



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



In the matter of:)
)
) ISCR Case No. 20-01440
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2022

Decision

RIVERA, Juan J., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on March 6, 2019, seeking continuation of his clearance eligibility, required for a position with a federal contractor. A government investigator interviewed him on September 4, 2019, and he answered a set of interrogatories from the Defense Office of Hearings and Appeals (DOHA) in November 2019.

On March 12, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued him a Statement of Reasons (SOR) alleging security concerns under Guidelines G (alcohol consumption) and B (foreign preference).

Applicant answered the SOR on April 17, 2021, and requested a hearing before an administrative judge. The scheduling of the hearing was delayed by COVID-19 health

concerns and travel restrictions. The case was assigned to me on March 18, 2022. On April 22, 2022, the DOHA notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 18, 2022. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. GE 4, the Government's discovery letter, dated August 10, 2021, was marked and included in the record, but it is not substantive evidence. Applicant testified and submitted Applicant's Exhibit (AE) A, his April 27, 2022 email to me and Department Counsel with attachments 1 through 7d, which were all admitted without objection. DOHA received the transcript (Tr.) on June 8, 2022.

Procedural Issue

At the hearing, Department Counsel moved to withdraw the Guideline B allegations under SOR ¶¶ 2.a and 2.b. Without objection, I granted the motion. (Tr. 9)

Findings of Fact

As amended, the SOR alleges that: from 1988 to about March 2020, Applicant has consumed alcohol, at times in excess and to the point of intoxication (SOR ¶ 1.a); in about October 2014, he was charged with intoxicated endangerment/unattended child under eight years old (SOR ¶ 1.b); in November 2018, he was diagnosed with alcohol dependency in partial remission (SOR ¶ 1.c); and in December 2018, he was diagnosed with alcohol use disorder (SOR ¶ 2.d).

In Applicant's answer to the SOR, he admitted all of the allegations, corrected some timelines, and provided information in explanation and mitigation. I have incorporated his admissions into my findings of fact.

Applicant is a 52-year-old engineering technician employed by a federal contractor and is seeking to retain his clearance eligibility. He graduated from high school in 1988, and completed some technical courses. He has a 36-year career supporting the U.S. Navy in different capacities. After high school, he worked for a federal contractor for 15 years and he has held a position of trust since 2002. He has worked for his current employer and security clearance sponsor since 2004. (Tr. 15) He feels honored he was granted clearance eligibility, would like to continue his career supporting the U.S. Navy, and hopes to retire in the future.

Applicant married in 2010 and divorced in March 2017. He has an 11-year-old son of this marriage. He remarried in November 2019. He and his second wife share a stepson, age, 9, and have a 2-year-old son together. His elder son lives with the boy's mother. (Tr. 16 -17)

Concerning his alcohol consumption, Applicant testified that from about 1988 to about 1992, he consumed alcohol, at times in excess and to the point of intoxication. From about 1993 to about 2008, he rarely consumed alcohol and never to excess or intoxication. From about 2009 to about 2013, he consumed alcohol socially, with few

times to excess or intoxication. During the period of 2014 to June 2017, Applicant went through what he described was an extremely rough time in his prior marriage, including a separation that culminated in divorce. During this period, he consumed alcohol at times in excess and to the point of intoxication. (SOR answer)

Applicant attended Alcoholic Anonymous (AA) meetings with his first AA sponsor periodically between 2014 and July 2020. He had some success with lengthy periods of sustained sobriety. He believes he has learned from his mistakes and has not had any alcohol since July 2020. (Tr. 18; AE A) He attributes his success abstaining from alcohol to attending weekly AA meetings and starting his new AA Big Book Step Study with a new sponsor. His new sponsor has taken him through the 12 Steps of Recovery. He considers himself a recovered alcoholic and has no intentions of consuming alcohol again. He is committed to making responsible decisions for himself and his family, including refraining from the use of alcohol. He stated that he is attending AA meetings every week.

In October 2014, during his first marriage and prior to his entry into AA, Applicant attended a family function and had "a few" drinks of alcohol. On his way home, his child fell asleep in the car and he stopped at a store allegedly to buy food, leaving the child alone in the car. The police were called and Applicant was arrested and charged with intoxicated endangerment/unattended child under eight years old. Applicant expressed remorse for his poor judgment. After the arrest, he attended 12 weeks of alcohol counseling, which included weekly breathalyzer tests and random urinalysis screenings, and started attending AA meetings. (Counselor's letter of October 2014) The State's Attorney's Office dismissed the charge and the state expunged the record. Applicant testified that this is the only alcohol-related legal action that he has faced.

In November 2018, Applicant was diagnosed with alcohol dependency in partial remission, and in December 2018, he was diagnosed with alcohol use disorder. Applicant explained that in November 2018, he started to see a new physician who prescribed six shots of an alcohol medication to help him maintain sobriety. The new medication was helpful preventing the cravings or his desire to consume alcohol, but it was expensive at about \$2,900 per injection. Applicant explained the doctor changed the diagnosis so that his medical insurance would pay for the injections. He received the injections from December 2018 to June 2019. (GE 3)

Applicant attributed his success in abstaining from alcohol to his wife's support. She has been proactive on working with him to learn what is going to keep him sober and keep their relationship in a good spiritual base. He wants to be a good father and husband for his family. (Tr. 21 – 22)

Applicant submitted an evaluation from his licensed counselor, dated October 7, 2021. Based on some tests she conducted and Applicant's statement, she opined that it does not appear that he currently has an alcohol problem. (AE A, attachment 6) He also submitted eight reference letters from supervisors, friends, and fellow AA members. Their consensus is that Applicant has demonstrated a desire to achieve sobriety. He regularly

attends AA, communicates with his sponsor frequently, and is a grateful contributor to AA. He has been willing to incorporate the 12 steps of the AA program into his daily life. He is considered to be a valued employee who does a great job as a coworker, husband, father, and friend. He has made great strides over the past few years, and is in a good place professionally and personally. (AE A, attachments 5a – 5h)

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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), 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

From 1988 to about March 2020, Applicant consumed alcohol, at times in excess and to the point of intoxication. (SOR ¶ 1.a) In October 2014, he was charged with intoxicated endangerment/unattended child under eight years old. (SOR ¶ 1.b) In November 2018, he was diagnosed with alcohol dependency in partial remission (SOR ¶ 1.c), and in December 2018, he was diagnosed with alcohol use disorder.

The concern under this guideline 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 following disqualifying conditions are supported by the facts in this case:

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;

AG ¶ 22(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

AG ¶ 22(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.

The following mitigating conditions are potentially applicable:

AG ¶ 23(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;

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;

AG ¶ 23(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

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.

AG ¶ 23(a) is partially established by the evidence. The only alcohol-related legal incident happened in 2014, thus, it is not recent. However, Applicant's most recent alcohol consumption occurred in March 2020, and it could be considered recent. Notwithstanding, AG ¶¶ 23(b) through 23(d) are fully established by the record evidence. The evidence shows a significant period has passed without recurrence. Applicant has demonstrated a pattern of abstinence, he has continued to participate in AA counseling, and is making satisfactory progress. Under the circumstance of this case, Applicant has demonstrated changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.

Applicant's alcohol-related problems were caused by a difficult marriage and subsequent divorce. After he was charged in 2014 with intoxicated endangerment of his unattended child, he acknowledged his problem and voluntarily sought treatment, which he completed. The source of the stress caused by the deterioration of his marriage apparently has been resolved by divorce and is unlikely to recur. He is now remarried and in a healthy relationship.

The testimonials of the coworkers, supervisors, and friends indicate that Applicant has improved his performance and demonstrated a desire to achieve sobriety. He is considered to be a valued employee who does a great job as a coworker, husband, father, and friend. He has made great strides over the past few years, and is in a good place professionally and personally. Applicant recognizes that he will not receive a second chance if he abuses alcohol again.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline G in my whole-person analysis and considered the factors in AG ¶ 2(d). Applicant was sincere, candid, remorseful, and credible at the hearing. He is highly regarded by his colleagues and supervisors, who believe that he has overcome his alcohol problem and that it will not recur. He has voluntarily sought and received treatment. He loves his family and his desire to be a good father has helped him abstain from alcohol consumption. A licensed alcohol counselor opined that he did not appear to have an alcohol problem when she last evaluated him in October 2021. After weighing the disqualifying and mitigating conditions under Guideline G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his alcohol consumption.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	WITHDRAWN
Subparagraphs 2.a – 2.b:	Withdrawn

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

JUAN J. RIVERA
Administrative Judge