



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



In the matter of:)
)
) ISCR Case No: 21-01187
)
)
Applicant for Security Clearance)

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2022

Decision

BENSON, Pamela, Administrative Judge:

Applicant mitigated the alcohol consumption security concerns, but he did not mitigate the criminal conduct security concerns?. Not enough time has elapsed since he engaged in criminal behavior to show that future misconduct is unlikely to recur. National security eligibility is denied.

Statement of the Case

On July 21, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 29, 2021, and requested a hearing before an administrative judge (Answer). The case was assigned to me on August 20, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 3, 2022, setting the hearing for March 22, 2022. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5; Applicant testified, but did not offer any documents. I admitted all proffered exhibits into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted six character reference letters and a court document, which I labeled as Applicant Exhibit (AE) A through G, and they were admitted without objection. DOHA received the hearing transcript (Tr.) on March 29, 2022, and the record closed on April 6, 2022.

Findings of Fact

Applicant admitted all allegations contained in the SOR. (¶¶ 1.a, 1.b, and 2.a.) In addition to his admissions, he made a short statement about his lifestyle changes, current separation from a verbally and physically abusive spouse, and his decision to abstain from all alcohol consumption. (Answer)

Applicant is 30 years old, married with no children, and currently separated from his spouse. Their divorce is pending. After graduating from college in 2014 with a bachelor's degree in mechanical engineering, he worked as an engineer for the aviation industry. In August 2020, he began working for a Federal contractor who sponsored Applicant for a DOD security clearance. (Tr. 15-20)

In October 2020, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). In January 2021, a government investigator conducted a background interview with Applicant. They discussed Applicant's June 2016 domestic dispute and a November 2020 domestic dispute that occurred after he submitted the e-QIP. Applicant reviewed the interview report, made corrections, and certified the summary of the edited interview as accurate and true on June 6, 2021. (GE 1, GE 2)

SOR ¶ 1.a (cross-alleged under ¶ 2.a):

During the January 2021 background interview, Applicant discussed his June 2016 domestic dispute which occurred five months after he and his spouse were married. They were preparing dinner in the kitchen and he had consumed four to five beers, but he denied being intoxicated. An argument ensued, and he picked up a kitchen knife and pretended to stab his wife. He did this to get her to stop arguing, but at no time did he intend to harm her. His wife called the police, and he departed the residence. The next day the police served him with a domestic violence protective order and confiscated all of his firearms. He was not charged with any criminal offense. Applicant and his spouse lived apart for a couple of months before reconciling, and they participated in marital counseling. (GE 2; Tr. 30-34)

SOR ¶ 1.b (cross-alleged under ¶ 2.a):

Applicant informed the investigator during the January 2021 background interview that he had been arrested in November 2020 for another domestic dispute. On this occasion, he and his wife were having dinner with family, and he drank 8-10 beers which left him intoxicated. His wife drove them home, and he started to work on a foyer light fixture in their new home. He received an electrical shock while working, cursed loudly, and his wife came to investigate. She was irritated that he was working on the light fixture and told him to go to bed, but Applicant ignored her. She pulled him off of the ladder, and he fell to the floor. She was in a rage and threatened to break every item in the garage that he cared about and proceeded to break several items. Applicant threw his wife to the floor. He punched her multiple times in the face and stopped only after he realized there was blood on the ground. She drove to her sister's house and was taken to the hospital. The police came to the residence and arrested Applicant. He stated that his earlier use of alcohol had impaired his judgment. (GE 2; Tr. 40, 43-51)

In January 2021, Applicant was charged with assault with serious bodily injury, a first degree felony, after his spouse suffered a fractured nose and other injuries. He was also charged with two misdemeanor offenses: 1) assault on a female, and 2) assault inflict serious injury. At the time of the security clearance hearing, Applicant's criminal case was still pending. He testified that his attorney recently informed him that he was working with the prosecutor on a plea agreement. While the record was held open following the security clearance hearing, Applicant timely submitted court records dated March 31, 2022, which showed he pled guilty pursuant to a plea agreement to a misdemeanor offense of assault inflict serious injury. He was sentenced to serve 60 days in jail, with two days credit. He was also ordered to enroll in the domestic violence intervention program (DVIP), pay restitution of \$3,650, and he was placed on probation for 18 months. (GE 4, GE 5, and AE G; Tr. 40, 52-58)

Applicant testified that he stopped drinking alcohol altogether in April 2021. At that time, he had visited a counselor to better understand his behavior, and he made a personal decision that he did not need alcohol in his life. He stopped drinking on his own. He has never received alcohol treatment or been diagnosed with an alcohol-related disorder. He has not consumed any alcohol for one year. (Tr. 56; Answer)

Character references:

Applicant submitted post-hearing character reference letters from his lawyer, friends, family members, and a former work associate. His former manager praised Applicant's depth of knowledge, work ethic, and professionalism. Two friends and two family members stated that Applicant was not a violent person by nature. They believed Applicant was in an unhealthy relationship with his spouse and his actions, although inexcusable, were not unprovoked. Since November 2020, they personally witnessed Applicant make positive changes, to include seeing a counselor and abstaining from using alcohol. Applicant's criminal lawyer stated that Applicant has been a considerate,

thoughtful, and forthcoming client. All of these individuals stated Applicant did not pose a risk or threat to national security. (AE A, AE B, AE C, AE D, AE F)

Policies

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

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 describes the security concern about alcohol consumption, “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 provides conditions that could raise a security concern and may be disqualifying as follows:

(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.

The record evidence establishes AG ¶¶ 22(a), and 22(c). Applicant was involved in two domestic disputes in 2016 and 2020 after consuming alcohol. He admitted the November 2020 arrest occurred after he had consumed alcohol to the point of impaired judgment.

AG ¶ 23 lists three conditions that could mitigate security concerns:

(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

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.

Applicant presented information supporting his positive work performance. He has participated in counseling for his violent behavior, and he made a personal choice to cut

alcohol out of his life. He has never enrolled in an alcohol treatment program nor has he been diagnosed with an alcohol-related disorder. He has abstained from consuming alcohol for one year, and he is motivated not to engage in future illegal conduct. He has taken responsible action by changing his lifestyle. Future alcohol-related problems are unlikely to occur and do not cast doubt on Applicant's current reliability, trustworthiness, or judgment. Guideline G security concerns are mitigated.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline is set out in AG ¶ 30:

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 lists conditions that could raise a security concern and may be disqualifying. Two potentially apply:

(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.

In June 2016, Applicant and his spouse were involved in a domestic dispute where he simulated stabbing his wife with a kitchen knife to end the argument. Although he was not charged with a criminal offense, Applicant acknowledged his behavior was extremely offensive and inappropriate. A protective order was issued and his firearms were confiscated by police.

In November 2020, Applicant and his spouse were involved in a domestic dispute which escalated to physical abuse by Applicant. His wife suffered a fractured nose, and he was charged with a felony and two misdemeanor assault offenses for his criminal conduct. This pattern of conduct raises concerns about his judgment, reliability, and trustworthiness. The evidence establishes the above disqualifying conditions.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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 criminal conduct is disconcerting and recent. He was convicted and sentenced to 60 days in jail with 18 months of probation. He is required to complete a domestic violence program and pay restitution of \$3,650. Applicant did not submit any evidence of rehabilitation, such as proof that he has fulfilled all of the court-ordered conditions, or that he is no longer on probation.

There is insufficient evidence in the record to demonstrate that Applicant's violent conduct will not recur. I find that more time is needed to ensure that he does not repeat his violent behavior in the event he encounters a stressful situation. As such, his criminal behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

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) 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 include 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 into my whole-person analysis.

In 2016 and 2020, Applicant was involved in two serious domestic disputes after consuming alcohol. To his credit, he has abstained from drinking alcohol for the past year and has made positive lifestyle changes. About nine days after the security clearance hearing concluded, Applicant pled guilty to allegations related to domestic violence. Not enough time has passed to demonstrate that Applicant's violent behavior will not recur, and there is insufficient evidence in the record to show that he successfully fulfilled all of the sentence requirements set by the court.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. Although he mitigated the alcohol consumption security concerns, Applicant failed to mitigate the security concerns arising under criminal conduct.

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:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant a security clearance. National security eligibility is denied.

Pamela Benson
Administrative Judge