



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



In the matter of:)	
)	
)	ISCR Case No: 21-00597
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
 For Applicant: *Pro se*
 08/08/2022

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Alcohol Consumption and Personal Conduct guidelines. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On September 29, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption) and E (Personal Conduct). Applicant responded in a November 15, 2021 Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.

On December 7, 2021, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on December 9, 2021, and received by him on December 14, 2021. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant submitted his Response to the FORM within the time provided, offered no objection to the FORM, and included additional material in extenuation and mitigation. Department Counsel offered no objection to the Response, which I marked as Applicant Exhibit (AE) A. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. I received the case file on March 14, 2022. Items 1 through 6 and AE A are admitted into evidence.

Findings of Fact

In his Answer, Applicant admitted the allegations contained in the SOR ¶ 1.a and denied the allegations in SOR ¶¶ 1.b, 2.a, and 2.b, with explanations. His admissions and explanations are incorporated into these findings of fact.

Applicant is 48 years old. He earned a high school diploma in May 1992. He is married, for the second time. He has two adult children who were born in 1992 and 1999, several years before his first marriage. He has never served in the military or been employed by the government of the United States. He said that the DoD granted him some level of local clearance, which was required for him to work as a bus driver under an Army support services contract, from August to September 2019. This clearance was revoked when he was fired for failing a breath alcohol test. He is seeking national security eligibility in connection with his current employment at the same Army installation, by a different defense contractor, as a Fuel Ammunition Specialist. (Item 2; Item 3.)

Applicant was arrested for Driving Under the Influence of Liquor (DUI) on October 3, 2001, according to a state criminal history report (Item 5.) The local municipal court prosecutor declined to prosecute the case, and it was dismissed (*nolle pros.*) on November 19, 2001. Since submitting his November 13, 2019 Electronic Questionnaire for Investigations Processing, Applicant has denied having ever been arrested for DUI. In his Answer he said he does not recall this incident. No evidence regarding his blood alcohol content (BAC) after this arrest appears in the FORM. (Item 1; Item 2; Item 5.)

Applicant began working as a refueler at a U.S. Army airfield in September 2015. This was his first employment by a DoD support-services contractor. He was fired from that job for two reasons related to an aviation fuel spill that he caused. On January 24, 2019, his employment was “terminated effective immediately due to [his] refusal to take a drug test after [his] accident on January 22, 2019.” On January 31, 2019, after completing its investigation of the incident, the company also “terminated [his employment] effective immediately due to negligence and violation of safety protocol and procedure before, during, and after a major fuel spill involving a fuel truck and helicopter.” Applicant claimed that his employer had no training program and that he was not properly trained to handle emergency shutdown procedures. He also claimed that the company did not relieve him of duty to go take a drug test, but instead told him to clean up the fuel spill and then resume work, after which he went home. He said that after resting for at least ten hours at home, he went to a clinic and “followed up with the required drug testing, which [he] passed.” He offered no corroboration for these explanations, which are

incongruous with the quoted language of the formal letters of termination issued by his employer two and nine days later. (Item 1; Item 2; Item 3; Item 6.)

A different support services contractor at the same Army installation hired Applicant in August 2019 to work as a bus driver. On the morning of September 3, 2019, he was scheduled to drive a bus full of flight school students to a location that is not identified in the FORM. Before the bus departed, another company employee notified the project manager that Applicant smelled of alcohol and he was sent to a medical clinic for a breath alcohol test. At 12:44 that afternoon his blood alcohol content (BAC) tested at .079; followed by a reading of .073 on the confirmation test administered 16 minutes later. The project manager fired Applicant in a letter dated the same day for this direct violation of the company's safety and security policies. Applicant admitted these facts, and explained that he was not aware he smelled of alcohol when he reported to work after staying up late and drinking at home the night before. He said that he does not remember how much or what he was drinking. (Item 1; Item 2; Item 3; Item 4; AE A.)

Applicant said that he is not dependent on alcohol anymore and it no longer controls his life, although he attended no treatment program and continues to drink. He said that his awareness of his past mistakes has made him a better man, husband, and employee. He claimed, without providing further detail, that he voluntarily attended some Alcoholics Anonymous (AA) support sessions during 2019. He submitted letters signed by two coworkers who had known him for five months, in which they describe his dedication, professionalism, integrity, excellent performance, and skills working with others. I was unable to evaluate his credibility, demeanor, or character in person, since he elected to have his case decided without a hearing. (Item 3; AE A.)

Policies

The national security eligibility 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

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 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, 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. The entire

process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 concerns 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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) alcohol-related incidents away from work, such as driving 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 is diagnosed with alcohol use disorder; and
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder.

Appellant was arrested for DUI in October 2001. He was substantially intoxicated when he reported to work at an Army installation after a long night of drinking in early September 2019. He was assigned to drive a busload of flight school students that morning. If a coworker had not promptly reported his inebriation to their project manager, his actions would have severely jeopardized the welfare and safety of those flight students. He continues to consume alcohol. These facts raise significant security concerns under the disqualifying conditions cited above.

AG ¶ 23 provides four conditions that could provide mitigation of the security concerns in this case:

- (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;
- (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; 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 was fired from his former employment with a DoD contractor less than three years ago for being intoxicated when he reported to his job that involved driving busloads of military personnel. He held that job for less than a month. He was previously arrested for DUI in 2001, so this incident was not unique and evinces a long term issue. Applicant neither participated in nor completed any alcohol treatment program, although he claimed in 2019 to have voluntarily attended several AA meetings. He said that he is not dependent on alcohol anymore and it no longer controls his life, although he continues to drink and failed to demonstrate a pattern of responsible consumption. Accordingly, he failed to establish mitigation under any of the foregoing mitigating conditions.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying under the facts alleged in the SOR:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (2) any disruptive, violent, or other inappropriate behavior; and
- (3) a pattern of dishonesty or rule violations.

Applicant was fired from his first job working for an Army support-services contractor in January 2019 for negligence and violation of safety protocol and procedure before, during, and after a major fuel spill involving a fuel truck and helicopter; and for his refusal to take a required drug test after the incident. He started his second employment with a defense contractor in August 2019, but was fired on September 2, 2019, when he reported to work while intoxicated. He provided no evidence of substance abuse treatment or other corroboration for his claim to have gotten his alcohol dependence under control. This evidence establishes substantial security concerns under AG ¶ 16(d).

AG ¶ 17 includes two conditions that could mitigate the security concerns arising from Applicant's personal conduct:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not provide evidence that would support mitigation under either of the foregoing mitigating conditions, for the same reasons discussed above under Guideline G. He was fired by two DoD support-service contractors from jobs as a refueler and a bus driver within an eight-month period in 2019 for serious negligence, violation of safety procedures, refusing a required post-incident drug test, and reporting to work while incapacitated due to intoxication. He failed to show that such personal conduct is unlikely to recur.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature person who is accountable for his choices and actions. His irresponsible conduct led to a major aviation fuel spill, and nearly jeopardized the health and safety of a busload of Army flight

school students. Both of these incidents occurred within a recent eight-month period during his only previous periods of employment by DoD contractors. Two current coworkers said that he performed well during the first five months of his present job as a fuel/ammunition specialist for a third support-services contractor, but this is insufficient to establish rehabilitation, other permanent behavioral changes, or that such misconduct is unlikely to recur. Applicant failed to meet his burden to mitigate the concerns arising under the guidelines governing U.S. national security eligibility.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	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 or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE
Administrative Judge