



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 05-00801
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

April 30, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns raised under Guidelines G, Alcohol Consumption and E, Personal Conduct. Clearance is denied.

On September 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and E.. The action was taken under 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 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on November 13, 2008, and requested a hearing. The case was assigned to me on February 12, 2009. On February 17, 2009 a Notice of Hearing was issued originally scheduling the case for March 3, 2009. The hearing was continued because of inclement weather, and rescheduled for April 6, 2009. It was then

held as scheduled. I received 26 government exhibits, one Applicant exhibit, and Applicant's testimony. The transcript was received on April 15, 2009.

Findings of Fact

Applicant is a 57-year-old man with four adult children. He has been divorced for more than 30 years. He has a GED, and served in the U.S. Army from 1972 through 1973. He received an honorable discharge (Exhibit 9). Since 2001, he has worked for a defense contractor as a shipyard pipefitter (Exhibit 1) He had previously worked in this occupation in the early 1990s (Exhibit 15 at 2), and from 1978 to 1980 (Exhibit 25 at 2).

Applicant has had a problem controlling his alcohol consumption for his entire adult life. Although his Army discharge status was honorable, he was released early after Medical Board Proceedings concluded he was temporarily disabled, in part, because of a history of alcoholism (Answer at 1; Exhibit 8). Between 1974 and 1988, Applicant was charged four times with alcohol-related offenses as described in SOR subparagraphs 1.c, 1.d, 1.h, and 1.i.¹

Applicant sought inpatient treatment for his alcohol consumption in December 1981 (Answer at 2). At that time, he was drinking a fifth of a gallon of liquor and a six-pack of beer per day (Exhibit 11 at 2). He left the program prematurely without completing it (*Id.*). His alcohol counselor stated in a discharge summary that he would continue to have problems with alcohol abuse so long as he had the same uncooperative attitude (*Id.*).

After leaving the treatment center in 1981, Applicant's alcohol consumption briefly decreased. By 1985, it again increased. By August 1985, when he re-entered the treatment center, he was drinking a fifth gallon of liquor per day (*Id.*). Subsequently, a psychiatrist diagnosed him with chronic alcoholism (*Id.*; Exhibit 20 at 2). While enrolled in the program, he was prescribed antabuse, received therapy, and attended Alcoholics Anonymous (AA) meetings. Upon his discharge, his therapist advised him to continue attending AA meetings, and taking antabuse (*Id.*).

Applicant remained sober for a few months after his discharge, then began gradually relapsing. By May 1986, he was again drinking a fifth gallon of liquor daily (*Id.* at 3). He went to a staff physician at the local VA who diagnosed him with chronic alcoholism, and recommended that he return to the treatment center where he had been treated twice earlier (Exhibit 24). Also, the physician admitted him into the hospital to begin treatment while waiting for a bed to become available at the alcohol treatment center. Applicant was then discharged from the VA after three days because he failed to follow through with his physician's recommendations (*Id.*).

¹These charges were the subject of an earlier security clearance investigation, and were included in an SOR issued on July 23, 1991 (Exhibit 12). Because Applicant admitted them then, and an administrative judge incorporated them into his findings of fact in a subsequent decision that is part of this record (Exhibit 11), I will not address the specifics of each arrest any further.

Applicant's continuing problems with alcohol consumption prompted the issuance of an SOR in July 1991. At the hearing, Applicant stated he never drank alcohol in the amounts he told the therapist at the treatment center. Rather, he lied to the therapist so that he could be admitted (Exhibit 14 at 45).

Upon considering the evidence, the administrative judge granted Applicant a clearance (Exhibit 11 at 6). In doing so, he rejected Applicant's contention that he purposefully misrepresented his alcohol consumption to the clinic director to gain admission into the program, and concluded that his contradictory testimony "undermined his credibility" (Exhibit 11 at 6).

One evening in July 1998, a police officer stopped Applicant for speeding. After Applicant informed him that he had been drinking, the officer conducted a field sobriety test (Exhibit 3 at 4). Applicant failed, and was arrested and charged with Driving While Intoxicated (DWI), and Refusal to take a Breathalyzer (Answer). Six months later, Applicant was found guilty and sentenced to five months in jail, suspended (Answer; Exhibit 2 at 10).

On February 26, 2000, Applicant was arrested and charged with DWI, Reckless Driving, and Possession of a Concealed Weapon (Answer; Exhibit 2 at 6). The court dismissed the latter two charges, and convicted him of the DWI charge. He was sentenced to six months in jail with all but two days suspended, fined \$250, and ordered to attend outpatient alcohol treatment, in addition to the state's Alcohol Safety Awareness Program (ASAP). As part of ASAP, an ignition interlock device was installed on his automobile (*Id.*; Tr. 30).

Applicant completed the outpatient alcohol treatment. He was diagnosed with alcohol dependence, hepatitis C and liver disease (Exhibit 6 at 1).

On or about June 15, 2001, a show cause order was filed against Applicant for returning the ignition interlock device without the court's permission. On August 20, 2001, he was found guilty, and ordered to participate in ASAP for an additional six months. He completed ASAP, as ordered (Exhibit 6 at 1).

Applicant completed another outpatient treatment in 2004 (Exhibit 6). Most recently, he received outpatient treatment in 2008. He underwent a urine screen, testing positive for alcohol (Exhibit 6 at 2). The organization's director, a licensed professional counselor, evaluated him, concluded he was alcohol dependent, and recommended a 20-week relapse prevention program to include random alcohol testings (Exhibit 6 at 1).

During an initial interview, Applicant told the clinic director that he was engaged in AA and the 12-step program. When the clinician asked Applicant to describe the 12 steps, "he was unable to provide the most basic information about them" (Exhibit 6 at 1). Also, Applicant stated his last use was in 2004, then later revealed he had drunk an alcoholic beverage three weeks before the evaluation (*Id.*).

In August 2003, Applicant completed a security clearance application. In response to a question regarding prior alcohol-related arrests, he listed the 2000 DWI, but not the 1998 DWI (Exhibit 1 at 7). He testified that he did not include it because he had forgotten about it (Tr. 29).

Also, in response to a question regarding alcohol-related therapy received in the past seven years,² Applicant disclosed the 2000 treatment, and listed attendance from July 2000 through August 2000. The government alleges this is a falsification, asserting that he attended from June 2000 through January 2001. The record evidence is inconclusive as to the exact dates of attendance.

Currently, Applicant characterizes himself as a beginner in the 12-step program (Tr. 33). Also, he stated that he was “not going to the meetings like [he] was at one time” (Tr. 32).

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 overarching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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 as to obtaining a favorable security decision.

²Question 20. Your Use of Alcohol: In the past 7 years, has your use of alcoholic beverages . . . resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism).

Analysis

Guideline J, Alcohol Consumption

Under this guideline, “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 ¶ 21). Applicant has a 40-year history of alcohol abuse. In that time, he has been arrested multiple times for alcohol-related offenses, and been diagnosed multiple times with chronic alcoholism or alcohol dependence. AG ¶¶ 22(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 . . . ,” 22(c), “habitual or binge consumption of alcohol to the point of impaired judgment . . . ,” 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” and 22(e), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” apply.

Applicant has relapsed multiple times over the years. As recently as 2001, he was found guilty of contempt of court for failing to follow the conditions of an alcohol-related court order. AG ¶¶ 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program,” and 22(g), “failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence,” also apply.

I have considered the mitigating conditions, and conclude none apply. After approximately 40 years of alcohol abuse, multiple arrests and failed attempts at treatment, Applicant characterized himself as a beginner in the 12-step program, and stated he is not attending any 12-step program sessions on a regular basis.

Guideline E, Personal Conduct

Under this guideline, “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” (AG ¶ 15). Although Applicant’s history of alcohol abuse does not trigger the application of any of the specific disqualifying Personal Conduct disqualifying conditions, it constitutes a concern under criteria set forth in the guideline’s introductory paragraph. Consequently, SOR subparagraph 2.a, which cross-alleges the Alcohol Consumption allegations of SOR Paragraph 1, also constitutes a security concern under SOR Paragraph 2, Personal Conduct. For the reasons set forth above, none of the Personal Conduct mitigating conditions apply, either.

The SOR alleges in SOR subparagraph 2.c that Applicant was charged with allowing an unlicensed driver to drive his car in 2000. Applicant successfully rebutted

this allegation at the hearing, providing evidence that the defendant was his son, who shares his name. I find in his favor as to SOR subparagraph 2.c.

Applicant has provided contradictory information concerning the extent of his alcohol abuse and his commitment to alcohol treatment through two separate security clearance investigative processes. Consequently, his contention, in response to SOR subparagraph 2.d, that he did not list the 1998 DWI arrest on his security clearance application because he forgot it, is not credible. AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies to SOR subparagraph 2.d without mitigation.

No conclusive record evidence establishes when Applicant completed his therapy that began in approximately June 2000. Consequently, Applicant’s disclosure of this therapy in response to the corresponding question on the security clearance application does not trigger the application of AG ¶ 16(a). Assuming for the sake of argument that the dates he listed were inaccurate by a few months, such an error would be immaterial given the disclosure of the therapy. I find in Applicant’s favor as to SOR subparagraph 2.e.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.”

Despite Applicant longstanding history of alcohol dependence, he has never fully applied himself toward rehabilitation. Not surprisingly, he has relapsed numerous times. The security risk generated by his ongoing drinking problem is exacerbated by the lack of credibility demonstrated both throughout this investigative process, and the one that occurred nearly 20 years ago. Upon considering the disqualifying and mitigating conditions together with the whole person concept, I conclude Applicant has not mitigated the security concerns. Clearance is denied.

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.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge