



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



In the matter of:)
)
) ISCR Case No. 22-00991
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

01/10/2024

Decision

PRICE, Eric C., Administrative Judge:

Applicant mitigated security concerns raised under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on April 6, 2022. On December 7, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines G and J. This action was taken under Executive Order (Exec. Or.) 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).

On January 5, 2023, Applicant responded to the SOR, and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2023. On

October 23, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 27, 2023. I convened the hearing as scheduled. Department Counsel offered six exhibits marked as Government Exhibit (GE) 1 through 6. The Government's exhibit list and pre-hearing disclosure letter were marked as Hearing Exhibit (HE) I and II. Applicant testified and offered two exhibits marked as Applicant Exhibit (AE) A and B. There were no objections, and all exhibits were admitted in evidence. DOHA received the transcript (Tr.) on December 8, 2023.

Findings of Fact

The SOR alleges Applicant was arrested for driving under the influence of alcohol (DUI) in May 2014 and arrested for driving while intoxicated (DWI) in February 2020, and that he pled guilty to both offenses. (SOR ¶¶ 1.a-1.b) His DUI and DWI were cross-alleged as criminal conduct under Guideline J. (SOR ¶ 2.a) In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.b, but did not specifically admit or deny the allegation in SOR ¶ 2.a. During the hearing, he admitted the allegation in SOR ¶ 2.a. His admissions are incorporated in my findings of fact. (Answer; Tr. 7-8)

Applicant is a 42-year-old aircraft mechanic employed by a defense contractor since May 2019. He was employed by a different defense contractor from October 2017 to May 2019. He served in the United States Air Force from October 2002 to October 2017 and was honorably discharged as a staff sergeant (E-5). He has served in the Air Force Reserve or Air Guard since October 2017 and was promoted to master sergeant (E-7) in July 2022. He has been awarded numerous awards and decorations including the Air Force Achievement Medal (three oak leaf clusters) and Air Force Good Conduct Medal (three oak leaf clusters). He successfully completed extensive military training and education and has made multiple overseas deployments. He has held a security clearance since 2003. (GE 1; AE A-B; Tr. 23-27, 48-52, 54-56)

Applicant received an associate degree in November 2012. He has taken college courses since September 2018 and is pursuing a degree in aviation science management. He was married from October 2002 to May 2006, and has one child, age 20. (GE 1; AE B; Tr. 25-26, 52-54)

In May 2014, Applicant was stopped by a local police officer after he was observed erratically operating a vehicle. He failed a field sobriety test, and a breathalyzer registered a blood-alcohol content (BAC) of 0.152. He was arrested for DUI. He pled guilty in a state court and was placed on probation for six months, fined, had his driver's license suspended for 90 days, and had an ignition interlock device installed in his vehicle for six months. He was required to complete an Air Force alcohol, drugs, and abuse prevention treatment course, and received a letter of reprimand from his commander. (Answer; GE 1-2; AE B; Tr. 20-21, 28-38, 56-57)

Before his 2014 arrest, Applicant had consumed an unrecalled quantity of alcohol in a bar. He was heartbroken after learning his prospective fiancé had been unfaithful to him. He took a taxi home from the bar, but after arriving at his residence realized he had

lost his cellphone. He then made the admittedly poor decision to get into his truck and go to look for his cellphone. He pulled onto a road in front of a police car and proceeded to the left turn lane. When the left turn light turned green, he remained stationary for about five seconds, and the police officer pulled him over. (Tr. 20-21, 28-38, 56-57; AE B)

In February 2020, Applicant was stopped by a local police officer after he was observed driving the wrong way on an access road. He told the police officer that he was not familiar with the area, had three or four drinks that night, and that he had stopped drinking 60-90 minutes before being pulled over. The police officer attempted to administer a field sobriety test, but Applicant disputed some procedures and did not perform parts of the test, so the officer interpreted his actions as a refusal. Applicant was arrested for DWI. He was administered two breathalyzers and registered a blood-alcohol content (BAC) of 0.147 and 0.150. In March 2021, a deferred adjudication was entered, and the charges were dismissed pursuant to the deferred adjudication in May 2022. He was fined \$500 and had an ignition interlock device placed on his vehicle. He completed a DWI driver education program in May 2020, a state-mandated online alcohol education program in October 2020, and a 16-hour program in May 2022 that included counselling. (Answer; GE 3-4; Tr. 21, 38-44, 58-59)

Applicant said he went out with friends for a few drinks and to reflect on his father's death. His friends wanted to go to a bar, and Applicant drove them. He consumed several drinks over six or seven hours and said his last drink, a mixed drink, was stronger than he had anticipated. After his DWI arrest, he refocused his life, disassociated himself from friends who drank excessively and "party mode" environments. (Tr. 61) He abstained from the use of alcohol from February 2020 until June 2022. Since June 2022 he has occasionally consumed one to three beers or seltzers at social events, said that he has not been intoxicated, and no longer drinks hard liquor. He said he has not driven after consuming alcoholic beverages since February 2020 and has never been intoxicated at work. (AE B; Tr. 21, 38-47, 58-62)

Character letters from two of Applicant's former supervisors and long-term colleagues praised his work ethic, expertise, positive attitude, trustworthiness, honesty, integrity, loyalty, judgment, character, and favorable security clearance history. (AE A at 3-5) A character letter from one former supervisor, an Air Force Major, noted his two DWIs were out of character, that he was ashamed of his behavior, has owned up to his mistakes and worked to bounce back. (AE A at 3-4) Character letters from four of Applicant's colleagues and long-term friends commented favorably on his work ethic, leadership, expertise, loyalty, trustworthiness, compassion for others, commitment to mission and country, suitability for a security clearance, remorse for his alcohol-related incidents, and his commitment to sobriety. (AE A at 6-9) Applicant's girlfriend of about 18 months, a government employee and former spouse of an alcoholic, wrote that he disclosed his two DUIs on their first date and is remorseful for his actions, does not consume alcohol if driving, and consumes no more than two drinks during occasional social interactions. She said he is responsible, has earned her trust, and always tries to take care of others. (AE A at 2)

I found Applicant's responses and demeanor at the hearing to be credible and consistent with someone who was reliably telling the truth. After reviewing the entire record, I find that his hearing testimony is corroborated by documentary evidence submitted by the government and his own exhibits. He credibly responded to all questions and was keenly aware of the significance of additional alcohol-related incidents or misconduct.

Policies

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See EO 10865 § 7.

"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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

Analysis

Guideline G, Alcohol Consumption

The security 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.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying condition 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.

The following mitigating conditions under AG ¶ 23 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.

AG ¶¶ 23(a), (b), and (d) are established. Applicant's alcohol-related incidents were infrequent, occurred more than three and nine years ago, and are unlikely to recur. He is sincerely remorseful for his errors in judgment and dedicated to not repeating those mistakes. He successfully completed probation, required alcohol education and counseling. He has disassociated himself from alcohol-abusing acquaintances and has demonstrated a clear and established pattern of abstinence and of modified alcohol consumption.

Guideline J, Criminal Conduct

The security concern under this guideline is set out 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 record evidence including Applicant's admissions establish the following disqualifying conditions under AG ¶ 31:

(a) a pattern of minor offenses, any one 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, or 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 formally charged, prosecuted, or convicted.

Two mitigating conditions under AG ¶ 32 are potentially applicable in this case:

(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.

AG ¶¶ 32(a) and (d) are established for the reasons set out in the above discussion of AG ¶¶ 23(a), (b) and (d).

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 the 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 Guidelines G and J in my whole-person analysis. I considered Applicant's age, military

service, work history, security clearance history, character letters, and modification of his consumption of alcohol. Applicant was sincere and credible, and he understands the significance of any additional alcohol-related incidents or misconduct.

After weighing the disqualifying and mitigating conditions under Guidelines G and J, 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 and criminal 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:	FOR APPLICANT
Subparagraph 1.a-1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge