



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



In the matter of:)
)
) ISCR Case No. 23-00894
)
)
Applicant for Security Clearance)

Appearances

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

March 4, 2024

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On June 23, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On July 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. The action was taken 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 19, 2023, and July 28, 2023. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On October 5, 2023, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing twelve Items, was mailed to Applicant and received by him on October 27,

2023. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 12, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 12.

Findings of Fact

Applicant is 52 years old. He is married and is a step-father. He has a high school diploma. He is employed by a defense contractor as a General Laborer. He is seeking to obtain a security clearance in connection with his employment. He has no military service.

Applicant admits that he is a recovering alcoholic, and his alcoholism is common knowledge. He knows that he cannot safely consume any amount of alcohol. He stated that he has no plans of ever drinking again. He does not want to consume alcohol in the future, and he will continue to fight his battle with alcoholism. (Government Exhibit 3.)

The SOR highlights Applicant's extensive history of alcohol abuse and criminal conduct. From about August 1991 to at least July 2022, he has consumed alcohol at times to the point of intoxication, and on many occasions resulting in criminal violations. Applicant admits to each of the allegations set forth in the SOR. (Applicant's Answer to SOR.)

Applicant started drinking alcohol at the young age of 10. He sporadically used alcohol from that time until he was 15. At the age of 15, he drank to the point of intoxication for the first time. From that time on, he consumed beer and liquor with his friends mostly on the weekends. He would drink in social settings and obtain the alcohol from family or older friends. By the age of 20, he was arrested and charged the first time for Driving Under the Influence of Alcohol. Following this arrest, he had a period of sobriety for about 2 and a half years. Since that period of sobriety, he has had off and on period of sobriety followed by what he describes as "benders". He would abstain from alcohol use for six to nine months and then relapse. When he relapsed, he would go on "benders" where he would drink heavily, on a daily basis, for weeks. He would consume twenty or more beers per day and be drunk all day, every day. He would drink until his body could not handle anymore. (Government Exhibit 3.)

Applicant's excessive alcohol abuse has resulted in a multitude of criminal arrests, charges, and convictions. Applicant was arrested in about August 1991, and charged with Driving While Intoxicated for the first time, Simple Assault, and Criminal mischief. In July 1999, he was arrested and charged a second time for Driving under the Influence of Drugs/Liquor, excess alcohol concentration. In November 2002, he was arrested and charged with Simple Assault, (Domestic Violence) while under the influence. In April 2003, Applicant was arrested and served a temporary order of protection while under the influence of alcohol. In May 2006, Applicant was arrested

and charged with misdemeanor spouse battery while visibly intoxicated. In June 2012, Applicant was charged with criminal threatening based on an in-house warrant due to an incident involving alcohol. In August 2013, Applicant was arrested and charged a third time with Driving While Intoxicated. In May 2014, Applicant was arrested and charged a fourth time with Reckless Operation of a vehicle, while under the Influence. In 2015, Applicant was arrested and charged a fifth time with Driving Under the influence. In November 2017, Applicant was arrested and charged with Violation of a Protective Order While Under the Influence. (Government Exhibits 4, 5, 6, 7, 8, 9, and 12.)

Applicant has also been arrested and charged for criminal violations that were not alcohol related. In September 2000, he was arrested and charged with False Personation, of a police officer; and Operating Under Suspension, driving his vehicle after his license had been suspended. In August 2001, he was arrested and charged with Simple Assault, Resisting Arrest or Detention, and Obstructing Government Administration. (Government Exhibits 10 and 11.)

Following a month long “bender”, Applicant voluntarily entered an alcohol treatment program from December 2021 through January 2022. There he received inpatient treatment for a condition diagnosed as Alcohol Use Disorder, Severe. During his treatment, he was advised to completely stop consuming alcoholic beverages. Against the treatment advice and recommendation, Applicant resumed drinking alcohol six months following his treatment. In July 2021, Applicant relapsed and started drinking again. In August 2022, he checked himself into treatment again. He again received treatment for his Alcohol Use Disorder, Severe condition. (Government Exhibit 3.)

During his subject interview, Applicant explained that he would usually go on benders when he did not have a job lined up. He used to work in the steelworkers/ masonry field and it was common for workers to have a drink of alcohol at lunch or drink heavily after work. It was considered part of the culture. Applicant stated that he generally drinks at home when he has no plans. (Government Exhibit 3.)

Applicant stated that his drinking problem was known and DoD was aware of his criminal record when he was issued a temporary or interim security clearance. He states that he is a man of integrity and honesty. He does not lie, cheat, or steal. He loves his country and is a proud American and Step-Dad. (Applicant’s Answer to SOR.) Applicant submitted little evidence in mitigation, as he failed to respond to the FORM.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 2(b) 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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 whether the individual is 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;

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder.

In addition to other alcohol related arrests, Applicant was arrested, charged and convicted on five separate occasions for DUI or Reckless Driving While Under the Influence of Alcohol. These incidents raise security concerns under AG ¶¶ 22(a), 22 (c), 22(d), 22(e), and 22(f), set forth above.

AG ¶ 23 provides conditions that could mitigate alcohol consumption 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 good judgment;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as

participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

None of the mitigating conditions are applicable here. Applicant is an alcoholic who is in the midst of battling his addiction. He has a history of benders and numerous periods of abstinence followed by numerous periods of relapse. He claims that his last use of alcohol was in August 2022. If this is so, Applicant has been sober for about 14 months. He is commended for his efforts and encouraged to continue living a sober lifestyle. Given his 30 years of excessive alcohol consumption, however, more time in sobriety is needed in order to show the Government that he can be trusted and that he will not return to his old ways. Applicant must continue to show that he can maintain sobriety and that future misconduct is unlikely to occur. At this time, Applicant has failed to meet his burden to mitigate his alcohol consumption security concerns.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (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 judgement, 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.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. None of the mitigating conditions are applicable.

- (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.

Applicant's extensive criminal record listed above shows a pattern of poor judgment, unreliability, and untrustworthiness. His numerous arrests, charges, and convictions demonstrate a failure to comply with the law over many, many, years. In totality, his misconduct calls into question his ability to follow rules, laws, and regulations. On the other hand, Applicant has recently acknowledged the seriousness of his alcohol condition, and has taken some steps to address his problem. He contends that he has been sober this time for 14 months. He is commended for this effort. However, given his criminal history, involving numerous alcohol-related arrests, coupled with the extent of his alcoholism, more time is needed to show the Government that he can remain alcohol free without difficulty. At this time, his past history shows that he is not sufficiently reliable and trustworthy to access classified information. His many violations of the law give rise to serious concerns about his judgment, reliability, and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and J, in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption and Criminal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.n.	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a through 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 national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge