



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02064
)
 Applicant for Security Clearance)

Appearances

For Government: Aubrey W. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on September 29, 2021. On September 29, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and J. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 9, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on November 30, 2023, and sent a complete copy of the file of relevant material to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. A duplicate copy of the FORM was sent to him on January 9, 2024, which he received on the same day. He did not respond to the FORM. The case was assigned to me on April 2, 2024.

Evidentiary Issues

The SOR, transmittal letter, and Applicant's answer to the SOR are the pleadings in the case (FORM Items 1-3). FORM Items 4 through 10 are the Government's evidence supporting the allegations in the SOR.

The FORM included a summary of a personal subject interview (PSI) conducted on January 11, 2022. (FORM Item 5) The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Items 4 through 10 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 61-year-old senior technical specialist employed by a defense contractor since April 2002. He served on active duty in the U.S. Air Force from May 1981 to December 1992 and received an honorable discharge. He married in April 1989 and divorced in November 1994. He remarried in March 1995, and divorced in February 2005, remarried in March 2005, and divorced in December 2018. He has three children, ages 20, 32, and 34. He has held a security clearance since January 1982.

On March 11, 2017, Applicant drove his daughter, then 13 years old, to an amusement park after consuming alcohol at home. He fell while walking at the amusement park and was injured. Local bystanders called the sheriff's department. Applicant did not cooperate when questioned and when asked to take a field sobriety test. He was arrested and charged with public intoxication and child endangerment. He pleaded no contest at his trial and was ordered to attend 52 sessions of Alcoholics Anonymous (AA), attend 40 weeks of parenting classes, and enroll in a Mothers Against Drunk Driving program. He was placed on probation for 48 months. (FORM Item 5 at 1-2; FORM Item 7 at 1-3)

On April 1, 2017, Applicant was stopped by a sheriff's deputy because he was swerving and failing to keep in his lane of traffic. He declined to participate in a field sobriety test. He was arrested and taken to a hospital for a blood-alcohol test. His blood-alcohol content was .21%. He was jailed overnight and charged with driving under the influence (DUI). In September 2017, he pleaded no contest. He was ordered to complete a nine-month alcohol awareness class, fined \$1,900, and placed on probation for 36 months. (FORM Item 5 at 2; FORM Item 7 at 3-4; FORM Item 8; FORM Item 9)

On January 29, 2020, Applicant was arrested for DUI. He spent two days in jail and then was released on bail. On October 28, 2020, he pleaded no contest. He was ordered to participate in an 18-month alcohol-awareness program and placed on probation for 60 months. (FORM Item 5 at 2; FORM Item 10)

Applicant disclosed his record of alcohol-related convictions in his SCA and confirmed them when he was interviewed by a security investigator. (FORM Item 4 at 26-30) In his answer to the SOR, he explained that his excessive drinking began while he was in a deteriorating marriage, in which his wife of 10 years began running marathons and ultra-marathons around 2010, typically leaving their home on Fridays and not returning until late on Sundays. As a "running widower," he increased his alcohol consumption until it became a problem. After his first two arrests, he took up running with his wife, but after about two years, his wife left him for one of her running partners.

After Applicant and his wife separated, Applicant retained physical custody of their youngest daughter so that she would not need to change schools. Applicant was working night shifts, from 4:00 p.m. to 1:00 a.m. He would arrive home at about 2:00 a.m., try to sleep until 6:30 a.m., take his daughter to school, try to sleep from 8:00 a.m. to 1:30 p.m., bring his daughter home, and leave for work at 3:00 p.m. Much of the time, he was unable to relax and fall sleep, and he resorted to using alcohol to alleviate his anxiety and insomnia. In January 2020, his work schedule increased to a 10-hour night shift. His third alcohol-related incident occurred when he fell asleep while driving home from work. In his answer to the SOR, he stated that he was involved in a single-car accident. In his PSI, he stated that he was stopped by the highway patrol for a reason he could not recall. (FORM Item 5 at 2).

In January 2022, Applicant told a security investigator that he stopped consuming alcohol in July 2021. (FORM Item 5 at 3) In his SOR response, he pointed out that he will have abstained from alcohol for four years as of January 2024, and he stated that the stressors that led to his alcohol problems no longer exist. He submitted no evidence of voluntary counseling or treatment for alcohol abuse or insomnia.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The

President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.” *Egan* at 531.

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 in the FORM establish the following disqualifying conditions under this guideline:

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; and

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.

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 23(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; and

AG ¶ 23(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.

The first prong of AG ¶ 23(a) ("so much time has passed") focuses on whether the conduct was recent. There are no bright-line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

The evidence reflects that Applicant's last alcohol-related incident was in January 2020, but he told a security investigator that he did not stop consuming alcohol until July 2021. (FORM Item 5 at 3) Nevertheless, the period from July 2021 to the present is a "significant period of time." Applicant has divorced and is no longer in an anxiety-

producing relationship. However, his marriage ended in December 2018, well before the incident in January 2020. Furthermore, the four years without alcohol-related incidents must be considered in the context of maladaptive alcohol use beginning at some time after his marriage started to deteriorate around 2010 and continuing until his arrest in January 2020. Applicant has submitted no evidence of counseling, AA participation, or other support measures. He is still on probation. He has submitted no evidence of work performance, or community involvement. I conclude that AG ¶ 23(a) is not established.

AG ¶ 23(b) is not established. Applicant has acknowledged his maladaptive alcohol use, but he submitted no evidence of voluntary counseling, treatment, AA participation, or other actions to avoid relapse. I am not convinced that he will not relapse when relieved of the pressure of being on probation.

Guideline J, Criminal Conduct

The 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.”

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 31(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; and

AG ¶ 31(c): individual is currently on parole or probation.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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.

Neither mitigating condition is established, for the reasons set out in the above discussion of Guideline G.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable military service and more than 20 years of service as a contractor employee. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption. 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 not mitigated the security concerns raised by his alcohol consumption and criminal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge