



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



In the matter of:)
)
) ISCR Case No. 23-01098
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2024

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 19, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. On December 27, 2023, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on January 22, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 25, 2024. He did not respond to the FORM. The case was assigned to me on April 17, 2024. The Government exhibits included in the FORM (Items 1-6) are admitted in evidence. In addition to other information, Item 6 purported to contain a copy of Applicant’s

November 2021 personal subject interview (PSI), and asked him to verify its accuracy, however, no copy of the PSI was included with that Item or within the FORM.

Findings of Fact

Applicant is a 60-year-old employee of a defense contractor. He received a high school diploma in 1981. He has been married and divorced three times (1983-1993, 1996-1998, and 1998-2011). He has three adult children. (Items 3, 5)

On various occasions between 1985 and August 2020, Applicant consumed alcohol in excess and drove while intoxicated. He was arrested and charged with driving under the influence of alcohol (DUI) on four occasions during that time. Police arrested him and charged him with DUI in May 1985, March 1994, October 1997, and August 2020. The court convicted him of DUI for all but the August 2020 charge, which the prosecutor dismissed after he paid a fine, completed a victim impact panel and a drug and alcohol class, and had an ignition interlock device installed on his vehicle for six months. For his most recent DUI charge, police stopped him at a sobriety checkpoint while he was driving, and he had a .20 percent blood alcohol content (BAC) after taking a breathalyzer test. This BAC is over two times the legal limit. He had been drinking an unspecified number of beers at a bar after going out to be around other people during the COVID-19 pandemic. (Items 3-6)

In March 2023, a licensed clinical psychologist (Psychologist) interviewed Applicant via telemedicine after reviewing unspecified documents from the DOD. During their interview, they discussed his four DUI charges and his drinking history, and he took a screening test to measure hazardous drinking behavior (on which he scored 9 out of 12, with a score of 4 or more indicating hazardous drinking in men). In her June 2023 report, the Psychologist opined that he “likely meets the criteria for a diagnosis of alcohol use disorder.” She also noted that the documents she reviewed showed no evidence of previous diagnosis or treatment for his condition. (Items 4, 5)

Applicant denied that he drinks and drives after his August 2020 arrest, and the Psychologist noted that his stable employment history with the same company for about 39 years tends to show that his drinking is not interfering with his occupational functioning. She opined that his alcohol use does not appear to be interfering with his current daily functioning, and that “there is not an indication of significant concern related to his judgment, reliability, stability, or trustworthiness.” He reiterated these points in his SOR response, referencing his “excellent work history,” and his lack of understanding why he is in danger of losing his clearance nearly three years after his last DUI. (Items 2, 4, 5)

During his interview with the Psychologist, he relayed that he had been drinking beer since he was 19-20 years of age, and that at that time, he was drinking three to five beers per day after work, without becoming intoxicated. On the weekends, he drank between 10-12 light beers throughout the day, but had a limit of no more than 12 beers per day. The longest he reported abstaining from alcohol was for about four days in January 2023, when he “was sick with the crud.” He claimed to have never consumed

alcohol before going to work. The Psychologist noted that his alcohol use was “excessive and likely contributing to his physical health problems.” She noted that his prognosis relative to his alcohol use was “poor,” that he lacked insight into how much his alcohol consumption was affecting his overall health, and he does not appear motivated to make any changes. (Items 4-6)

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

The security concern for alcohol consumption 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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
- (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.

Applicant was arrested and charged with DUIs in 1985, 1994, 1997, and 2020, after drinking too much and driving. In June 2023, a licensed clinical psychologist opined that he likely met the criteria for an alcohol use disorder. The above-referenced disqualifying conditions are established, and the burden shifts to Applicant to provide evidence in mitigation.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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; and
- (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.

On at least four occasions, Applicant consumed too much alcohol, drove a vehicle while under the influence of alcohol, and was arrested for DUI. Although it has been almost four years since Applicant's most recent alcohol-related arrest, his pattern of impaired driving with significant gaps between alcohol-related incidents means I will not find that this behavior is unlikely to recur. His lack of awareness that he consumes too much alcohol, his unwillingness to modify the amount of his alcohol consumption, and his "poor" prognosis further cement my doubts and tend to show that he exhibits poor judgment. For these reasons, he has not met his burden to show that the behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and judgment. He also has not met his burden of showing that he has demonstrated a clear and established pattern of modified consumption. 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the alcohol consumption security concerns.

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:

AGAINST APPLICANT

Subparagraphs 1.a-1.e:

Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge