



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



In the matter of:)	
)	
)	ISCR Case No. 20-02741
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant continues to drink alcohol despite an evaluation of alcohol dependence, and he continues to remain on parole related to his most recent conviction for driving while intoxicated. Under these circumstances, Applicant has failed to mitigate the security concerns. Clearance is denied.

Statement of the Case

On February 3, 2021 the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (alcohol consumption), and Guideline J (criminal conduct). The DOD CSCAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication on or after June 8, 2017.

In an undated response, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.e, 1.f, and 2.c., and requested a hearing. On April 5, 2022, the case was assigned to me. DOHA issued a notice of video-conference hearing on September 8, 2022, scheduling the hearing for September 21, 2022. Applicant waived his right to 15-days' notice of hearing. The hearing was held as scheduled. I considered eight government exhibits, identified as Government Exhibit (GE) 1 through GE 8, and considered Applicant's testimony. In addition, at the Government's request, I took administrative notice of two documents, identified as Hearing Exhibit (HE) I and HE II. At the close of the hearing, I left the record open to afford Applicant the opportunity to submit exhibits. Within the time allotted, he submitted a supplementary closing argument and an exhibit. I incorporated these documents into the record as Applicant Exhibit (AE) A and AE B.

Findings of Fact

Applicant is a 38-year-old single man. He finished college in 2006, double majoring in finance and statistics, and in 2008, he earned a master's degree in operations research. He has been working for his current employer, a defense contractor, since 2019, as a data engineer. (Tr. 24)

Applicant is highly respected on the job. According to the director of the government agency that Applicant serves, he is a man of character and integrity, and an impressive worker. (AE B)

Applicant has consumed alcohol, at times in excess and to the point of intoxication, since about 2014 to the present. (Tr. 28) In April 2014, he was arrested and charged with driving under the influence of alcohol (DUI). (Answer at 1) When the police stopped him, he was on the way home from a pub where he had consumed a few beers. (Tr. 38) The police officer administered a sobriety test, and Applicant's blood/alcohol content registered .15 percent. (Tr. 41) Subsequently, Applicant was convicted and sentenced to six months in jail with five months and 25 days suspended, ordered to pay a \$2,500 fine, and ordered to attend alcohol education classes. (Tr. 43) Moreover, the court suspended his driver's license for a year. (Tr. 43)

In March 2019, Applicant was arrested and charged with DUI after an evening of drinking alcohol and bar hopping. (Tr. 50-52) Subsequently, he was convicted and sentenced to ten days in jail and 29 days of house arrest, fined \$2,600, and placed on probation for 11 months and 29 days. (GE 8 at 6) Moreover, the court suspended his license for five years, ordered him to complete in-patient treatment and 50 hours of community service, and ordered him to install an ignition interlock device on his automobile. (Tr. 43-45, 60, GE 8 at 6; GE 4)

Applicant's inpatient treatment program, lasting from June 28, 2019 to July 8, 2019, consisted of a combination of individual and group counseling. (Tr. 45: GE 6 at 1) During the program, Applicant admitted to drinking to intoxication three days per week. (GE 7 at 1) Moreover, he disclosed that his history of alcohol abuse caused strife in his personal

relationships. (GE 6 at 1; GE 7 at 9) He was diagnosed with “severe alcohol dependency.” (GE 6 at 5)

Applicant successfully completed the treatment program, and was discharged after 14 days. (GE 6 at 5) The clinician who worked with him during the treatment program recommended that he work with a 12-step support program, such as Alcoholics Anonymous, and attend follow-up aftercare appointments. (GE 6 at 2, 5) Applicant’s counselor characterized his prognosis as fair to moderate “provided [he] adheres to the recommendations of the treatment team and continues working a program of recovery and abstain from mood altering chemicals, including alcohol.” (GE 6 at 2)

Applicant remained abstinent from alcohol for approximately one month after discharge from in-patient treatment in June 2019. (Tr. 75) He resumed drinking alcohol in August 2019, then stopped in approximately February 2020. (GE 2 at 11) Some time later, Applicant resumed alcohol consumption. He currently drinks two to three alcoholic drinks per week on weekends, and he is not enrolled in a 12-step support program. (Tr. 76)

In October 2019, Applicant was arrested and charged with Driving While License Revoked with Knowledge, and Operating a Motor Vehicle without a Required Ignition Interlock Device. (Answer at 1) In February 2020, he pleaded guilty in state court, and was sentenced to 29 days of house arrest. (Tr. 80) In June 2020, Applicant was charged in federal court for the same offense. (Tr. 80)

Applicant characterizes his decision to drive on a suspended license as a “desperate decision” after months of commuting 16 miles roundtrip to work by bicycle to a base that did not consistently allow ride sharing or cab access. (Tr. 78) In addition, he admits that he had not installed an ignition interlock device at the time of his arrest, explaining that he considered this requirement redundant, having already been prohibited totally from driving. (Tr. 77)

In January 2021, Applicant successfully applied to the state’s motor vehicle administration for a reinstatement of his driver’s license on a restricted basis. (Answer at 2) Under the reinstatement, he is allowed to commute to work, drive for educational purposes, and drive to church. (Answer at 2) The state motor vehicle authority’s authorization for Applicant to drive under restricted conditions stated that he must obtain an ignition interlock device before the restrictions were relaxed. (Answer at 2)

Applicant contends that he “does not have an Alcohol Dependency problem” because he has none of the associated risk factors. (AE A) He provided no evidence from either a physician, counselor, or certified alcohol clinician that his diagnosis is in remission.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484

U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge's overall 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 ¶ 1(d) 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. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline G: Alcohol Consumption

Under this 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." (AG ¶ 21) Applicant's history of alcohol abuse

and alcohol-related arrests, and diagnosis of severe alcohol dependence triggers the application of the following disqualifying conditions under 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;
- (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 continues to drink alcohol and he is not enrolled in a 12-step rehabilitation program, in contravention of the discharge recommendations of the clinician at the facility where he received inpatient treatment. Under these circumstances, AG ¶ 22(e), "the failure to follow treatment advice once diagnosed," and AG ¶ 22(f), "alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder," also apply.

The following mitigating conditions under AG ¶ 23 are potentially applicable:

- (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.

Although Applicant attended an inpatient treatment program, he did not enroll in a 12-step rehabilitation program, as recommended, after completing the program. He quit drinking alcohol after completing an intensive inpatient treatment program, but relapsed a month after completing the program. He quit drinking a few months later, only to resume use. Currently, he drinks alcohol, in contravention of the recommendations of his discharge counselor. Applicant's contention that he is not alcohol dependent is unsupported by any record evidence. Under these circumstances, none of the mitigating conditions, set forth above, applies.

Guideline J: Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness [and] by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) Applicant’s history of DUI convictions, together with his conviction for probation violations trigger the application of AG ¶ 31(b), “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct”

The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has passed since the criminal behavior happened . . . that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or 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 has a good employment record, as indicated by the strong recommendation from the head of the government agency that he serves as a contractor. This constitutes evidence of successful rehabilitation, triggering the application of AG ¶ 20(d).

Conversely, although Applicant completed in-patient treatment per the terms of his probation, he did not comply with his discharge instructions, and, as of the time of the arrest for probation violation in 2020, he had not installed an ignition interlock device on his vehicle. Although he has since successfully applied for an upgrade from a completely restricted license to a partially restricted license, his driving privileges are still overseen by the state because of his history of alcohol-related convictions. Under these circumstances, neither AG ¶ 32(a), nor AG ¶ 32(b) apply

Whole-Person Concept

I considered the whole-person factors in my analysis of the disqualifying and mitigation conditions, and they do not warrant a favorable conclusion. I conclude Applicant has failed to mitigate the 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:

AGAINST APPLICANT

Subparagraphs 1.a – 1.f:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a – 2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge