



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



In the matter of:)
)
) ISCR Case No: 22-01768
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilley, Esquire, Department Counsel
For Applicant: *Pro se*

12/13/2024

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Alcohol Consumption guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On December 12, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption). Applicant responded in a December 29, 2022 Answer to the SOR, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 28, 2023, and I received the case file on July 3, 2023. DOHA issued a Notice of Hearing on July 14, 2023, setting the hearing for July 27, 2023.

Department Counsel offered two hearing exhibits (HE) comprising the Government's Documentary Exhibit List and Department Counsel's May 31, 2023 letter to Applicant. These hearing exhibits were marked HE I and HE II, for identification, and appended to the record for reference purposes. Department Counsel also offered Government Exhibits (GE) 1 through 4 into evidence, all of which were admitted without objection. Department Counsel then requested that I take administrative notice of the contents of an eight-page excerpt from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (known as the DSM-5), relating to alcohol use disorder, as well as a four-page publication from the National Institute on Alcohol Abuse and Alcoholism, entitled *Understanding Alcohol Use Disorder*. Applicant had no objection, and I granted the motion to take administrative notice of pertinent facts within the documents, which I marked as Administrative Notice (AN) exhibits I and II.

Applicant testified and offered the testimony of four witnesses at his hearing. He also introduced Applicant's Exhibit (AE) A into evidence, which was admitted without objection. I left the record open until August 25, 2023, for submission of additional documentary evidence in mitigation or rebuttal. Neither party submitted additional evidence and the record closed as scheduled. DOHA received the hearing transcript (Tr.) on August 7, 2023.

Findings of Fact

In his Answer, Applicant admitted the factual allegations contained in the SOR ¶¶ 1.a through 1.d; but he disagreed with the assessment of the Government's duly qualified mental health professional that his diagnosed Alcohol Use Disorder, Severe, impairs his judgment, reliability, trustworthiness, or ability to safeguard classified information, despite his unwillingness to reduce his regular use of alcohol or to engage in further treatment for the condition. His admissions and explanations are incorporated in these findings of fact.

Applicant is 61 years old. He earned a high school diploma in May 1981. He is married and has two adult children. He honorably served in the Marine Corps from 1983 to 1987, and then transferred to the Air National Guard where he served until his Honorable discharge as a master sergeant upon retirement in 2019. While in the Air National Guard Applicant was also promoted to GS-11, Step 10, and performed the same avionic technician duties as a Federal civilian employee when not in a drill status. He has worked as a senior systems administrator on defense contracts for his current employer since 2020. He has held a Top Secret clearance for more than 20 years. (GE 1, Tr. 34-38.)

Applicant submitted a security clearance application in connection with his new employment with the defense contractor on May 1, 2020. In the section inquiring about his use of alcohol, Applicant reported that he had successfully completed a voluntary 32-session outpatient treatment program, to which he was referred by his family physician to help him address his alcohol use. This treatment lasted four weeks, from September to November of 2007. He also disclosed that from August 2016 through August 2017 he

underwent counseling with a licensed family therapist, which helped him to better manage his alcohol use over time and resolve issues that his drinking was causing between him and his family. (GE 1.)

On June 23, 2020, Applicant was interviewed by an investigator from the office of personnel management (OPM). He said that from 2007 to 2011 he remained sober but relapsed to moderate drinking from 2011 through 2015. He described how this caused issues at home because of his daily alcohol intake, including whiskey, and led to some 2016 incidents of conflicts with coworkers. He said that in 2019, his retirement from the Air National Guard led to increased whiskey consumption until January 2020, and several attempts to reduce his intake had led to withdrawal symptoms. Applicant admitted that his use was habitual or excessive prior to 2020. He said that from February through April 2020 he drank no alcohol, but he then resumed moderate beer drinking, which he described as 6 to 14 beers per week. He denied that his use had any impact on his judgment, reliability, finances, or discretion. (GE 2.)

On June 27, 2022, Applicant underwent a psychological evaluation at the request of the DCSA CAS. The evaluation was conducted by a duly qualified mental health professional, who is a licensed clinical psychologist with a Doctor of Psychology degree. The information Applicant provided during the evaluation confirmed the information discussed above from his OPM interview, including his admission to habitual binge and excessive drinking, and not having followed recommendations for abstinence following his two treatment programs for alcohol use disorder. He confirmed that he had confrontational incidents with coworkers following heavy alcohol consumption the preceding nights, and that his supervisor told him that he needed to seek counseling. Following his most recent counseling, he again relapsed but tried to limit his alcohol consumption to only beer and wine, which he described as a case of beer and a bottle of wine per week since 2020. The psychologist diagnosed Applicant with Alcohol Use Disorder, Severe, and her prognosis was, "guarded to poor." She said that Applicant, "is not motivated or willing to substantially cut down his alcohol use and does not want to attend treatment,[or] take medications to assist with cravings, and will not attend AA meetings." She concluded that there is current indication the Applicant's psychological condition impairs his judgment, reliability, and trustworthiness, as well as his ability to safeguard classified information. (GE 3.)

Applicant testified about another alcohol-related incident during his squadron's 2015 Christmas party. He drank to excess before and during the event, leading to a disruptive and profanity-laced incident while he tried to sing a karaoke song. He further described his current continuing use of alcohol, as including about 10 ounces of brandy, 7 glasses of wine, and 12 beers per week. (Tr. 80-84, 85-87.)

Applicant's wife and three of his longtime coworkers, including his boss and the Special Security Officer for the Air Force Surveillance and Reconnaissance Group where he works, testified on his behalf. All were very complimentary of his character, trustworthiness, and integrity. One coworker detailed a very recent security violation in

which Applicant inadvertently brought his cell phone into a controlled area, but no other security violations were noted. None thought that he had been recently irresponsible concerning alcohol consumption, and his coworkers indicated that they had never noticed his good performance and work ethic to be affected by alcohol. They all expressed their confidence in his reliability; and they opined that he would not pose any security risk and should retain his security clearance. Applicant also submitted a letter from his wife describing his efforts to moderate his alcohol consumption and importance in their family's relationships and successes. (AE A; Tr. 49-79.)

Policies

This national security eligibility 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

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 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, 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an Applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.” See *a/so* Executive Order 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 concerns 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 six conditions that could raise security concerns and may be disqualifying in Applicant's case:

(a) alcohol-related incidents away from work, such as driving 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 is diagnosed with alcohol use disorder; and

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, 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.

Applicant has a long and well-documented history of alcohol use disorder, which has factored into both work and non-work incidents, binge drinking, and relapses against post-treatment program recommendations. After being diagnosed with Alcohol Abuse Disorder, Severe, he continues substantial daily alcohol consumption. These facts raise significant security concerns under the disqualifying conditions cited above.

AG ¶ 23 provides four conditions that could provide mitigation of the security concerns in this case:

(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 completed two alcohol treatment programs but relapsed after brief periods of sobriety both times. He currently consumes alcohol on a regular basis and has no intention of seeking further treatment or attending additional AA meetings. The licensed clinical psychologist who evaluated him offered a “guarded to poor” prognosis and opined that his continuing alcohol consumption impaired his trustworthiness, reliability, and ability to safeguard classified information. Accordingly, he failed to establish evidence to support any of the foregoing mitigating conditions.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature person who is accountable for his choices and actions. His issues with alcohol abuse have spanned decades and the two treatment programs he completed did not produce sustained abstinence per the professional post-treatment advice he received. Three current and long-term coworkers said that he has performed very well at work, but this is insufficient to establish rehabilitation from his admitted and longstanding alcohol use disorder. He continues regular consumption of alcohol daily, for which he received a "guarded to poor" prognosis from the duly qualified mental health professional who evaluated him. The potential for pressure, coercion, exploitation, or inadvertent security violations remains undiminished, as evidenced by his security violation at work just days before his hearing. Applicant failed to meet his burden to mitigate the concerns arising under the guidelines governing U.S. national security eligibility.

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

Subparagraphs 1.a through 1.d:

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 national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE
Administrative Judge