



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



In the matter of:)
)
) ISCR Case No. 22-00323
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/13/2023

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is denied.

History of the Case

On June 13, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On August 4, 2022, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). He admitted both the allegations, provided no explanations, and did not attach any documentary evidence to his Answer.

On November 14, 2022, DOHA notified Applicant that the hearing was scheduled for December 5, 2022, via video teleconference. I convened the hearing as scheduled. At the hearing, I marked my November 9, 2022 case management order as Hearing Exhibit (HE) I and Department Counsel's September 1, 2022 discovery letter as HE II. Government Exhibits (GE) 1 through 3 were admitted without objection, and Applicant testified. Applicant did not proffer any documentary evidence. I received the hearing transcript (Tr.) on December 14, 2022, and the record closed.

Findings of Fact

Applicant is 42 years old. He has been married to his wife since 2018, and he has a 12-year-old stepson, whom he has raised since his stepson was a toddler. He attended technical school courses during his junior and senior years of high school, and in 2000, he received a high school diploma from the technical school. He has been employed by a DOD contractor since March 2020. He works in production control and requires a security clearance for his position. His interim secret clearance was revoked when the SOR was issued in June 2022, and this is his first security clearance application. (GE 1-3; GE 2; GE 3; Tr. 10-11, 17-20)

Applicant told the government investigator during his August 2020 background interview that he spent most of his time between 1999 (when he was 18) and 2013 either working or partying. His typical week consisted of going out to a bar three to four nights, where he would consume seven to eight beers and have a few shots. If he was not at the bar drinking, he was at home smoking marijuana. His testimony described a different drinking pattern between 1999 and approximately 2015, when he worked night shifts in the restaurant industry. He testified that during this period, he typically consumed one or two cocktails at his workplace after his shifts ended, and then drove to his home, where he would consume more alcohol. He would drink, "Maybe a 6-pack [of beer] and a couple of shots or, you know, maybe more shots and not so many beers." It typically took eight to ten drinks for him to feel intoxicated, and this pattern occurred five to six times a week. (GE 2; Tr. 21-26, 41-42)

In 2013, Applicant experienced "some very, very low points" in his life. He quit using drugs after he borrowed money for his drug use and realized "it was time to change [his] life." He testified that he quit using drugs, stopped drinking alcohol as heavily, but he continued to consume between a six-pack to a 12-pack of beer two to three times a week at home. However, during his October 2021 psychological evaluation, mentioned below, he stated that after he discontinued using drugs in 2013, his alcohol consumption increased rather than decreased. (GE 2; GE 3; Tr. 26-27)

Applicant started taking antidepressant medications in 2013, and he was prescribed testosterone medication in 2018. In 2020, he started to experience high and low mood swings. He drank more during the downswings, which occurred approximately two to three times a month. Additionally, during the downswings, he often drank to the point that he blacked out, and he was drinking not just to drink, but to forget. (GE 3; Tr. 24-25, 29-32)

At the time of Applicant's August 2020 interview with the investigator, he initially described his alcohol consumption as one to two drinks a few times a week. Upon further questioning regarding the time he was last intoxicated prior to the interview, he admitted that he was intoxicated the previous weekend. It had been his birthday, and he drank 10 to 12 beers and a few shots. He ultimately admitted that he consumed alcohol at this level two or three times a month and that he was experiencing alcohol-related blackouts two or three times a month. (GE 2; Tr. 28-29)

In October 2021, Applicant was referred for an independent psychological evaluation by the DOD Consolidated Adjudication Facility (CAF) for the purpose of answering the following question: "Does the [Applicant] have any medical, psychiatric, emotional, or substance use condition which could impair his judgment, reliability, or trustworthiness." In reaching her opinion, the licensed psychologist (LP) conducted a two-hour interview and administered the Psychological Assessment Inventory (PAI) and the Substance Abuse Subtle Screening Inventory (SASSI-4). The LP also reviewed and relied upon documents provided by the CAF, including Applicant's August 2020 interview and his 2018 security clearance application (SCA). The LP determined that Applicant met the criteria for Alcohol Use Disorder, Severe, and concluded that his prognosis was guarded to fair. She recommended that he refrain from consuming shots of hard liquor and continue to limit his drinking. (GE 3)

Applicant told the LP that, in October 2021, he was drinking three times a week, primarily on the weekends, and consuming a maximum of four to five beers. He blacked out from drinking three or four times after his August 2020 interview, and the last time he blacked out was in approximately June 2021. During his blackouts, he had no memory of what occurred until he woke up in the morning. (GE 3)

Applicant testified that he stopped drinking just before the DOD evaluation. However, at the hearing, he disclosed that he consumes "[m]aybe a beer or two here and there." He testified that he had not been intoxicated since October 2021, and the most he has consumed at one time since the 2021 evaluation is four beers. Before the hearing date, he consumed two beers, at home, eight or nine days earlier over the weekend. He currently drinks alcohol two to three times a month. (Tr. 26-40)

At the hearing, Applicant admitted he reduced his alcohol consumption in 2021, because he was afraid of losing his wife and stepson. He also told the LP that he reduced his drinking, because he did not want to risk hurting himself or anyone else. When Applicant changed his level of alcohol consumption, he started going to the gym more, helping his stepson practice baseball, and took up woodworking as a hobby. Applicant disclosed to the government investigator that his wife expressed concern that he becomes angry when he is intoxicated. (GE 2; GE 3; Tr. 36-40, 44)

Applicant has never attended an alcohol-treatment program or Alcoholics Anonymous (AA) meetings. He did not obtain an updated evaluation prior to the hearing. He received a copy of the DOD evaluation in September 2022, and at that time he considered discontinuing all consumption of alcohol, because he was concerned about losing his job and his clearance. He stated, "I feel like I've stopped drinking to the

point where I don't put myself in danger. I don't put anybody else in danger. I'm not blacking out. I'm not drinking while I'm driving." In October 2020, he told the government investigator that he was addressing his alcohol issues on his own, and he was on day four of a 75-day no-alcohol pledge. He hoped that after he finished the pledge, he would have a better handle on his alcohol consumption. In October 2021, he told the LP that he discontinued the 75-day challenge after approximately 10 days due to the challenge of not eating sugar. (GE 2; GE 3; Tr.40, 44-45, 47-48)

During cross-examination, Applicant was asked about his history of driving while intoxicated. He claimed that if he had ever driven over the legal limit, it was after consuming two to three drinks when he was younger and still working in the restaurant industry. However, he told the DOD evaluator that he had driven while intoxicated two years prior to his October 2021 evaluation. He has never been arrested for alcohol-related issues. The issue regarding Applicant driving while intoxicated was not alleged in the SOR and will not be considered as disqualifying conduct; however, it may be considered in assessing mitigation and whole-person applicability. (Tr. 3, 20, 46)

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 expresses the security concern 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.

Applicant's admissions and the documentary evidence establish the following two disqualifying conditions under 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

(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.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Two 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 good judgment; and

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant has admitted to a history of consuming alcohol in excess and to the point of intoxication from 1999 to at least October 2021. He experienced multiple blackouts between 2000 and June 2021, and he drove under the influence of alcohol as recently as 2019. In August 2020, he disclosed during his interview with a government investigator that his alcohol consumption was negatively affecting his relationship with his wife and causing him to experience blackouts. As a result, he was referred for a psychological evaluation, and he was subsequently diagnosed by a duly qualified professional with Alcohol Use Disorder, Severe.

Despite Applicant's diagnosis, he continues to consume alcohol, in a reduced amount, and denies that he has been intoxicated or "blacked out" since October 2021. He has not sought treatment or attended AA, nor did he provide documentation or corroborating testimony of his modified behavior. Other than his testimony, he presented no evidence of a pattern of responsible use of alcohol. Given his lengthy history of abusing alcohol, his inconsistent testimony regarding driving under the influence of alcohol, and his relatively short period of modified behavior, I have lingering concerns regarding his suitability to hold a security clearance. AG ¶¶ 23(a) and 23(b) do not 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 have incorporated my comments under Guideline G in my whole-person analysis.

Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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, Alcohol Consumption: AGAINST Applicant

Subparagraphs 1.a-1.b: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge