



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



In the matter of:)	
)	
)	ISCR Case No. 20-02394
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

August 8, 2022

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On September 13, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On October 15, 2021, the Department of Defense Consolidated Adjudications Facility (DoD 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 (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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 18, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 12, 2022, and the hearing was convened as scheduled on June 9, 2022. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted

without objection. The Applicant offered no exhibits, however, he testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 23, 2022.

Findings of Fact

Applicant is 33 years old. He is not married and has no children. He has a high school diploma, several college courses, and military training. He is employed by a defense contractor as an Electrician. He is seeking to obtain a security clearance in connection with his employment. Applicant began working for his current employer in 2013. In his answer, Applicant admits each of the allegations set forth in the SOR.

Guideline G: Alcohol Consumption

Applicant's history of excessive alcohol abuse leading to questionable judgment, and the failure to control impulses, raises questions about his reliability and trustworthiness.

Guideline J: Criminal Conduct

Applicant's history of criminal conduct creates doubt about his judgment, reliability, and trustworthiness. It also calls into question his ability or willingness to comply with laws, rules, and regulations.

Applicant served in the U.S. Navy from 2007 to 2012. He separated at the rank of E-4, petty officer, third class, and received an honorable discharge. Applicant held a security clearance in the military without incident. Applicant began consuming alcohol when he joined the Navy. He started by consuming a couple of beers at social events. As time passed, he found himself drinking as much as ten beers at a time to the point of intoxication. (Government Exhibit 2.)

In 2010, Applicant was arrested and charged with Driving Under the Influence (DUI.) Applicant explained that he was with a close friend, at a bar drinking alcohol. Before driving back to his parent's house, Applicant believes he consumed at least five beers and two shots of hard liquor. (Tr. pp. 23-24.) While driving, Applicant hit another car. When the police arrived, Applicant was administered the breathalyzer, and found to be legally intoxicated. Applicant was arrested and taken into custody. Applicant pled nolo contendere to the DUI charge. He was found guilty, and sentenced to pay a fine and referred to driver's education classes and alcohol counseling. His license was revoked for one year, and he was required to attend a substance abuse rehabilitation program. Applicant was also required to pay restitution for the damage from the accident. Applicant attended Alcoholics Anonymous (AA) meetings. Since Applicant was active duty Navy at the time of the arrest, he was reduced in rank from E-4 to E-3, placed on one month's restriction on the ship, and forfeited to half a month's pay for two months. (Tr. p. 29, and Government Exhibit 4.) Following this arrest, Applicant states that he was able to maintain sobriety for about nine months. (Tr. p. 31.) When

Applicant returned to consuming alcohol, he states that he would have a few drinks every now and then.

In 2014, Applicant was charged with Reckless Driving. Applicant explained that he was at his cousin's house, talking, drinking, and playing cards. Applicant believes that he had consumed only one beer before driving home. (Tr. p. 32.) Applicant was pulled over by the police, and administered the breathalyzer. Applicant believes that he passed the sobriety tests, as he was not arrested. He was given a Reckless Driving citation, and required to appear in court. (Tr. p. 33.) Applicant was sentenced to pay a fine, required to enroll in and complete a driver improvement course, and required to remain arrest and conviction free for a period of six months. After receiving this ticket, Applicant stopped drinking altogether for about six months. (Tr. p. 36 and Government Exhibit 5.)

In 2015, Applicant was arrested again for DUI. Applicant stated that he and a close friend were hanging out. They went drinking at a bar, and then took a taxi back to his friend's place to sleep. Applicant believes that he had consumed, "under ten beers" before the arrest. (Tr. p. 37.) Applicant spent the night at his friend's house, and the next afternoon at about 2:00 pm, he drove home. Applicant fell asleep at the stop light, and when he woke up, he continued driving. He was pulled over by law enforcement. Applicant was administered the breathalyzer, and taken into custody. Applicant's court case was eventually dismissed on a technicality, as the officer did not appear. (Tr. pp. 40-41, and Government Exhibits 6 and 7.)

Following this arrest, Applicant was able to remain totally sober for about nine months. (Tr. p. 42.) Applicant stated that during this time he would stay away from his friends. In 2016, he started drinking alcohol again at social events.

In 2019, Applicant was arrested for DUI again. Applicant stated that he was drinking with a friend. Applicant consumed at least five beers and two shots of hard liquor, and then decided to drive home. On this occasion, Applicant "rear-ended" a bus and then reversed the car, and hit a police car. Applicant was administered the breathalyzer that registered a .16 blood alcohol level, which was twice the legal limit. Applicant was arrested and taken into custody. Applicant plead nolo contendere. He was found guilty, and sentenced to a driver's education classes, his license was revoked for one year, and he was required to attend a substance abuse assessment and rehabilitation program. (Government Exhibit 8.)

Following this arrest, Applicant stopped drinking for a couple of months. When he started drinking again, he states that he would only have a beer here and there. Applicant completed all of the court ordered sentencing requirements related to his four alcohol-related arrests. He states that he no longer drinks and drives. Applicant states that he is a good employee and a hard worker on the job. He is the first one in his family to be able to purchase a house, and he is proud of this. He has picked up gardening as a hobby. (Tr. p. 50.) He is working to improve himself.

Applicant acknowledges that he is an alcoholic. (Tr. p. 53.) He has never received inpatient treatment for alcohol abuse, or attended an out-patient treatment program. He is not currently attending AA meetings. (Tr. p. 53.) Applicant states that the last time he consumed alcohol was a few months ago and it was a beer. (Tr. p. 54.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information seeks to enter 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 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

AG ¶ 21 expresses the security concern pertaining to 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 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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 was diagnosed with alcohol use disorder.

Concerning his history of alcohol abuse, the evidence shows that Applicant incurred at least four arrests, three charges for DUI, resulting in two convictions for DUI, and one for Reckless Driving. These incidents raise serious security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption 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 good 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;

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

(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.

Applicant failed to introduce sufficient evidence of rehabilitation. Applicant is an alcoholic with a long pattern of abusive drinking. Applicant began abusing alcohol in 2010 while in the military, and he continues to consume alcohol. Since his first DUI, his excessive drinking has caused him many encounters with law enforcement. Furthermore, although he has not been formally diagnosed as being an alcoholic, he acknowledges that he is one. He has had four alcohol-related arrests away from work, the most recent one occurred as recently as 2019. Following each arrest, Applicant has tried to quit drinking. Each time, he abstained from alcohol for a period before returning to his regular drinking pattern. Applicant states that his goal is to quit drinking, but he is not there yet. It is noted that Applicant has successfully completed all of the court-ordered sentencing requirements. He has attended the alcohol awareness programs, paid the fines, paid restitution, attended AA meetings, and completed his probation, but he continues to consume alcohol. Under the circumstances, Applicant has not demonstrated sufficient good judgment and reliability necessary to access classified information. ¶ 23 does not provide mitigation.

Guideline J: Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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 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 judgement, 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.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are 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's criminal record spans over a period of twelve years, beginning in 2010 and continuing to 2014, 2015 and most recently 2019, which is less than three years ago. This history reflects four alcohol-related arrests; which include three arrests for DUI, resulting in two DUI convictions, and one arrest for Reckless Driving. Applicant acknowledges that he is an alcoholic, but continues to consume alcohol. Applicant's criminal conduct demonstrates poor judgment, immaturity and a total disregard for the law. This is inexcusable. Applicant has not established that he is sufficiently reliable and trustworthy to access classified information. His criminal conduct involves excessive alcohol abuse and gives rise to serious concerns about his judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and J in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge