



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 23-01567
)
)
Applicant for Security Clearance)

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

04/16/2024

Decision

BENSON, Pamela, Administrative Judge:

Applicant failed to mitigate the alcohol consumption, criminal conduct, and personal conduct security concerns. Not enough time has elapsed to show that future misconduct is unlikely to recur. Eligibility for access to classified information is denied.

Statement of the Case

On August 24, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

Applicant provided an undated response to the SOR and requested a hearing before an administrative judge (SOR response). The case was assigned to me on

November 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2024, setting the hearing for February 13, 2024. On February 9, 2024, I contacted Department Counsel and Applicant to see if we could postpone the hearing for two days and meet on February 15, 2024, due to an unexpected personal appointment. Both parties consented to the new hearing date and the Microsoft Teams video-teleconference hearing was held as agreed.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 12, Hearing Exhibits (HE) 1 and 2, and he requested that I take administrative notice of the law of “conditional discharge” as defined in Applicant’s state of residence. Without objection, I have taken administrative notice of the facts contained in the request. Applicant testified and offered one exhibit I labeled as Applicant Exhibit (AE) A. All of the proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted AE B, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 23, 2024, and the record closed on February 29, 2024. (Tr. 17-19)

Amendment to the SOR

During the hearing, it became apparent that SOR ¶ 3.a contained a typographical error, noted in bold below:

3.a: That information as set forth in subparagraphs 1.a through 1.e and **2.a** through 2.f, above.

The error was cured through a motion by Department Counsel to amend the 2.a to “2.b.” The motion was granted without objection. (Tr. 9-10)

Findings of Fact

Applicant admitted all allegations contained in the SOR. (¶¶ 1.a-1.e, and 2.a-2.f.) He did not specifically admit or deny ¶ 3.a in his SOR response, which cross-alleged ¶¶ 1.a-1.e and 2.b-2.f under Guideline E. During the hearing he admitted ¶ 3.a. Applicant’s admissions are accepted as findings of fact. Additional findings follow. (SOR response; Tr. 6-7)

Applicant is 46 years old. He was an active-duty U.S. Marine from 1996 until 2001, when he was honorably discharged, and he served in the Marine Reserve until 2004. His rank was an E-4 at the time of his honorable discharge in 2004. He married in 2004, and he has two adult children, and a 12-year-old child. He earned a bachelor’s degree in February 2005. He has worked for a DOD contractor since November 2003. He does not currently possess a DOD security clearance, but he has been sponsored by his employer to obtain one so that he can perform specific job duties. (Tr. 22-25; GE 1)

Alcohol Consumption, Criminal Conduct, and Personal Conduct:

In December 1999, Applicant was charged with driving on a suspended license. He was 21 years old, and he was fined for this offense. (¶ 2.b) (GE 8)

In December 2006, Applicant was arrested for disorderly conduct. He was fined \$150 and placed on probation. (¶ 1.a) He testified that he had not consumed any alcohol prior to his arrest. This was alleged under Guideline G, but there is no evidence to show that the incident is alcohol related. (Tr. 25-31; GE 3, 8)

SOR ¶ 1.b alleges that Applicant was arrested in March 2013 for driving under the influence of alcohol (DUI) and refusal to take blood alcohol test and field sobriety test. He admitted that he had consumed too much alcohol and should not have been driving. He was convicted of reckless driving and fined. (Tr. 31-32; GE 2, 4, 5)

In June 2013, Applicant was charged with driving on a suspended license. He was placed on probation for six months. (¶ 2.c) (Tr. 32-33; GE 2, 5)

SOR ¶ 1.c alleges that in May 2014, Applicant was arrested for DUI. He had been involved in an accident with another vehicle. He was convicted and required to attend a victim impact panel and participate in an alcohol counseling program. His driver's license was suspended, and he was required to perform 240 community service hours. Applicant was placed on probation for two years. (Tr. 33-38; GE 2, 5)

SOR ¶ 1.d alleges that in March 2017, Applicant was arrested for a felony aggravated DUI and driving while his license was suspended/revoked. Applicant was convicted on the felony charge. He was sentenced to ten days in jail, ordered to enroll in alcohol treatment, and he was placed on two years of probation. His probation ended in May 2021. (Tr. 39-47; GE 2, 5, 6)

Applicant was charged in June 2018 with driving on a revoked license. He was convicted and fined \$1,104, ordered to serve 20 days in jail and placed on two years of probation. Applicant stated that he was in possession of alcohol at the time of the police stop, but the police did not find it. (¶ 2.d) (Tr. 47-50; GE 2, 5)

SOR ¶ 1.e alleges that in November 2019, Applicant was arrested for felony driving while license suspended/revoked for DUI; fleeing or attempting to elude police; disorderly conduct – false crime report and resisting or obstruction a police officer. He was convicted of felony driving while license suspended/revoked for DUI and sentenced to 30 days house arrest and one year of probation. Applicant was under the influence of alcohol at the time of his arrest. He explained that he had been to multiple bars and was heading to another bar when he was stopped by the police. After the police officer asked for his driver's license and registration, Applicant fled the area and headed home. He later falsely reported to the police that his car had been stolen by his brother. (Tr. 50-56; GE 2, 5, 7, 12)

Applicant was charged in July 2020 with driving on a revoked license. He was sentenced to 30 days in jail and placed on one year of probation. (¶ 2.e) During his

October 22, 2022 background interview with a DOD authorized investigator, Applicant stated that his driver's license was currently revoked, and that he did not drive "unless he absolutely had to drive then he would drive." He certified that the statements reported were accurate by his interrogatory response dated August 22, 2023. At the hearing, Applicant denied that he had made that statement to the investigator. (Tr. 56-60; GE 2, 5, 11)

SOR ¶ 2.f alleges that in October 2021, Applicant was charged with probation violation due to his felony driving while license suspended/revoked conviction alleged in SOR ¶ 1.e. (Tr. 47; GE 7)

Applicant admitted that he drove a vehicle under the influence of alcohol "dozens" of times without being detected by the police from about 2009 to November 2019. (Tr. 73) When Applicant was asked why he kept repeating his offenses, he said:

Alcohol -- I don't know how to describe this to you. When I got off of work, alcohol was the first thing on my mind. At work, alcohol was on my mind. I would pull over into a park and have alcohol, just so I could just go home. I let alcohol take over my life. (Tr. 38-39)

Applicant received a restricted driving permit on September 27, 2023. (AE A) He is required to use an interlock device that is installed on his car to test for alcohol. He is not permitted to drive any vehicle without the interlock device, and he is only permitted to drive during restricted hours and within a certain distance. These driving restrictions are imposed by his state of residence and will remain in effect until September 27, 2025. (Tr. 58-63; AE A)

After the hearing, Applicant submitted his outpatient treatment records. The records showed that he attended a Level III High Risk treatment program from September 2019 to June 2020, which included 75 hours of counseling sessions and aftercare. There was no diagnosis reflected in the records. On September 21, 2019, Applicant told the counselor that his goal was to "cut down on drinking." A few weeks later, Applicant was arrested on November 8, 2019, as listed above, after he had been visiting multiple bars. (AE B, Tr. 67)

Applicant testified that November 8, 2019, was the last day he consumed alcohol. His wife gave him an ultimatum that she would leave with the children if he got into trouble again, and the court made it clear that his next violation would result in a lengthy jail sentence. This was a wake-up call, and he has remained abstinent from alcohol to the present time. He attended Alcoholics Anonymous on a sporadic basis for a few months. He did not engage in the steps, and he did not obtain a sponsor. Since he completed alcohol treatment in June 2020, he has not participated in any type of continuing care for his excessive use of alcohol. Applicant stated that his family is his continuing support to maintain his sobriety. (Tr. 62-64, 67-73)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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 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 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 Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 describes the security concern about 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 provides two conditions that could potentially raise a security concern and may be disqualifying as follows:

- (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
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant’s admissions and the record evidence establish AG ¶¶ 22(a) and 22(c). Applicant was involved in multiple arrests after consuming alcohol.

AG ¶ 23 lists four conditions that could mitigate 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 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;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; 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.

Applicant’s history, including an over 20-year pattern of abusing alcohol, as detailed in the findings of fact, indicates a pattern of excessive use of alcohol. Applicant

has never attended an inpatient alcohol-treatment facility, and he currently is not involved in any continuing care alcohol program. During the beginning of his most recent alcohol treatment program, his goal was to reduce his consumption of alcohol. A few weeks later he was stopped by the police after going to several bars, but he fled from the scene. He stated that after this November 2019 incident he stopped drinking alcohol altogether.

The record is devoid of substantial evidence of a change in behavior, and convincing efforts to ensure that no further alcohol-related incidents will occur. After Applicant stopped drinking alcohol in November 2019, he continued to use poor judgment by driving again in July 2020 while his driver's license was revoked. He has demonstrated that he is unable or unwilling to follow the law. Applicant's history shows that he is a repeat offender. I am not convinced that enough time has passed to show that he has his alcohol consumption is under control, and that further alcohol-related incidents are unlikely to recur. It is difficult to place confidence in an applicant who is required to use an interlock device on his vehicle until September 2025. None of the mitigating conditions fully apply, and Applicant has not proffered sufficient evidence of rehabilitation and a change in lifestyle to overcome concerns about his established pattern of excessive alcohol use.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct 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.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. Two potentially apply:

(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.

The record evidence establishes AG ¶¶ 31(a) and 31(b). Applicant was involved in multiple criminal offenses.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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 criminal conduct raises serious security concerns. His alcohol-related arrests and multiple offenses for driving while his driver's license was suspended or revoked is troubling. He also admitted that he drove "dozens" of times under the influence of alcohol and/or during times when he did not have driving privileges, but he was not stopped by the police. His pattern of criminal conduct demonstrates that he was unwilling to learn from his past mistakes and established that laws, rules, or regulations do not apply to him. During his October 2022 background interview, he stated that he does not drive unless he absolutely needs to drive. Not enough time has elapsed since he engaged in criminal behavior to show that future misconduct is unlikely to recur. As such, his criminal behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying condition is potentially applicable in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but it not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

The record evidence supports application of AG ¶ 16(d)(3). The guideline also includes a condition that could mitigate security concerns arising from personal conduct. The following mitigating condition under AG ¶ 17 is potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant engaged in repeated excessive alcohol consumption and criminal conduct over a span of 15 years. The evidence in the record clearly shows a pattern of rule violations. His inability to learn from his mistakes demonstrates an unwillingness to comply with laws, rules, and regulations which raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant failed to mitigate the personal conduct security concerns.

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) 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 national security eligibility must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G, J, and E into my whole-person analysis.

Applicant's history of alcohol consumption shows that it was a regular and habitual part of his life for many years. Alcohol has not only caused him many legal problems, but it has also caused problems with his family. He completed the court-ordered outpatient alcohol classes. He stated that he has stopped drinking and has been sober since November 2019. Applicant is commended for this effort and encouraged to continue a sober lifestyle to become eligible for access to classified information sometime in the future. However, at this point, he has failed to present enough evidence of rehabilitation to overcome his heavy burden to mitigate his alcohol abuse and pattern of criminal offenses.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the alcohol consumption, criminal conduct, and personal 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a - 2.f:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	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 or continue Applicant's security clearance. Eligibility for access to classified information is denied.

Pamela Benson
Administrative Judge