



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



In the matter of:)
)
) ISCR Case No. 20-00783
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 12, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). Applicant responded to the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 1, 2022.

The hearing was convened as scheduled on May 11, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since about June 2019. He served on active duty in the U.S.

military from 2010 until he was honorably discharged in 2014. He has an associate's degree, which he earned in 2013 and additional college credits toward a bachelor's degree. He has never married, and he has no children. (Transcript (Tr.) at 18; GE 1, 2)

Applicant has a history of alcohol-related criminal offenses. He was stopped on base in 2013. His blood alcohol concentration (BAC) was about .17%. He received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for drunk driving under Article 111 of the UCMJ. He was reprimanded and reduced one pay grade. He also lost his driving privileges on base for a year. He received an evaluation from an alcohol and drug counselor, but no diagnosis and no treatment. (Tr. at 20-24; Applicant's response to SOR; GE 1-3)

Applicant was arrested in August 2017 and charged with operating a vehicle while intoxicated (OWI). The breathalyzer test registered .088% BAC, just above the legal limit. He pleaded guilty in February 2018 to a lesser offense of careless operation of a vehicle. He was required to pay a fine and take a traffic safety course and a substance abuse class. (Tr. at 25-28; Applicant's response to SOR; GE 1-3)

Applicant was arrested in September 2018 and charged with OWI. He refused a breathalyzer. He pleaded guilty pursuant to a plea agreement to what he described as underage driving under the influence. He could not explain why a person in their later 20s would be charged and found guilty of an underage offense. He was required to pay a fine and take a traffic safety course. (Tr. at 17, 29-34; Applicant's response to SOR; GE 1-3)

Applicant testified that he has not had any arrests or charges since the 2018 arrest. He stated that he drinks infrequently. When he does drink, it is responsibly, and he never drinks and drives. (Tr. at 17, 35-36, 38; Applicant's response to SOR)

Applicant submitted a letter from a supervisor attesting to Applicant's moral character and excellent job performance. He praised Applicant for his professionalism, trustworthiness, work ethic, loyalty, and careful handling of sensitive information. He recommends Applicant for a security clearance. (AE A)

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 has three alcohol-related criminal offenses. 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; 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 not had any arrests or charges since the 2018 arrest. He stated that he drinks infrequently. When he does drink, it is responsibly, and he never drinks and drives. I believe Applicant may be on the right track. However, three incidents in about five years cause me to have doubts, and 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." None of the mitigating conditions are sufficient to overcome concerns about Applicant's alcohol use, reliability, trustworthiness, and judgment.

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 Guideline G in my whole-person analysis. I also considered Applicant's honorable military service and 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 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.c:	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