



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



In the matter of:)
)
) ISCR Case No. 21-00511
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: Todd Hull, Esq.

10/31/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant mitigated the alcohol consumption and criminal conduct concerns alleged in the SOR. The security concerns happened under circumstances that are unlikely to recur, and there is evidence of successful rehabilitation. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant last submitted a security clearance application (SCA) on December 27, 2016. On September 30 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and J, alcohol consumption and criminal conduct. Applicant responded to the SOR on October 28, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on May 18, 2022.

The hearing was convened as scheduled on June 28, 2022. Government Exhibits (GE) 1-11 were admitted in evidence without objection. Applicant’s Exhibits (AE) A-G were admitted in evidence without objection. After the hearing, I held the record open to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE H-N, and admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted the SOR allegations with explanation. His admissions and explanations are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact:

Applicant is 47 years old. He was married in 2006, and has two minor children. He earned a bachelor's degree in 1997, and a computer science certificate in 1999. He worked for a large government contractor, Employer A, for 18 years, and over time was promoted into an executive and leadership role. He left that employment in May 2021, and started working for another government contractor, Employer B, in a similar role. His job performance in both positions has been lauded. He has held a security clearance since 2003. (Tr. 23-28; GE 1; AE E, F)

A significant part of the corporate culture for Employer A was to meet with colleagues in monthly after-work happy hours. Applicant explained that he had hundreds of employees who reported to him, but they were spread-out in various government offices throughout the region. He was taught that an effective way to engage and connect with his employees face-to-face was in these after-work social events. (Tr. 31-33.)

In December 2016, Applicant attended an after-work happy hour event, and afterwards went out with friends. He stated that despite drinking, at the end of the evening he thought that he was able to drive a short distance home. While driving home, he missed his exit and got his car stuck in a grassy area. He claimed that he called the police for assistance, which resulted in his arrest for DUI. He pled guilty, and had a restricted license for a year, an interlock device placed on his vehicle, 6 months of probation through the state Alcohol Safety Action Program (ASAP), and 10 mandatory ASAP classes from about March – August 2017. He successfully completed the ASAP classes and the terms of his sentence. He stated that his decision to drive that night was a mistake, and he is remorseful. After his arrest, he made changes to prevent future incidents, by leaving his car at home and only using ride-share services for transportation if any alcohol was involved in work or personal social events. He also stopped drinking alcohol for about 9 months after his arrest. (Tr. 29-31, 35-36, 82; GE 3; AE A)

For about two years, Applicant had been successfully using ride-share services to travel home after consuming alcohol. In October 2019, he had a scheduled dinner meeting one evening after work. He stated that he had planned to drive home and take a ride-share service to dinner. However, one of his employees asked to meet with him right after work. He reported that meeting went longer than expected, and he was unable to go home before leaving for his dinner meeting. He stated that the evening ended late, and he had drank that night, but thought that he was safe to drive his car approximately three miles home. He was stopped by police in a speed trap on the way home, and was arrested for DUI. He pled guilty in February 2020, and was sentenced to 10 days in jail; a three-year license restriction/suspension; a mandatory three-year supervision by the state ASAP program during his license restriction/suspension; a fine; and mandatory ASAP

classes. He has complied with the terms of his sentence, and his license restriction and supervision ends in about three months. (Tr. 36, 46-50 53-56; 186; GE 4, 5, 6, 7; AE A)

Right after his second DUI arrest, Applicant stated that he sought personalized counseling to ensure that he was taking all steps to address any issues with alcohol, and find a professional who could best assess and assist him. He attended counseling from October 2019 to February 2020 with Dr. G, a clinical psychologist who specializes in substance abuse treatment. He reported that this counseling gave him the insight into the specific way his body processes alcohol, and his personal and family history of alcohol use. He reported that he learned that some people have negative reactions to alcohol and process it in a way that is different from the general population. He stated that he was not addicted to alcohol, but rather had a problem with binge drinking. Applicant had follow-up meetings with Dr. G in 2021 and 2022. He also met with a counselor from Employer A's employee's assistance program for six sessions in the summer of 2020. (Tr. 38-46, 50-53, 56-57, 62, 90-95, 113-115, 127-128; AE A)

Applicant stated that he does not drink anymore. After his arrest, he abstained completely from alcohol use from Oct 2019 to Jan 2021. He reported that he learned techniques from Dr. G to handle any social pressure he felt to drink at work or personal social events. This included having a non-alcoholic drink in his hand at social functions. He was also taught a method called "zero, one, two", which gave him an appropriate strategy to handle any situations involving alcohol. He stated that he was not told that he could never drink again, but rather the counseling focused on how to prevent a future relapse to situations where there was excessive alcohol use. (Tr. 38-51, 59-60, 90-95; AE A, L, M)

Applicant reported that he was ashamed of his DUI convictions, and he was not ready to explain to colleagues and subordinates at work why he was no longer drinking. He reported that after COVID-19 restrictions waned, he felt significant pressure at work and personal social events. He stated that from about spring 2021 to October 2021 he used the "zero, one, two" method to give the impression that he was drinking, when he did not want to consume alcoholic drinks. He stated that on a few occasions, he would have an alcohol drink in his hand, from which he had a few sips over the course of an evening, to stave off questions about why he was not drinking. He left Employer A in May 2021, which removed the pressure he felt to drink at work social events. Employer B's culture does not promote drinking. (Tr. 96-99, 101, 107-108; AE A)

His wife testified that after his second DUI, Applicant was ashamed and was not ready to discuss his conviction with their social circle. She reported that when COVID precautions loosened they started seeing friends again. To avoid questions about why he was not drinking, on occasion he used the "zero, one, two" method to give the impression that he was consuming alcohol, when in reality he would have only a few sips of a drink over a long period of time. She stated that eventually pretending to drink was too stressful, and he just started telling their family and friends about why he stopped drinking. She stated that he found support and understanding, and became vocal with friends about the dangers of excessive drinking. (Tr. 188-215).

Dr. G testified about Applicant's treatment, assessment and prognosis. He also testified as an expert witness on substance abuse treatment. He has a doctorate in clinical psychology and is a licensed substance abuse treatment provider. He has over 30 years of experience providing substance treatment, including in several military substance abuse programs, by serving as a treatment provider, supervisor, and clinical director on a large military base. In February 2020, Dr. G provided an assessment of Applicant, stating that he has made significant life style changes and adopted healthy behaviors, which promote low risk choices. He also stated that he was effectively implementing coping strategies as a deterrence to high-risk choices at social events. He reported that he expected that Applicant would effectively manage life stressors and social events involving alcohol use in the future. He had similar findings in reevaluations in December 2021 and June 2022. He also conducted credibility assessments of Applicant along with his evaluations, and believes that he was being honest. (Tr. 146-147, 184; GE 8; AE C, D)

When he started counseling in 2019, Dr. G diagnosed Applicant with alcohol use disorder - moderate, because he had reported a dysfunctional pattern of alcohol use. However, his current assessment of him is alcohol use disorder – moderate in sustained remission. Dr. G reported that in their counseling sessions, they dug into his patterns of behavior involving alcohol use, and identified changes that he needed to make. While Dr. G prefers that his patients did not drink at all, he realizes that they need effective coping skills and strategies for life situations where alcohol is present. One of the skills he taught him was the “zero, one, two” method. He believes that Applicant's current work and social life circumstances are healthier for him, as is his decision to stop drinking. He is not concerned that Applicant will drive under the influence again. (Tr. 133-150, 150-185; AE G, L, M)

There are four character letters in the record from two of Applicant's friends, a colleague, and his supervisor. Two have known him over 20 years. He is highly regarded and he is described as trustworthy, responsible, professional, committed to his family, and possessing good judgment. The writers have knowledge of his DUIs and challenges with alcohol, and they have witnessed the positive life changes that he has made. (AE F, H, I, N)

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

AG ¶ 21 details the personal conduct security 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.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following are potentially applicable:

(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;

(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 has 2016 and 2019 DUI arrests and convictions, and a 2019 assessment for alcohol use disorder. AG ¶¶ 22(a), (c), and (d) apply.

I have considered the mitigating conditions 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;

(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

(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.

Both of Applicant's DUI arrests occurred under unusual circumstances that are unlikely to recur, and no longer cast doubt on his reliability, trustworthiness, and judgement. The last incident was three years ago. He acknowledges that he had a problem with binge drinking, and took action to get the personalized counseling needed, in addition to the mandated state ASAP classes, to address the issue and make life style changes. He has completely abstained from alcohol use. He has complied with his sentence, and demonstrated a clear and established pattern of modified consumption and abstinence, both in accordance with treatment recommendations. He has successfully completed a treatment program, and has a counselor to check-in with and to address any aftercare needs. AG ¶¶ 23(a), (b), and (d) apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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 disqualifying conditions are potentially applicable:

(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; and

(c) individual is currently on parole or probation.

Applicant has 2016 and 2019 DUI arrests and convictions, and is under supervision from the state ASAP program until his license restriction is completed in about three months. AG ¶¶ 31(b) and (c) apply.

The following mitigating conditions for criminal conduct are potentially applicable under 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; 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.

Both of Applicant's DUI arrests occurred under unusual circumstances that are unlikely to recur, and no longer cast doubt on his reliability, trustworthiness, and good judgement. The last incident was three years ago, which is sufficient passage of time in this case, and there has been no recurrence of criminal activity. He acknowledges that he had a problem with binge drinking, and took action to get the personalized counseling he needed to address the issue and make life style changes. He has been successfully rehabilitated, and has completely abstained from alcohol use. He has complied with his sentence and terms of supervision by the state ASAP program. He is highly regarded by his friends, colleagues, and supervisor, and his employment performance has been exemplary. AG ¶¶ 23 (a) and (d) apply.

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 the facts and circumstances surrounding this case. I considered the testimony of his wife and Dr. G, his work performance evaluations, and his letters of recommendation highlighting his character, trustworthiness, and reliability. I have incorporated my comments under Guidelines G and J in my whole-person analysis.

I found Applicant's testimony to be credible. He was forthcoming with the reasons for his problem with alcohol, and I found that his lifestyle changes were genuine and appropriate to address the concerns. The whole-person evidence clearly demonstrates that Applicant is reliable, trustworthy and possesses good judgment. He is remorseful for his past behavior. He has successfully navigated social pressures to consume alcohol, and found an appropriate way to inform family, friends, and colleagues about his past challenges and current abstinence. He has a strong support system in place to ensure his future success. He has clearly established that all of the security concerns have been mitigated by circumstances that are unlikely to recur. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant

Paragraph 2, Guideline J:

FOR APPLICANT

Subparagraphs 2.a:

For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge