



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 23-00159
)
Applicant for Security Clearance)

Appearances

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

03/13/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant used alcohol to intoxication on a regular basis between 2018 and September 2021. His excessive alcohol use led to his cocaine abuse from about April 2019 to October 2021 while possessing a security clearance. His unsupported evidence in mitigation is insufficient to meet his ultimate burden of persuasion under both guidelines. His October 2021 non-judicial punishment under the Uniform Code of Military Justice (UCMJ) for use/possession of a controlled substance has not been mitigated under the personal conduct guideline. Applicant’s security clearance application is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on August 12, 2022. On September 21, 2022, he was interviewed by an investigator of the Office of Personnel Management (OPM). On February 13, 2023, the Department of Defense (DOD), Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudication Services (CAS), issued a Statement of Reasons (SOR)

detailing security concerns under the guidelines for alcohol consumption (Guideline G), substance abuse and drug involvement (Guideline H), and personal conduct (Guideline E). This case is adjudicated in accordance with Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017.

Applicant's answer to the SOR is dated February 14, 2023. I was assigned the case on July 17, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 20, 2023, for a hearing on December 4, 2023. The hearing was held by Teams video teleconference as scheduled. I entered the Government's two exhibits (GE) 1-2 into evidence without objection. Applicant did not seek admission of documentary evidence. The record remained open until December 19, 2023 to allow Applicant an opportunity to submit exhibits. No post-hearing exhibits were received by DOHA. The transcript (Tr.) was received on December 14, 2023. The record closed on December 19, 2023.

Findings of Fact

The SOR alleges alcohol consumption, drug involvement, and personal conduct. Applicant admitted the allegations in the SOR without explanations. The Government's two exhibits were admitted in evidence. (Tr. 16)

Applicant is 37 years old and separated, expecting to file for divorce. In June 2005, he received a high school diploma. He collected community college credits between September 2005 and April 2009, without obtaining a degree. (GE 1 at 7-10)

When Applicant signed and certified the e-QIP in August 2022, he anticipated he would start a new job during the month. From May to August 2022, he was a solar panel installer. From November 2015 to March 2022, he was on active duty in the United States Navy (USN). While in the USN, he was granted a security clearance in March 2021. (GE 1 at 60) He held previous employment positions as a horse stable laborer and nursing assistant. (GE 1 at 15-26)

In June 2018, Applicant married. He separated from his wife in August 2021, but is not divorced because of marital issues and locating the right attorney. His wife has two children from another marriage. (GE 2 at 13; Tr. 20-21)

In Section 23 of his August 2022 e-QIP (Illegal Use of Drugs), Applicant indicated that in the last seven years, because of depression and stress, he started using cocaine about once a month. He purchased the drug in \$50 amounts from cocaine dealers. He self-medicated with cocaine a couple of times while on ship deployment, but claimed that

he stopped using the drug in June 2021. The medical records indicate that his last use of cocaine was August 18, 2021 (positive drug test), and he explained in his testimony that his last cocaine use was in October 2021. (Tr. 24) He received a Captain's Mast for the positive urine test and additional adverse consequences under the Uniform Code of Military Justice (UCMJ). (GE 1 at 53-55; GE 2 at 4-5; Tr. 20)

After his failed drug test in August 2021, Applicant enrolled in treatment at the Drug and Alcohol Program Advisor (DAPA) program. He was admitted to inpatient treatment in October 2021, and completed the program in November 2021. He explained that the program helped him find other ways to relieve his depression like riding his bicycle, hiking, or running. He admitted using cocaine or crack cocaine while possessing a security clearance. In February 2022, he received a general discharge under honorable conditions. (GE 1 at 53-55; GE 2 at 4-5; Tr. 20, 45)

Under section 24 of the e-QIP (Alcohol Use), Applicant admitted alcohol use between August 2018 and September 2021. When he was deployed in 2018, he began drinking excessively when the ship stopped at ports. He drank to intoxication with his coworkers and blacked out every day at the ports, with his most serious use occurring in August 2021. He realized that he had a problem and sought the month-long treatment referred to in the preceding paragraph. Subsequent to his discharge, he learned that the program closed because of a lack of funding. Applicant recalled attending a couple of Alcoholics Anonymous (AA) meetings after his November 2021 discharge, but ultimately concluded that he did not need more counseling. (GE 2 at 4; Tr. 30-32)

The medical records summarizing Applicant's treatment from October to November 2021 show that his admitting and discharge diagnoses were alcohol and cocaine use disorder, categorized as severe according to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The reason for the admission was Applicant's intoxication and appearing suicidal over the weekend prior to his admission. His drinking pattern in the period before his admission was four or five shots of whiskey every day with more on the weekend. Applicant's last use of cocaine was in October 2021. He successfully completed the program. He was referred to the Substance Abuse Rehabilitation Program (SARP), but there is no indication in the record that he attended the program. Applicant recalled the medical providers telling him that as long as he did not have a relapse, he should be fine. They suggested that he utilize different resources like the Veteran's Administration (VA) for assistance. He renewed a couple of medications from the VA. Applicant has not pursued treatment because he does not believe he needs help. He has handled depression by steering clear of negative people and his family. Now he focuses on work at home rather than seeking negative influences. (GE 2 at 1-3; Tr. 24, 32-33)

Following treatment in November 2021, Applicant consumed a glass of wine in August 2022, a couple of drinks during the 2022-winter holidays, and a couple of drinks

during the summer and Thanksgiving 2022. The major adjustments in Applicant's life since November 2021 treatment have been a change from an environment containing people with bad habits to people with healthier lifestyles. He currently works at a job where exercise is part of the job. Finally, his job is stress-free, and he has no personality problems with his coworkers. (Tr. 40, 46-47)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with commonsense and the general factors of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Alcohol Consumption

The security concerns of the guideline for alcohol consumption are set forth 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying include:

(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;

- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (d) diagnosis by a duly qualified medical professional of alcohol abuse or alcohol dependence.

The medical records (October to November 2019) contain admission and discharge diagnoses of alcohol and cocaine use disorder, severe. A couple of times, Applicant self-medicated with alcohol, or cocaine, or both during deployment. When his ship stopped at port, he regularly drank to intoxication and blacking out. The evidence meets the disqualifying conditions set forth in AG ¶¶ 22(a), 22(b), 22(c), and 22(d).

AG ¶ 23 describes 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; 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 most recent alcohol use occurred in October 2021, immediately before he was admitted for inpatient treatment. After his discharge in late November 2021, he resumed drinking albeit at reduced levels. With Applicant's history of habitual alcohol consumption, his continued use of alcohol casts doubt on his current reliability and judgment. AG ¶ 25(a) does not apply.

Applicant contended in his answer to the SOR that the treatment program helped him find other ways to deal with stress. What is missing from his case in mitigation is independent evidence that reinforces his claims about modified consumption and other changes in his life. Applicant only receives limited mitigation under AG ¶23(b).

AG ¶ 23(d) applies only in part. Though the record shows that Applicant completed treatment in late November 2021, there is no record that he participated in

recommended aftercare. In sum, he has not presented a clear pattern of modified consumption or abstinence.

Drug Involvement

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia;
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional; and
- (f) any illegal drug use while granted access to classified information or holding sensitive position.

Applicant began using cocaine in 2019. He used the drug about once a month until October 2021, when he tested positive for cocaine. After his drug test, he enrolled in the inpatient treatment program in October 2021. But he did not participate in aftercare. AG ¶¶ 25(a), 25(b), 25(c), 25(d), 25(e) and 25(f) applies.

AG ¶ 26. Conditions that could mitigate security concerns include:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- 1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) does not apply for the same reasons expressed under AG ¶ 23(a). Applicant has furnished no independent evidence, i.e., aftercare, or follow-up counseling, or knowledge by a third party of Applicant's current drug and alcohol use, to support his claims of abstinence or control under the drug involvement guideline.

AG ¶ 26(b) has not been fully established. Though Applicant appears to have taken some steps to remove himself from the drug environment, he failed to provide substantiating evidence to firmly establish he has overcome illegal drugs and alcohol, and is on the road to long-lasting recovery. Lastly, Applicant did not provide a signed statement acknowledging that future drug use could be grounds for revocation of national security eligibility.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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 national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation or further processing for national security eligibility.

The potential disqualifying conditions under AG ¶ 16 are:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 he may not properly safeguard classified or sensitive information;

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information ...

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Guideline E addresses conduct of a questionable nature, dishonesty, or unwillingness to obey rules and regulations which raise questions about an individual's judgment and ability to protect classified information. Applicant's use of cocaine resulted in a positive urinalysis test in August 2021. When this test result is considered with all other available information, it supports a whole person assessment of questionable judgment and unreliability within the scope of AG ¶¶ 16(c) and 16(d).

The potential mitigating conditions under AG ¶ 17 are:

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶ 17 (c) has not been established even though the misconduct is unlikely to recur. Receiving non-judicial punishment in October 2021 under Article 15 of the UCMJ for wrongful possession of a controlled substance in the military while holding a security clearance was a major offense that resulted in Applicant being discharged from the USN in February 2022

AG ¶ 17(d) applies on a limited basis to Applicant's acknowledgement of his alcohol and drug-related behavior and completion of a treatment and counseling, but there is no evidence of voluntarily seeking support to prevent a recurrence of the past alcohol- and drug-related conduct. Moreover, there appear to be lingering issues with his estranged wife that he has not resolved.

Whole-Person Concept

I have examined the evidence under the guidelines for dur involvement, alcohol consumption, and personal conduct in the context of the nine general factors of the whole-person concept 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 common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have carefully evaluated the disqualifying and mitigating conditions under the specific guidelines in the context of the entire record. Applicant is 37 years old and separated. Between 2018 and October 2021, he was involved in excessive alcohol and cocaine use. Prior to his admission in October 2021, he was drinking heavily, and there is sufficient reason to believe he was using cocaine regularly. Though he successfully

completed the inpatient treatment program in November 2021, there is no tangible evidence that he was involved in any significant aftercare.

Following a careful examination of the disqualifying and mitigating conditions under the alcohol consumption, drug involvement, and personal conduct guidelines, I conclude that Applicant has failed to sufficiently mitigate the remaining adverse security concerns arising from the guidelines

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.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 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 security interests of the United States to grant Applicant access to classified information or a sensitive position. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge