



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 21-01632

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2022

Decision

MASON, Paul J., Administrative Judge:

The evidence submitted to support alcohol consumption, drug involvement, personal conduct, and criminal conduct, has not been mitigated. Eligibility for access to classified information is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on January 9, 2020. He provided subject interviews (PSI, Item 5) to an investigator from the Office of Personnel Management (OPM) in 2016 and 2020. Item 4 also contains 2019 treatment records, signed by Applicant in August 2021. On September 28, 2021, the Department of Defense (DOD), Defense Counterintelligence Security Agency (DCSA), issued an SOR detailing security concerns under the guidelines for alcohol consumption, criminal conduct, and personal conduct. This case is adjudicated in accordance with Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6,

Defense Industrial Personnel Security Clearance Review Program (January 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017.

Applicant's answer to the SOR is dated November 15, 2021. The Government sent a copy of its File of Relevant Material (FORM, dated March 15, 2022), the Government's evidence in support of the allegations in the SOR, to Applicant on March 28, 2022. He received the FORM on April 11, 2022. At page 6 of the FORM, in bold letters, Department Counsel recommended Applicant file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response was due on May 11, 2022. DOHA received no response. I was assigned the case on August 4, 2022.

Rulings on Procedure

Attached to the March 15, 2022 FORM is Department Counsel's Motion to Amend the SOR, which seeks to add the following allegations to the SOR:

Paragraph 3 (Guideline E):

- b. That information set forth in subparagraph 4.b, below.

Paragraph 4 (Guideline H):

- a. That information as set forth in subparagraphs 2.b and 2.c, above.
- b. The incident detailed in subparagraph 2.b, above occurred while you were granted access to classified information.

Department Counsel recommended that Applicant furnish his updated answers to the additional allegations with his response to the FORM. Applicant provided no response to the FORM and no answers to the additional allegations. I interpret Applicant's failure to answer the additional allegations as a denial of those allegations. The motion to amend the SOR by adding subparagraph 3.b (Guideline E), paragraph 4, and subparagraphs 4.a and 4.b, is granted.

Findings of Fact

The SOR alleges personal conduct, alcohol consumption, drug involvement, and criminal conduct. Applicant admitted the allegations in the original SOR. He provided brief explanations in his answer that the treatment programs, his communication with his family, and his recent marriage, have turned his life around. (November 2021 answer to SOR) His failure to respond to the new allegations set forth in subparagraphs 3.b (Personal Conduct) and 4.a and 4.b (Drug Involvement) is considered a denial of those three additional allegations.

Applicant is 38 years old and recently married. As of November 2021, the date of his answer to the SOR, he was living with his parents at the same address he listed in January 2018. (GE 3 at 9) He earned an associate's degree in January 2007, a bachelor's degree in January 2012, and a master's degree in October 2015. (Item 3 at 13)

Applicant's January 2020 e-QIP indicates that from October 2017 to his current employment in August 2021 (Item 4 at 1, 25), he was a development lead with a defense contractor. From March 2016 to October 2017, he was a software analyst. From May 2003 to March 2016, Applicant was a deputy program manager. He received his security clearance in October 2016. He seeks a continuation of his security clearance. (Item 3 at 14-16, 41-43)

Drug Involvement, Criminal Conduct

Applicant began using marijuana in 2000. He used the drug one or two times a year until he was charged with possession of cannabis and possession of drug paraphernalia in July 2010. (SOR 2.c) (Item 4 at 18) The arresting officer discovered a container with marijuana and a glass pipe inside the car Applicant was driving. He was referred for pre-trial diversion, but did not start the program because he was arrested for driving while under the influence of alcohol (DUI) in September 2010. (SOR 1.c) He pled no contest to the July 2010 drug charges; the charges were dismissed and adjudication was withheld. (Item 9 at 1-5)

In his March 2016 e-QIP, Applicant indicated that he began using marijuana in 2010 (Item 12 at 32), and not in 2000 as he had stated in his August 2016 PSI (item 4 at 18). He was then granted a security clearance in October 2016. (Item 3 at 12)

In March 2017, Applicant was charged with possession of drug paraphernalia. The charging officer found a marijuana grinder, a glass pipe, and marijuana residue in Applicant's vehicle. He denied that any of the items belonged to him, but he admitted he had previously had marijuana in the car. Though he disclosed his March 2017 arrest in his January 2020 e-QIP, he answered "no" to illegal use or involvement with a drug while possessing a security clearance. (SOR 4.b) See Item 3 at 38-39, 41.

Alcohol Consumption, Criminal Conduct

When Applicant was arrested in September 2010 for his first driving while under the influence of alcohol (DUI, SOR 1.c), his blood alcohol concentration (BAC) was .17 and .199. His frequency of consumption during the period was one or two beers every two months. (Item 4 at 19) Applicant's sentence for the DUI included a fine, court-ordered alcohol counseling, and a year of probation until August 2012. (Item 3 at 38) He completed all conditions of the sentence. (Item 4 at 18)

In July 2019, Applicant was arrested and charged with DUI. (SOR 1.b) In September 2019, he was found guilty of the offense and his license was suspended. He was placed on probation for six months and he was required to attend alcohol counseling because of a previous DUI conviction. Applicant received an early discharge from probation in March 2020. (Item 4 at 5, 10-11; Item 6 at 8)

Applicant claimed in his August 2020 PSI that he began drinking alcohol in 2015 when he was 21 years of age. Because the first DUI occurred in September 2010 (SOR 1.c), his claim is not credible. He could not recall his drinking frequency because he had barely had any alcohol in the last 20 years. He did not intend to drink while driving and he was not drinking in August 2020, the time his PSI was taken. (Item 4 at 6)

In his August 2016 PSI, Applicant described his alcohol use as once every two months at social gatherings. He surmised that he became intoxicated at three beers and never drank to intoxication. He did not consider that he had a problem with alcohol. (Item 4 at 19) Applicant indicated by his signature that both the August 2020 and August 2016 PSIs were accurate summaries of information discussed. (Item 4 at 14, 22)

During a court-ordered treatment program at an addiction counseling service from October to December 2019 (Item 4 at 10-11), Applicant was diagnosed with alcohol use disorder (mild). He informed the intake officer about the circumstances leading to his arrest in July 2019 for DUI. He claimed that he had not used alcohol in the period between his first DUI in September 2010 and second DUI in July 2019. He also claimed that he had not used alcohol since his July 2019 DUI. He also maintained that he had used no other drugs. (Item 4 at 10-11)

Throughout the security clearance investigations in 2016, 2020, and during his medical counseling in October to December 2021, Applicant supplied inconsistent information about his drug and alcohol history since 2000. These discrepancies generate damage to the credibility of his current claims concerning his drug and alcohol usage.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Alcohol Consumption

The security concerns of the guideline for alcohol consumption are set forth 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying include:

(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

(d) diagnosis by a duly qualified medical professional of alcohol abuse or alcohol dependence.

Applicant stated he did not begin to drink alcohol until he was 21 (2015), and that he barely consumed any alcohol in 20 years. If he started drinking at the age of 21 (2015), that would be five years after his September 2010 DUI offense. If he had had hardly consumed any alcohol for about 20 years, then his BAC test results should not have been elevated to a level indicating he was under the influence of alcohol in the September 2010 DUI.

The medical records (October to November 2019) contain an intake diagnosis of alcohol use disorder (mild), which was rendered during Applicant's court-ordered treatment at the addictive services treatment program. The records establish AG ¶ 22(d). Applicant made some puzzling statements about his alcohol use during the medical evaluation. He claimed that he only consumed alcohol in September 2010 and July 2019. He asserted that he has consumed no alcohol since July 2019. It is surprisingly coincidental that in both instances when he chose to drink, he committed the DUI

offenses. Furthermore, his claims are inconsistent with his claim that he was drinking alcohol once every two months during the August 2016 period when his PSI was taken.

AG ¶ 23 describes conditions that could mitigate 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 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.

While Applicant's most recent alcohol-related offense occurred almost two years ago, the inconsistencies in his accounts of his alcohol use over the years generates continuing security concerns about his trustworthiness and judgement. AG ¶ 25(a) does not apply.

Applicant contended in his answer to the SOR that the treatment programs, his improved communication, and his recent marriage, helped turn his life around. What is missing from his case in mitigation is independent evidence that reinforces his contentions about the changes in his life. Applicant only receives limited mitigation under AG ¶23(b).

AG ¶ 23(d) applies only in part. Though the record shows that Applicant completed court-ordered counseling, education, and treatment, he has not presented a clear pattern of modified consumption or abstinence. This conclusion results from the conflicting accounts of his alcohol use he provided over the years.

Drug Involvement

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner

inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The SOR and amended SOR cross-alleges Applicant's alcohol consumption and criminal conduct under drug involvement (Guideline H).

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia;
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; and
- (f) any illegal drug use while granted access to classified information or holding sensitive position.

Applicant began using marijuana in 2000. He used the drug one or two times a year until he was charged with possession of cannabis and possession of drug paraphernalia in July 2010. (SOR 2.c) (Item 4 at 18) After his discovery of the marijuana in a container and a glass pipe inside the car Applicant was driving, Applicant was arrested. He was referred for pre-trial diversion, but did not start the program because he was arrested for the DUI in September 2010. He pled no contest to the July 2010 drug charges; the charges were dismissed and adjudication was withheld.

In his March 2016 e-QIP, Applicant indicated that he began using marijuana in 2010 (Item 12 at 32), and not in 2000 as he had stated in his August 2016 PSI (item 4 at 18). He was then granted a security clearance in October 2016. (Item 3 at 12)

In March 2017, Applicant was charged with possession of drug paraphernalia. The charging officer found a marijuana grinder, a glass pipe, and marijuana residue in his vehicle. He denied that any of the items belonged to him, but he admitted he had previously had marijuana in the car. Though he disclosed his March 2017 arrest in his January 2020 e-QIP, he answered "no" to illegal use or involvement with a drug while

possessing a security clearance. The discovery of marijuana and the drug paraphernalia in the vehicle Applicant was driving in 2010 and 2017, establishes AG ¶¶ 20(a) and 20(c). The discovery of the marijuana and drug paraphernalia in Applicant's car in March 2017, along with the fact that he was granted a security clearance in October 2016, establishes AG ¶ 25(f).

AG ¶ 26. Conditions that could mitigate security concerns include:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

While Applicant's most recent drug-related offense occurred more than four years ago, he still denies that the drug paraphernalia and the marijuana residue belonged to him. In addition, Applicant's inconsistent statements about his marijuana use undermines the credibility of those statements and generates continuing security concerns about his trustworthiness and judgement. AG ¶ 26(a) does not apply.

AG ¶ 26(b) has not been fully established. Though Applicant appears to have taken steps to terminate his marijuana use, he presented no documented evidence of severing his ties with drug users. Although he has made productive changes by communicating his problems to his family, the record does not contain independent evidence demonstrating what he has done to enhance the communication any action taken to avoid the environment where drugs are used. Lastly, Applicant did not provide a signed statement acknowledging that future drug use could be grounds for revocation of national security eligibility.

Criminal Conduct

The security concern for criminal conduct is set forth 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.

The potential disqualifying conditions under AG ¶ 31 are:

(a) a pattern of minor offenses, anyone 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 judgment, reliability, and 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 charged, prosecuted or convicted.

Applicant's commission of two DUI offenses and two drug offenses cast doubt on his reliability and trustworthiness.

AG ¶ 32 lists the pertinent mitigating conditions that may be applicable in this case:

(a) so much time has passed since the criminal behavior happened, or it happened under such 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, remorse or restitution, job training or higher education, good employment record, or constructive community development.

AG ¶ 32(a) has not been established. Though Applicant's most recent DUI offense occurred almost two years ago, the drug offenses occurred more than four years ago, he continues to deny he used the marijuana in March 2017, while he possessed a security clearance. He has been less than candid about his alcohol use over the years.

The record contains evidence that Applicant complied with all terms of his sentences and court-ordered treatment and counseling. But the most persuasive evidence of reform and rehabilitation is acceptance of the past adverse conduct and documented efforts to prevent a recurrence in the future. Mitigating evidence under AG ¶ 32(d) is limited.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation or further processing for national security eligibility.

The potential disqualifying conditions under AG ¶ 16 are:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 he may not properly safeguard classified or sensitive information;

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information ...

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Guideline E addresses conduct of a questionable nature, dishonesty, or unwillingness to obey rules and regulations which raise questions about an individual's judgment and ability to protect classified information. Applicant alcohol and drug use, which has independent significance under the criminal conduct guideline, establishes the disqualifying conditions posted in AG ¶¶ 16(c) and 16(d).

The potential mitigating conditions under AG ¶ 17 are:

(c) the offense is so minor, or so much time has passed, or the behavior is 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 and 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

As with the conclusions reached in AG ¶¶ 23(a), 26(a), and 32(a), AG ¶ 17 (c) has not been established. Though the most recent alcohol-related offense occurred in 2019, and the most recent drug offense was in 2017, I am unable to justify with complete confidence that the conduct will not recur. Had Applicant been truthful about his alcohol consumption and accepted responsibility for using marijuana while holding a security clearance, his adverse conduct may have been mitigated by the passage of time.

AG ¶ 17(d) applies on a limited basis to Applicant's acknowledgement of the alcohol-related incidents and completion of court-ordered treatment and counseling, but there is no evidence of voluntarily seeking support to prevent a recurrence of the past alcohol-related conduct. He receives no mitigation for not providing the full story about his alcohol use. He has not accepted responsibility for his marijuana use while holding a security clearance and having a sensitive position.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have carefully evaluated the disqualifying and mitigating conditions under the specific guidelines in the context of the entire record. Applicant is 38 years old and married. He has received three academic degrees in 2007, 2012, and 2015. He was a deputy program manager from 2003 to 2016. Between 2016 and employment with his current employer, he has been a software analyst and a development lead.

On the other hand, Applicant has not been totally honest about his alcohol and drug use during the security investigation. Based on the drug paraphernalia discovered in the search of Applicant's vehicle resulting in the drug charges in March 2017, including Applicant's admission to the charging officer, and the fact that he had a security clearance granted to him in October 2016, it is reasonable to infer that he was using the drug in March 2017 while possessing a security clearance. Following a careful examination of the disqualifying and mitigating conditions under alcohol consumption, criminal conduct, personal conduct, and drug involvement, I conclude that Applicant has failed to sufficiently mitigate the remaining security concerns arising from the guidelines for alcohol consumption, drug involvement, criminal conduct, and personal conduct.

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.c: | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 2.a-2.c: | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 3.a, 3.b: | Against Applicant |
| Paragraph 4, Guideline H: | AGAINST APPLICANT |

Subparagraphs 4.a, 4.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 security interests of the United States to grant Applicant access to classified information or a sensitive position. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge