



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



In the matter of:)
)
) ISCR Case No. 23-00494
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2024

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 March 8, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. On March 13, 2024, 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 April 11, 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 May 16, 2024. He did not respond to it. The case was assigned to me on August 15, 2024. The Government exhibits included in the FORM (Items 1-10) are admitted in evidence.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor, for whom he has worked since August 2008. He earned a bachelor's degree in 2002 and a master's degree in 2006. He has been married since 2003, but he and his wife have been legally separated since April 2018. He has three children, ages 18, 15, and 11. (Items 3-7)

Applicant has had struggles with alcohol. Sometime between 2012 and 2014, his alcohol consumption increased to the point where he was drinking about eight to ten beers per day. He was regularly drinking to the point of intoxication. He was tired of feeling hungover after drinking, and his wife was worried about him, so he began attending Alcoholics Anonymous (AA) meetings. Between 2014 and 2015, he attended AA meetings regularly, but would relapse once every two to three months and drink about eight to ten beers in an evening. He considered himself an alcoholic, and between 2014 and 2018, only abstained from drinking to avoid being caught by his wife. When he and his wife separated in April 2018, despite recognizing that he was an alcoholic, he was no longer worried about his wife finding out, so he began drinking regularly again. Between his separation and September 2022, he was drinking to intoxication daily, and consuming 12 to 13 drinks each time. He acknowledged that his drinking caused marital strain, which ultimately led to his separation. He has developed cirrhosis of the liver as a result of his alcohol consumption. (Items 3-9)

Applicant's desire to drink is at least partially provoked by his being clinically depressed. The result of his alcohol consumption is that it makes him feel numb, and that makes him feel less depressed. Over the years, he has sought alcohol-related treatment from duly qualified health professionals. These health professionals advised him to abstain from alcohol. A medical doctor (MD) diagnosed him with alcohol dependence between 2014 and 2019. Medical records from the MD note Applicant had periods of abstinence and relapse. He underwent outpatient alcohol-related treatment from May 2016 until February 2017 with Treatment Center A. A duly qualified health professional at Treatment Center A diagnosed him with alcohol use disorder, early remission, severe, and alcohol dependence in remission. After continuing to struggle with alcohol, he also sought alcohol-related treatment with a licensed clinical social worker in 2019, who diagnosed him with alcohol abuse, uncomplicated. This licensed clinical social worker noted that Applicant had been consuming alcohol while under her care. Between 2019 and 2023, he also met with about four other counselors for alcohol and mental health counseling. (Items 3-9)

In September 2022, a licensed psychologist and doctor of psychology (Psychologist) interviewed Applicant after reviewing documents related to his security clearance application, including medical records from some of the aforementioned healthcare providers. During their interview, Applicant acknowledged that he had been consuming about 12 to 13 drinks daily. He stated that he had been attending SMART recovery sessions weekly and has been on prescription medications to help him stop drinking. The Psychologist diagnosed him with alcohol use disorder, moderate. She wrote that his prognosis was "guarded" (Items 7, 10)

As he continued to consume alcohol while wishing to abstain, Applicant completed alcohol-related inpatient treatment with Treatment Center B from June 7, 2023, until July 1, 2023, and intensive outpatient treatment with Treatment Center C from July 2, 2023, until September 12, 2023. He has abstained from alcohol since June 1, 2023, which was also the last time he was intoxicated. Prior to his June 2023 inpatient treatment with Treatment Center B, he was consuming a 12-pack of beer per day. (Items 3-9)

Applicant has not had legal problems stemming from his alcohol consumption. He also claimed that it has not caused any problems for him at work. His children and his estranged wife are aware that he has a problem with alcohol. Some of his colleagues at work are aware of his alcohol issues as well. (Items 3-9)

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:

- (c) habitual or binge consumption of alcohol to the point of impaired judgement, 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.

For extended periods over the last decade, Applicant was binge-drinking alcohol almost daily to the point of intoxication. AG ¶ 22(c) is established.

AG ¶ 22(d) is not established. There is evidence in the record that qualified mental health professionals diagnosed Applicant with an alcohol use disorder. However, the only SOR paragraph that contains an alcohol use disorder allegation states that

diagnosis is contained in an October 22, 2020 report by the Psychologist. There is no report from the Psychologist from that date (or any date near it) in the record. As the specific alcohol use disorder allegation from the SOR is unsupported by the evidence, that disqualifying condition is not established.

AG ¶¶ 22(e) and 22(f) are not established. As the only SOR allegation concerning an alcohol use disorder averred it was contained in a report not in evidence, I cannot find an alcohol use disorder was established or that Applicant failed to follow treatment after such a diagnosis.

I find for Applicant with respect to the allegations contained in SOR ¶ 1.b. That paragraph alleges that he continued to consume alcohol after treatment, but it does not allege an alcohol use disorder diagnosis or a failure to follow treatment advice. As written, this paragraph does not state disqualifying facts.

I find for Applicant with respect to the allegations contained in SOR ¶ 1.c. SOR ¶ 1.c alleges that Applicant's alcohol consumption was the primary factor in his legal separation. While the fact that his alcohol consumption contributed to his marital separation is unfortunate, it is not disqualifying.

I also find for Applicant with respect to the allegations contained in SOR ¶ 1.d. SOR ¶ 1.d alleges that, in an October 22, 2020 report, a psychologist diagnosed Applicant with alcohol use disorder, moderate. While there is evidence in the record that other qualified mental health professionals diagnosed him with an alcohol use disorder, there is no October 22, 2020 report in the record. The SOR allegation specifically relies upon a diagnosis contained in a report that is not in the record, so there is insufficient evidence to sustain that allegation.

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;
- (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.

I commend Applicant for voluntarily seeking treatment for his issues with alcohol. I also commend him for having been abstinent since June 1, 2023. However, given his many false dawns over the past decade, where he abstained from alcohol pursuant to treatment advice and then relapsed, I do not find that another relapse is unlikely to recur. Additionally, given his many relapses after extensive treatment and advice to abstain over an extended time, I do not find this period of abstinence constitutes a clear and established pattern of abstinence. AG ¶¶ 23(a), 23(b), and 23(d) 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. While Applicant's current period of abstinence is a significant step in the right direction, given his long history of treatment and relapse, he has not mitigated 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For 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