



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-00603 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2024

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has not drunk any alcoholic beverages in more than two years, it is too soon to conclude that he has mitigated the alcohol consumption security concern, given the severity of his drinking disorder, its longstanding nature, the number of alcohol-related episodes, and the lack of any substantiating documentation from a licensed alcohol abuse treatment professional that the problem is under control. Under these circumstances, Applicant’s security clearance application must be denied.

Statement of the Case

On May 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, alcohol consumption. The SOR explained why the DCSA CAs was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 24, 2023, admitting the allegations and requesting a hearing before an administrative judge at the Defense Office of Hearings and Appeals. (DOHA) In January 2024, Applicant contacted DOHA to revoke his hearing request, and instead, requested that a decision be reached on the written record. On January 28, 2024, Department Counsel prepared a File of Relevant Material (FORM), a brief with 12 items, relevant to the allegations. I have incorporated them into the record as FORM, Items 1 through 12.

Applicant received a copy of the FORM on February 1, 2024 and was given 30 days to file a reply. Within the time allotted, he filed a response, which I admitted into evidence. The case was assigned to me on May 3, 2024.

Findings of Fact

Applicant is a 43-year-old married man with two children and three stepchildren. A previous marriage ended in divorce. He has a high school diploma and has been working with a defense contractor as a data technician since 2020. (Item 4)

Applicant is highly respected on the job. Per his supervisor, “if [he] could clone his work ethic and positive attitude, [he] would do so without hesitation.” (FORM Reply at 2)

Applicant has a drinking problem. He began drinking alcohol at age 15, initially consuming once every three to four months when camping with friends. (Item 5 at 12) By age 18, he was drinking about 12 beers each weekend, and by the time he was in his early thirties, he was consuming approximately 18 to 24 beers per day. (Item 6 at 5, 15)

On May 23, 2013, Applicant admitted himself into an inpatient chemical dependence detoxification clinic for treatment. After he received one month of inpatient treatment, he was diagnosed with severe alcohol dependence. (Item 6, Items 10 – 12) Per the counselor, he made moderate progress during treatment and was given a fair prognosis. (Item 6 at 23) He was encouraged to attend a 12-step program and to obtain an Alcoholic Anonymous (AA) sponsor. (Item 6 at 23) There is no record evidence that he did so. He was also referred to an outpatient recovery service facility but declined the recommendation. (Item 6 at 24)

In April 2015, Applicant was arrested and charged with public intoxication and disorderly conduct after engaging in a verbal and physical altercation with his ex-wife’s male friend while at a ballpark. (Items 8 at 2-14; Item 9) He pled guilty.

In September 2015, Applicant was arrested and charged with an open container violation and with Driving Under the Influence (DUI). (Item 8 at 20) Applicant pled guilty

and was sentenced to 30 days in jail, placed on probation for six months, fined, and ordered to pay for the cost of an interlock installation. (Item 8 at 19)

In March 2016, Applicant was stopped by police, failed a sobriety test, and was arrested and charged with DUI. (Item 7 at 3, Item 9) Applicant pled guilty and was sentenced to 12 months of probation, and 90 days imprisonment (suspended). (Item 8 at 29-31) Moreover, the court revoked his probation. (Item 6 at 29)

In May 2018, Applicant was arrested and charged with violation of the requirement to use an ignition interlock device. He pled guilty. Later that month, he was arrested and charged with an open container violation. (Item 8 at 18) The charge was dismissed.

In October 2019, Applicant's employer fired him for drinking on the job. (Item 5 at 4) When asked about this episode during an investigative interview in 2022, Applicant acknowledged it and stated that he drank on this job approximately once per week. (Item 5 at 4)

In July 2020, Applicant's employer fired him after he arrived to work with alcohol on his breath. (Item 5 at 3) Applicant had consumed about 12 beers before going to bed the previous night. (Item 5 at 3)

Applicant quit drinking in February 2022, "and hasn't looked back." (FORM Reply at 1; Item 5 at 21) Both his family life and his career are thriving, which is enabling him to maintain sobriety. (FORM Reply at 2) He presented no evidence that he has undergone any alcohol evaluations or professional assessments of his current condition.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 the adjudicative process. The administrative judge's overall 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. 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 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 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. Section 7 of EO 10865 provides that 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

Under 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.” For most of Applicant’s adult life he has consumed alcohol heavily. His excessive alcohol consumption has resulted in multiple arrests and led to the loss of two jobs. Under these circumstances, the following disqualifying conditions under AG ¶ 22 apply:

- (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;
- (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; 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.

In 2013, Applicant admitted himself into an inpatient clinic for treatment and was diagnosed with severe alcohol dependence. Although he completed the program satisfactorily, he declined the recommendation to attend an outpatient clinic after he was discharged. Under these circumstances, the following two disqualifying conditions are also applicable:

(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); and

(e) the failure to follow treatment advice once diagnosed.

The following mitigating conditions under AG ¶ 22 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;

(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;

(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 the treatment recommendations.

Applicant deserves credit for admitting himself into an inpatient treatment clinic in 2013 and for being sober since February 2022. However, he did not follow the advice of the treatment clinic upon discharge, and he relapsed, leading to multiple alcohol-related incidents over the ensuing seven years. Moreover, his declaration of sobriety was not supported with the opinion of any alcohol abuse professional. Under these circumstances, AG ¶ 20(a) does not apply.

Applicant readily acknowledges his alcohol use problem, and he successfully completed a treatment program. However, he completed the program more than ten years ago, and there is no record of any updated evaluations since then. Also, he declined to follow the clinic's advice about seeking outpatient help. Consequently, AG ¶ 22(d) is not applicable and AG ¶ 22(b) is only applicable as to Applicant's acknowledgment of his drinking problem. Under these circumstances, the period of sobriety is not sufficient to fully mitigate the security concern.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

Applicant has been sober for more than two years. However, given the severity and longstanding nature of his drinking problem, I conclude that his declaration of sobriety, without supporting clinical documentation is insufficient to carry the burden and fully mitigate the 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.l:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge