has no children. (Items 4, 5)

Applicant has a history of alcohol-related criminal offenses, alleged under Guideline G and cross-alleged under Guideline J. In about April 1998, he was charged with public intoxication in State A and fined. In September 1998, he sought in-patient alcohol counseling because he believed that he might be drinking too much. He ceased this counseling after about three days because he decided that he did not have a problem with alcohol after hearing about the other attendees' issues. Applicant believes that his record with respect to this charge of public intoxication has been expunged from his criminal record. (Items 3-5; AE AA, BB, EE; Enclosure 3)

Applicant was arrested in 2000 in State A and charged with driving under the influence (DUI). He spent the night in jail. As a result of this DUI, he had to complete 40 hours of community service, a DUI course, and have an ignition interlock device installed on his car. He received a two-year deferred sentence. He believes that his 2000 DUI has been expunged from his record. As a result of this DUI, Applicant reduced his drinking to about two beers at a time, once every two months. (Items 3, 5; AE EE; Enclosure 3)

Applicant was arrested again in July 2002 in State A and charged with DUI after a night out with friends. He again spent the night in jail. Applicant pleaded guilty. He received a two-year deferred sentence, had an ignition interlock device placed on his vehicle, and attended a DUI school for 12 hours. He completed all the requirements of his deferred sentence. After this DUI, Applicant reduced his drinking to no more than two or three beers on any occasion, only drank twice per year, and never drove a vehicle after he consumed alcohol. (Items 3, 5, 6; AE EE; Enclosure 3)

In approximately 2011, Applicant decided that he wanted to work for the government or a government contractor. He began attending Alcoholics Anonymous (AA) meetings in an effort to mitigate his alcohol issues and related legal problems. He attended AA meetings from 2011 until 2016. His attendance was initially fairly regular, but gradually decreased until he stopped attending in 2016. He completed all 12 steps

of AA at some point between 2014 and 2016, while having regular contact with his sponsor. As part of a plan to improve his health, he abstained from alcohol for over four years. He resumed drinking in the summer of 2016, and consumed one to three beers once per month until the end of 2016. From 2017 until September 2019, he drank about one to three servings of alcohol about six times per year. (Items 3-5; AE G; Enclosure 3)

In October 2019, Applicant was arrested in State A and charged with Aggravated DUI after a night out with friends. His blood alcohol content was measured at either .16 or .18, after he had been arrested and taken to jail. Applicant pleaded *nolo contendere* to a lesser charge of non-aggravated DUI, for which he received a deferred one-year sentence with unsupervised probation, 50 hours of community service, and about \$1,700 in fines. He was also ordered to install an ignition interlock system on his vehicle. Applicant completed all of his post-sentencing requirements and paid all of his fines. He completed a 24-hour alcohol and drug abuse course, a victim input panel, and a six-week substance abuse group through State A. (Items 3, 4, 5, 7; AE EE, DD; Enclosure 3)

Applicant resumed attending AA meetings again in October 2019, after his 2019 DUI arrest. He had a "small" glass of champagne on December 31, 2019, New Years' Eve. In connection with his resumed AA participation, he has again completed the 12-step program and has received his one, three, six, and nine-month sobriety chips. After moving to Country A for his job, he continued attending AA meetings two to three times per week online and obtained a new AA sponsor, who is a citizen and resident of Country A. (Items 3, 5; AE G, H, EE; Enclosure 3)

In a written statement attached to his October 2021 SOR response Applicant committed to never drinking again. He claimed that no one had ever advised him or recommended to him that he should fully and permanently abstain from alcohol. (Enclosure 3)

Applicant submitted a Drug and Alcohol Assessment, dated February 16, 2022, from an individual who is a licensed social worker and licensed chemical dependency counselor III (Clinical Evaluator). The Clinical Evaluator reviewed the results of Applicant's drug abuse screening test, a Michigan alcohol screening test, and a proprietary mental health screening. The Clinical Evaluator opined that, despite Applicant's written screenings providing evidence of problem alcohol use, "the drinking habits" Applicant "acknowledges are insignificant enough for alcohol abuse disorder" (AE EE, FF)

Applicant submitted letters from friends, acquaintances, co-workers, and fellow AA participants praising him for his reliability, honesty, responsibility, trustworthiness, dependability, integrity, and charitable work. Some of the authors also noted his commitment to sobriety and his participation in AA. He submitted documentation of numerous cash awards his employer granted him in 2018, 2019, and 2020. (AE A-J, GG, HH)

Through his Personal Representative, Applicant requested that I consider granting him a conditional clearance. He provided several suggestions “to ensure monitoring and enforcement of the conditions.” (Applicant’s response to FORM)

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 cited for public intoxication in 1998 and arrested for DUI in 2000, 2002, and 2019. (SOR ¶¶ 1.a-1.d) The above disqualifying conditions are established.

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; and
- (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.

Applicant has an extensive history of poor decisions involving alcohol. He incurred four alcohol-related citations and charges over a 21-year period, including three DUI arrests, most recently in 2019. While he asserted that he has been sober since December 31, 2019, it is troubling that he drank alcohol just several months after being charged with his third DUI and after he resumed attending AA meetings. Applicant has never been diagnosed with an alcohol use disorder and claims to not be addicted to alcohol. If true, he is voluntarily making poor choices involving alcohol. These poor choices and his past unwillingness to stop drinking and driving despite the glaring evidence that he should, leave me with doubts about his current reliability and judgment. Additionally, his most recent decision to moderate his alcohol consumption appears to be motivated by his desire to obtain a security clearance, rather than an acknowledgement that he has a problem with alcohol, which leaves me with doubts that his behavior is unlikely to recur.

As to AG ¶ 23(b), Applicant is credited with addressing his alcohol issues through resumed participation in AA. However, I have lingering concerns related to Applicant's willingness to violate the law and place others in danger. He has driven a vehicle after consuming alcohol to excess at least three times, resulting in three DUI convictions, most recently in October 2019. Given that Applicant has repeatedly relapsed after committing to either reduced consumption of alcohol or abstinence, I also have doubts regarding whether he has demonstrated a clear and established pattern of modified consumption and compliance with the law. AG ¶ 23(b) does not fully apply. In short, given Applicant's track record, more time is needed for Applicant to demonstrate that he has fully mitigated the security concerns arising from his alcohol issues.

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." At this time, none of the mitigating conditions are sufficient to overcome ongoing 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:

(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's public intoxication charge and three DUIs establish the above disqualifying conditions.

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 not been charged with a crime since October 2019. He has a strong work record, favorable character evidence, and there is evidence of his community involvement. He has complied with the terms of his probation and made restitution for his criminal activity. However, these facts are insufficient to overcome his three-time DUI history, the last of which involved a charge of Aggravated DUI. While AG ¶ 32(d) partially applies, I have unmitigated concerns for the same reasons discussed in my analysis of the the alcohol consumption concerns, above.

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 and employment evidence.

Although the adjudicative guidelines provide 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)," the facts do not warrant it in this case. I conclude that a conditional clearance is not appropriate for the reasons stated above.

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.

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.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

It is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge