



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



In the matter of:)	
)	
)	ISCR Case No. 21-02405
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant’s history of alcohol abuse and operating both military and commercial aircraft while intoxicated generate security concerns which he failed to mitigate. Clearance is denied.

Statement of the Case

On December 21, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSCA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline J (criminal conduct). The DCSCA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On February 7, 2022, Applicant answered the SOR, admitting all of the allegations and requesting a decision based on the record without a hearing. On February 28, 2022, Department Counsel prepared a File of Relevant

Materials (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on March 1, 2022, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. Applicant did not respond. On May 5, 2022, the case was assigned to me.

Findings of Fact

Applicant is a 56-year-old married man with two adult children. After graduating from college in 1990, he joined the U.S. Air Force (USAF) where he served for 20 years until retiring honorably in 2011. (Item 2 at 12) While in the USAF, he flew aircraft. After retiring, he worked as a pilot for two commercial aircraft companies. Since August 2019, he has been working for a defense contractor as an aircraft lab test director. (Item 2 at 12)

Applicant has a drinking problem. Between 1983 and 2018, he consumed approximately 10 to 14 alcohol drinks daily. (Item 1 at 3) Applicant's alcohol consumption resulted in a 1985 arrest for driving under the influence. He later pled guilty to the lesser charge of driving while ability impaired. (Item 1 at 3) Applicant's alcohol abuse also led to family problems, as it caused his wife to temporarily separate from him in 2013. (Item 4 at 14)

Applicant frequently flew airplanes while intoxicated, both in his military and civilian career. He would sometimes drink up to a bottle of alcohol the night before flying. (Item 3 at 7) He was fired from both of his commercial piloting jobs for showing up to work intoxicated. (Item 4 at 14, 16) On the second instance, a Transportation Security Administration (TSA) agent smelled alcohol on his breath as he was passing through the airplane checkpoint. The TSA agent then contacted the TSA supervisor, who called the police. Upon arriving, the police administered a field sobriety test. (Item 5 at 2) The test revealed that Applicant's blood alcohol content was three times the state limit for driving an automobile. (Item 5) The police then escorted Applicant from the airplane. Consequently, the airline had to cancel the flight, deplane the passengers, and reschedule them for later flights. (Item 5 at 2)

This episode prompted the acting administrator of the Federal Aviation Administration to issue an emergency order revoking Applicant's airman certificates. (Item 6 at 1) Subsequently, Applicant was fired. (Item 5 at 1)

In November 2018, after Applicant's termination, he checked into an inpatient alcohol treatment facility. (Item 3 at 7) He attended inpatient treatment for 30 days, followed by outpatient treatment once a week for eight weeks. (Item 4 at 7) In January 2019, he was diagnosed with severe alcohol dependence. (Item 1 at 4; Item 4 at 20) As part of his treatment, he received individual and group therapy. (Item 4 at 5, 9) He satisfactorily completed the inpatient treatment program. (Item 4 at 20)

Applicant has been clean and sober since checking into the alcohol treatment facility in November 2018. He attends Alcoholics Anonymous (AA) meetings regularly, as well as

therapy sessions. (Item 4 at 5, 7, 10) He characterizes himself as “a better, more reliable, and more trustworthy person” since he stopped drinking alcohol. (Item 1 at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline G: Alcohol Consumption

Under this concern, “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 ¶ 21) Applicant abused alcohol for more than 30 years. He habitually reported to work intoxicated, leading to the loss of two jobs. His alcohol use led to one alcohol-related arrest and had an adverse effect on his marriage, as it led to a separation in 2013. Most troubling, his alcohol use repeatedly jeopardized the safety of others, as he flew military and commercial aircraft while intoxicated countless times over the years. In 2018, he was diagnosed with severe alcohol dependence. Under these circumstances, the following disqualifying conditions apply under AG ¶ 22:

- (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 conditions, 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.

Applicant voluntarily entered an alcohol treatment program, successfully completed it, and has not consumed any alcohol in more than three years. Under these circumstances, the mitigating conditions set forth under AG ¶ 23(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 AG ¶ 23(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,” apply.

Applicant has been sober since November 2018. There is no record evidence, however, of any clinical update gauging his current well-being, whether his alcohol

dependence diagnosis is in remission, or whether his drinking is likely to recur. Given the nature and seriousness of Applicant's problem, the length of time that he has been abstinent from alcohol, alone, is insufficient to carry the burden. Under these circumstances, none of the remaining mitigating conditions apply, and Applicant has failed to mitigate the alcohol consumption security concerns.

Guideline E: Personal Conduct

Under this guideline, "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." (AG ¶ 15) Applicant's history of flying aircraft while intoxicated triggers the application of AG ¶ 16(d)(1), "untrustworthy or unreliability behavior . . ." Under 14 C.F.R. § 120.37(b), no employee who performs safety-sensitive functions shall show up to work with a blood alcohol content of .04 percent or greater. Applicant's violation of this federal regulation during the episode that led to his termination in 2018 and for the multiple times before this episode trigger the application of AG ¶ 16(d)(3), "a pattern of . . . rule violations."

Applicant's voluntary enrollment in an alcohol abuse treatment program and his successful completion of it, together with his three-and-a-half years of abstinence constitute positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress, under AG ¶ 17(e). Given the severity of the alcohol dependence, the length of time that he abused alcohol, and the extraordinary circumstances under which some of the alcohol abuse occurred, the positive taken to address the problem are insufficient to mitigate the Personal Conduct security concerns.

Guideline J: Criminal Conduct

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness [and] by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." (AG ¶ 30) It is a federal crime to fly an airplane while intoxicated. (18 U.S.C.A. § 342) Consequently, Applicant broke the law each time he operated a plane while intoxicated during both his military and his civilian career. This criminal conduct, together with his 1985 alcohol-related arrest triggers the application of AG ¶ 31(b), "evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted."

After Applicant was caught attempting to fly an aircraft in 2018 while intoxicated, the FAA revoked his airman's certificate. Consequently, the possibility of him flying another aircraft, whether intoxicated or not, is highly unlikely. As for the alcohol-related offense, it occurred more than 35 years ago. Although Applicant certainly has unresolved security concerns related to his history of alcohol consumption, there are no ongoing criminal conduct security concerns. I conclude the mitigating condition set forth in AG ¶ 32(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," applies. Applicant has mitigated the criminal conduct security concern.

Whole-Person Concept

I considered the whole-person factors in my analysis of the disqualifying and mitigation conditions, and they do not warrant a favorable conclusion. I conclude Applicant has failed to mitigate the 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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Marc E. Curry
Administrative Judge