



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-19487
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 17, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 21, 2004 (Item 4). On October 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G for Applicant (Item 1). 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 responded to the SOR (RSOR) in writing on November 19, 2007, (Item 3), and he included additional documents. He also requested that his case be decided on the written record in lieu of a hearing.

On January 5, 2007, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 18, 2008. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on March 4, 2007.

In the FORM, Department Counsel offered eight documentary exhibits (Items 1-8). No additional documents were offered by Applicant. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR (Item 3) Applicant admitted all of the SOR allegations under Guideline G with explanations for allegations 1.a. and 1.c. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 27 years old. He works for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

(Guideline J - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abuses alcohol to excess.

1.a. Applicant has consumed alcohol, at times to the point of intoxication, from approximately 1999 to at least 2007. In item 3, Applicant admits the allegation, but stated that "from 2004 to 2007 his alcohol consumption was limited to specific and identified celebrations" such as weddings or other celebrations.

1.b. In January 2001, Applicant was arrested and charged with (1) Driving Under the Influence (DUI), and Driving with a Blood Alcohol Content (BAC) of .08% or more. Applicant plead guilty and was sentenced to three years probation, a suspended driver's license for one year. He was also ordered to serve 240 hours of community service, and to pay a fine.

1.c. In January 2004, Applicant was arrested and charged with (1) DUI, and Driving with a BAC of .08% or more. Applicant failed to appear and in September 2004 a Bench Warrant was issued. Applicant plead guilty on August 20, 2007, and he was sentenced to serve 30 days in jail, which was stayed, three years probation. He was also ordered to attend an 18 month Multiple Offender Alcohol Program, and to pay a fine.

In an attachment to Item 3, a November 13, 2007 letter to the judge regarding Applicant's 2004 arrest, discussed in 1.c., below, the manager of a treatment program wrote that Applicant "admits to having a problem with alcohol dating back to his early 20's, and states there is a history of alcoholism on the fraternal side of the family." The letter follows that if Applicant "follows our recommended discharge planning we believe he has been given the tools to remain sober and continue in long-term recovery." This is the only independent evidence offered concerning Applicant's history of alcohol use or his recommendation of future sobriety. Since Applicant did not testify before me, nor offer any independent evidence about his current alcohol consumption, I have no evidence to conclude that Applicant has complied with the discharge plan of the program or that his alcohol difficulties have been resolved.

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 over-arching 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." 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 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 Executive Order 10865 provides that 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

Applicant's alcohol consumption has resulted in two DUI arrests and convictions, occurring in 2001 and 2004.

The Government established, by substantial evidence, that Applicant was involved in alcohol-related incidents away from work, and binge alcohol consumption to the point of impaired judgement. Disqualifying Conditions 22. (a) and (c) apply to this case.

As stated above, in his RSOR (Item 3), Applicant admitted to currently drinking at weddings or other celebrations. Since no independent evidence was introduced as to the amount of Applicant's current alcohol consumption, nor what steps he has taken to avoid having alcohol related problems in the future, I can not find that any Mitigating Condition applies under Guideline G. Paragraph 1 is found against Applicant.

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.” 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 have considered the potentially disqualifying and mitigating conditions under Guideline G, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including the lack of evidence regarding Applicant's

character and lifestyle, or any independent evidence on his behalf, I find that the record evidence leaves me with serious doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For these reasons, I conclude Applicant has failed to mitigate the 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge