



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



In the matter of:)
)
)
) ISCR Case No. 23-02170
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro Se*

11/06/2024

Decision

Lokey Anderson, Darlene D., Administrative Judge

Statement of the Case

On March 31, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On January 9, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. The action was taken 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on January 29, 2024, and requested a hearing before an administrative judge. The case was assigned to me on July 29, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on August 16, 2024, and the hearing was convened as scheduled on September 11, 2024. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered 15 exhibits, referred to as Applicant's Exhibits A through O, which were admitted without objection. Applicant also testified on his own behalf. The record remained open until close of business on September 18, 2024, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one

Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 20, 2024.

Findings of Fact

Applicant is 33 years old. He has never been married and he has no children. He has a Bachelor's degree. He is employed by a defense contractor as a Material Analyst. He is seeking to obtain a security clearance in connection with his employment. Applicant began working for his current employer in March 2023. In his answer, Applicant admits each of the allegations set forth in the SOR, except allegation 2.a.

Guideline G: Alcohol Consumption

Applicant's history of excessive alcohol abuse leads to questionable judgment, and the failure to control impulses, which raises questions about his reliability and trustworthiness.

Guideline J: Criminal Conduct

Applicant's history of criminal conduct creates doubt about his judgment, reliability, and trustworthiness. It also calls into question his ability or willingness to comply with laws, rules, and regulations.

Applicant graduated from college in 2013. He then worked various jobs and had periods of intermingled unemployment. From August 2021, through July 2022, he was employed with Company A. He was arrested a second time for Driving Under the Influence (DUI) in June 2021. At that time, his supervisor at Company A, learned of his DUI. Applicant stated that it completely changed his relationship at work and made him embarrassed and humiliated. He left the company for that reason.

Applicant began working for his current employer in March 2023. He completed a security clearance questionnaire dated March 31, 2023. (Government Exhibit 1.) His interim clearance was granted in April 2023.

A review of Applicant's history of excessive alcohol consumption shows that on two occasions over a period of twelve years, he was arrested for DUI. Applicant started drinking alcohol as a senior in high school, at the age of eighteen. At that time, while at social gatherings, he would have two or three beers at the most. (Tr. p. 60.) During college, his use of alcohol increased. Applicant explained that he was a rowing athlete and among other events, there were team social gatherings where he would enjoy alcohol. On those occasions, he would drink beer and take shots of hard liquor. There were times after these college gatherings where he found himself way too intoxicated to drive a vehicle. (Tr. p. 66.) He stated that he has not experienced a "black out" for excessive drinking since his 21st birthday.

On June 29, 2013, while in college, Applicant was first arrested for DUI. He explained that he had been drinking alcohol with his girlfriend at her place. He had

consumed several beers before driving. He was driving his girlfriend's car from her house to his office, where he lived, when he was pulled over at a checkpoint. Applicant refused to take the breathalyzer. He stated that he opted for a blood test because he knew that he had alcohol in his system and he wanted it to be accurate. His girlfriend who was in the car with him was allowed to drive her car home. Applicant pled guilty to a reduced charge of "Wet Reckless." He was sentenced to 30 day's incarceration, all other counts suspended, and three years probation, 1 year suspended license, and fines and fees of \$1,000.00. The DMV also required him to complete a three-month alcohol education course before his driver's license could be reinstated. (Government Exhibits 3 and 4.)

Applicant stated that following this arrest for DUI in June 2013, and after completing the sentencing requirements imposed by the court, he changed his drinking habits. He stated that he looked for more opportunities to exercise and work out instead of consuming alcohol. He stated that he continued to drink alcohol, but the amount he consumed decreased. At that time, he was normally drinking about a six pack of beer on a weekly basis. His drinking preference at that time was beer, but he would have Tequilla and Vodka at least monthly. (Tr. p. 76-80.)

On August 29, 2021, Applicant was arrested a second time and charged with DUI. On this occasion, Applicant had been drinking beer and vodka seltzers at a friend's graduation party. Applicant was convicted again and pled to the reduced charge of "Wet Reckless." He was sentenced to 1 year probation, 4 days incarceration, all credited for time served and good behavior, a 21-day alcohol program, and required to pay fines and fees of \$325. Applicant completed each of the court mandated sentencing requirements. Following this arrest and conviction, Applicant continued to drink alcohol, at times to the point of intoxication. From May 2022 to about September 2022, Applicant received outpatient alcohol treatment counseling ordered by the court. (Applicant's Exhibits A, B, and C.) In September 2023, Applicant reported that he was consuming alcohol to the point of intoxication on a monthly basis. (Government Exhibits 2 and 4.)

Applicant testified that after three or four alcoholic drinks he feels intoxicated and impaired. However, in his interrogatory responses he indicated that it takes 8 drinks for him to feel intoxicated. He explained that while he was preparing for this hearing, he consumed two 12-ounce vodka seltzers on the Sunday before the hearing. He stated that he last drank to the point of intoxication at a party on July 4, 2024, and he had a six pack of beer at the time. He used a ride sharing app to get home. (Tr. pp. 85-97.)

Applicant does not believe that he has an alcohol problem. He has had no formal diagnosis or treatment for alcohol addiction. However, he testified that he still has an urge to consume alcohol. On the weekends, he normally consumes anywhere between seven and eight drinks spread over the weekend. At most, he has eight or nine drinks, consisting of a combination of beer and vodka seltzer. On the weekdays, he makes a conscious effort to the best of his ability to avoid drinking and tries to go to the gym. He testified that consuming alcohol helps him release stress. His drink of preference is either beer or vodka seltzer. (Tr. pp. 85-97.)

Letters of recommendation from professional associates, including coworkers and a long-time friend all attest to Applicant's professionalism, strong work ethic, good moral

character, humble, honest, and trustworthy personality. Collectively, they have determined him to be a productive member of their team, and they all highly recommend him for a security clearance. (Applicant's Exhibits D and E.)

Applicant's annual performance evaluation for the period from January 1, 2020 through December 3, 2020, indicates an overall rating that he "met expectations." (Applicant's Exhibit G.) He also received a performance award from his employer in February 2022. (Applicant's Exhibit F.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 access to classified information. 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 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

AG ¶ 21 expresses the security concern 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 conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual was diagnosed with alcohol use disorder.

Applicant's history of excessive alcohol abuse includes two arrests for Driving Under the Influence of Alcohol. He most recent arrest for DUI occurred in 2021, about three years ago. The evidence shows that Applicant continues to drink to the point of intoxication and impairment on at least a monthly basis. This conduct raises serious security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption 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 good 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 or 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 has failed to introduce sufficient evidence of rehabilitation. It is noted that he has not been formally diagnosed, but the record is clear that alcohol has been and remains problematic for him. Applicant has abused alcohol for the past twelve years resulting in two arrests for DUI. The most recent arrest occurred in 2021, just about three years ago. Despite his two DUI convictions, and the strict sentencing penalties imposed by the courts that followed those offenses, such as driver's license suspensions, jail time, probationary periods, alcohol awareness programs, an outpatient alcohol counseling program, mandatory AA meeting attendance, and fees and fines, Applicant continues to consume alcohol, at times to the point of intoxication. It is also noted that at times, Applicant has the urge to consume alcohol. He has not made any efforts to seek out rehabilitative support in this area such as alcohol treatment courses, counseling, or alcohol awareness classes, that he may find helpful. In essence, to address his alcohol situation, Applicant has only completed the requirements the court asked him to do, and nothing more. Under the circumstances, Applicant has not demonstrated sufficient good judgment and reliability necessary to access classified information. ¶ 23 does not provide mitigation.

Guideline J: Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgement, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

The guideline at AG ¶ 32 contains conditions that could mitigate security concerns. Neither of the conditions set forth below are applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal conduct involves two arrests for DUI, the first one in 2012, and a second one as recently as 2021. In between the two DUI's, and up to the present time, Applicant has continued to consume alcohol, at times to the point of intoxication. Applicant acknowledges that his excessive drinking has been problematic, but he still drinks to the point of intoxication at least monthly. At times he has been intoxicated and called a car service to pick him up. He also stated that at times he has the urge to drink. During the weekdays, he makes a conscious effort not to drink and tries to distract himself by going to the gym and working out. On the weekends, he allows himself to consume alcohol. He stated that he consumes alcohol to relieve stress and to relax. He has not pursued any alcohol rehabilitation or alcohol awareness classes that have not been ordered by the court. Applicant does not believe that he has a drinking problem. He also believes that he can control his drinking. Applicant's criminal conduct demonstrates poor judgment, immaturity, and a total disregard for the law. Under the circumstances, Applicant's excessive drinking has not stopped, nor has it gone away. It is a clear and present danger that can raise its ugly head at any time. Applicant is very vulnerable to alcohol and its consequences, and he has not established that he is sufficiently reliable and trustworthy to access classified information. His criminal conduct and excessive alcohol abuse give rise to serious concerns about his judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and J in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption and Criminal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.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 national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge