



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



In the matter of:)
)
) ISCR Case No. 06-19225
SSN:)
)
Applicant for Security Clearance)

Appearances

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

November 28, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on January 31, 2007. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under alcohol consumption (Guideline G) and personal conduct (Guideline E). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his answer to the SOR on July 22, 2008, and requested a decision be made on the record in lieu of a hearing. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on September 19, 2008. Applicant received the FORM

on October 6, 2008. His undated response to the FORM has been received in evidence. The case file was assigned to me on November 5, 2008.

Findings of Fact

The SOR contains 11 allegations under the alcohol consumption guideline and seven allegations under the personal conduct guideline. Applicant admitted all allegations except for SOR 2.a., which he denied. In support of his denial of SOR 2.a., Applicant explained that the investigator, who took his statement in April 2000, misunderstood information he provided about being present during a drug transaction in June 1994, leading to his indictment.

Applicant is 42 years old, divorced and has seven children. He has been employed as a security guard by a defense contractor since December 1998. He seeks a security clearance.

Alcohol Consumption

According to Item 15 (sworn statement dated April 14, 2000) Applicant began drinking about six beers a week when he was 17, and often drank to the point of intoxication until he stopped in April 2008 (SOR 1.j.). After joining the United States (U.S.) Army at the age of 18, his consumption increased to a case of beer each weekend. At age 20 (1986), he got married, and his drinking increased to about a fifth of whiskey and a 1½ cases of beer a week. The pattern continued into his early 20s. He asserted he reduced his drinking in the past 10 years by discontinuing use of hard liquor, and drinking only about a case of beer generally on the weekends. When under the influence of alcohol, Applicant is generally sociable, but can become mean and violent if provoked. In 1990, Applicant did not think he had an alcohol problem, but the U.S. Army required that he complete an inpatient, substance abuse program in the Fall of 1990. No military records were provided concerning the inpatient treatment.

In May 2003, Applicant responded to questions (Item 17) about the scope of his alcohol use. He claimed he stopped drinking alcohol in May 2002, and began attending Alcoholics Anonymous (AA) shortly after completing the counseling conditions of his sentence in May 2002 for DWI (SOR 1.g.).

According to his interview November 15, 2007 (Item 29), Applicant reduced his drinking after his conviction for DWI in December 2001, but no mention was made of abstinence for any period. Instead, he just drank beer on his two days off every week. The amount of consumption was just enough for him to feel under the influence, with consumption to the point of intoxication occurring about once a month. Applicant felt he had an alcohol problem, but he thought he could control his consumption. If his use worsened, he would seek help through counseling or AA. Significantly, Applicant denied observing his friend conduct a drug transaction in June 1994, as he had described in detail in his April 14, 2000 statement (Item 15). See, SOR 2.a.

On March 12, 2008 (Item 30), a licensed substance-abuse treatment practitioner (LSATP) from a substance abuse services center, submitted a report to DOHA regarding an evaluation of Applicant. Her report was based on an interview of Applicant, his government interview on November 15, 2007 (Item 15), and a urine screen. Applicant did not appear to understand his alcohol addiction, prompting the LSATP to opine the initial treatment experience was not effective in increasing Applicant's knowledge of substance abuse. The practitioner opined he should enroll in a relapse prevention program, including a 12-step component and random drug testing. Based on an evaluation of her interview with Applicant and his government interview in November 2007, she determined that alcohol dependence would be an appropriate, preliminary diagnosis (Item 32).

Alcohol Related Incidents

While in the Army in April 1990 (SOR 1.a.), Applicant was arrested and charged with driving while under the influence (DWI), a violation of Article 111 of the Uniform Code of Military Justice (UCMJ). In August 1990 (SOR 1.b.), Applicant was arrested and charged with DWI and using a false visitor's pass in violation of Article 111 of the UCMJ. He received an Article 15, resulting in a reduction in rank and a requirement to attend inpatient alcohol treatment. In March 1991 (SOR 1.c.), Applicant violated Article 92 of the UCMJ after he was found to unfit for duty (sleeping on duty) due to having consumed too much alcohol. As a result of the three above alcohol-related offenses, Applicant's security clearance was revoked by the U.S. Army (SOR 1.d.), yet he continued to drink alcohol.

As set forth in SOR 1.e., Applicant was found guilty of drinking in public on school grounds in November 1992. In October 1999 (SOR 1.f.), Applicant consumed alcohol before he was arrested and charged with assault and battery. The charges were dismissed.

On December 22, 2001 (SOR 1.g.), Applicant was arrested for DWI and other charges. The other charges were dismissed, and Applicant was found guilty of DWI. He was sentenced to 5 months in jail, his license was suspended, and he was ordered to complete alcohol awareness counseling. He completed counseling in May 2002.

In May 2003, Applicant stated he had stopped alcohol consumption in May 2002 (SOR 1.h.), and had no plans for alcohol use in the future. However, he resumed drinking. In September 2004, Applicant was denied a security clearance (SOR 1.i.) by another DOHA Administrative Judge, based on alcohol use, criminal conduct, and personal conduct.

In May 2008, Applicant was diagnosed alcohol dependent (SOR 1.i.) by an LSATP, who recommended treatment, random urine testing, and breath testing for alcohol.

Personal Conduct

On April 14, 2000 (Item 15, sworn statement), Applicant indicated he witnessed a drug sale in June 1994. On March 3, 2008 (SOR 2.a.), Applicant affirmed his November 15, 2007 interview by providing false information when he stated he had never seen his friend selling drugs in June 1994 (Item 29). Given Applicant's detailed description of the drug transaction and his recall of the course the case took in the court system, I choose to believe that Applicant observed the drug deal.

In May 1990 (SOR 2.g.), Applicant was charged with assault on his spouse. In the same month (SOR 2.f.), Applicant received an Article 15 for driving on the base with privileges revoked. He was found guilty for carrying a concealed weapon (CCW) (SOR 2.e.) in September 1992. In June 1994, Applicant was charged with felony conspiracy to distribute cocaine (SOR 2.d.), but was acquitted. In July 1996 and August 2003, Applicant was charged with assault and battery. (SORs 2.c. and 2.d.) He could recall neither incident because there were about six similar incidents which began with him arriving home late after drinking and/or being with another woman, and his girlfriend accusing him of infidelity (Item 29).

Character Evidence

Applicant provided no evidence of his job performance or of his lifestyle away from the job. He provided no independent evidence of AA contact, or participation in any kind of therapy. He has been employed at his job for almost 10 years.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable doubt concerning personnel being considered for access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption (AC)

21. *The Concern.* “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.”

Applicant’s lengthy alcohol abuse and alcohol-related conduct activates AC disqualifying condition (DC) 22.a. (*alcohol-related conduct away from work*); AC DC 22.b. (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*); AC DC 22.c. (*habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*); and AC DC 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*). Applicant’s habitual alcohol consumption led to alcohol-related incidents, both outside and inside the workplace, and also led to Applicant’s repeated punishment under the UCMJ, and finally revocation of his security clearance on December 30, 1991.

Applicant’s drinking continued at abusive levels after his discharge from the service in (circa) 1992. Following a public intoxication conviction on school grounds in November 1992, and an arrest (no conviction) in October 1999 for assault after he had been drinking, Applicant was convicted of DWI in December 2001. Though he claims he quit drinking and joined AA following the completion of the alcohol awareness program

in May 2002, because there is no mention of this year-long period of sobriety in any of the more recent exhibits, I do not consider his claim credible. A lack of supporting evidence for Applicant's more recent claim in his response to the FORM that he has been sober since April 2008 is not believable either.

The LSATP, director of the community substance abuse center, conducted an evaluation of Applicant in March 2008 pursuant to a request by DOHA. After the LSATP's clinical interview of Applicant, her review of his November 2007 interview (Item 29) and examination of his urine sample, she determined (Item 32) that Applicant should be diagnosed as alcohol dependent.

Though there are four mitigating conditions under the AC guideline that potentially could apply, none do apply because Applicant's drinking history demonstrates he is not committed to abstinence or recovery from his alcohol dependence. AC MC 23.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*) does not apply. Even if I assume he stopped drinking in April 2008, Applicant has only seven months of abstinence. This brief period of abstinence pales in comparison to his 22-year period of alcohol abuse or dependence.

AC MC 23.b. (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use if an alcohol abuser*) does not apply, because as the LSATP indicated in March 2008 (Item 30), Applicant does not comprehend his alcohol addiction. His lack of understanding of his alcohol problem makes it more difficult for him to take credible action to overcome the problem. Finally, the short period of abstinence, though encouraging, does not convince me Applicant is firmly on the road of recovery. The other two mitigating conditions are inapplicable.

Personal Conduct (PC)

15. *The Concern*. "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 security clearance process or any other failure to cooperate with the security clearance process."

PC DC 16.b. (*deliberately providing false or misleading information concerning relevant facts to an investigator or other official government representative*) applies. In April 2000, Applicant provided a detailed description of observing a drug transaction between his friend and a female in June 1994. He provided a detailed description that tracked the case through the criminal justice system and ultimately resulted in his acquittal. His denial of this drug transaction in his November 2007 interview, and

affirmation of that denial in his March 3, 2008 interrogatory answers (Item 29) is not credible, is not credible either. Item 15 is a sworn statement (whereas Item 29 is only an interview) that Applicant provided to the government in April 2000. Unlike the interview, Applicant's initials throughout the statement indicate he had a full opportunity to review the statement and make changes. Before Applicant signed the statement, he acknowledged that the statement was true as written. As between Item 15 and Item 29, I determine Item 15 is more reliable in supporting my conclusion that Applicant did observe a drug transaction in June 1994.

Applying to Applicant's conduct that occurred between May 1990 and August 2003 (SOR 2.g. through 2.b.) is disqualifying condition PC DC 16.c. (*credible adverse information in several adjudicative issue 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, unwilling to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard classified information*). In April 1990, Applicant received Article 15 punishment for DWI, and his driving privileges on the base were suspended. One month later, he violated his suspension (rules violation) by driving on the base with his privileges suspended.

In September 1992, at age 26, Applicant was arrested and convicted for carrying a concealed weapon. In June 1994, Applicant was arrested for conspiracy to distribute cocaine and distribution of cocaine. Although he was acquitted of the charges, he exercised poor judgment by associating with drug users. In June 1996 and August 2003, Applicant was arrested for assault and battery. Applicant recalled that both incidents were started after he came home late after drinking or being with another woman.

There are four mitigating conditions (MC) that are potentially applicable to the circumstances of this case. Those conditions are: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC 17.c. (*the offense was so minor, or so much time has passed, or the behavior is so 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, or good judgment*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*). PC MC 17.a. is not applicable as Applicant continues to deny he falsified his interview in November 2007 regarding his observation of a drug transaction in June 1994. PC MC 17.c. is inapplicable because Applicant's ongoing belief he did not falsify the interview continues to cast doubt on his judgment and reliability. The second element of the condition cannot be applied as the most recent falsification occurred less than nine months before the hearing. The remaining mitigating conditions are inapplicable. Applicant's intentional attempt to conceal the drug transaction in June 1994, and his misrepresentations about his alcohol abstinence for a year or more,

coupled with the instances of poor judgment between 1990 and August 2003, have not been mitigated.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and whole person concept. The WPC is made of nine general policy factors:

(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 the participation is voluntary; (6) the presence or absence of rehabilitation and other 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.

Factor 6 (the presence or absence of rehabilitation and other behavior changes) and factor 9 (the likelihood of continuation or recurrence) are critical factors in this case. Applicant presented no independent evidence which shows rehabilitation or behavioral changes from his 22-year history of alcohol abuse or dependence. Applicant was convicted of four alcohol-related offenses between April 1990 and March 1991. Then, Applicant, at age 25, had his security clearance revoked in December 1991 because of his alcohol problem. After his discharge in 2002, Applicant continued to drink, and got involved in alcohol-related incidents.

On September 10, 2004, Applicant was denied a security clearance by an Administrative Judge of DOHA. The reason for the denial was Applicant's drinking pattern and alcohol-related conduct. Rather than discontinue his drinking and/or seek treatment Applicant has continued to consume alcohol. After reading Applicant's interview with a government investigator in November 2007, and conducting an interview with him in March 2008, the LSATP believed that, based on the lack of insight into his illness, he should be diagnosed with alcohol dependence and was in need of a treatment program. Based on the totality of the evidence, the AC and PC guidelines are found against Applicant.

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 (Alcohol Consumption, Guideline G): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant

Paragraph 2 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	Against Applicant
Subparagraph 2.d.	Against Applicant
Subparagraph 2.e.	Against Applicant
Subparagraph 2.f.	Against Applicant
Subparagraph 2.g.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge