



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



In the matter of:)	
)	
)	ISCR Case No. 14-00165
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline J, criminal conduct; Guideline G, alcohol consumption; and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On March 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, G, and E. DOD acted 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 adjudicative guidelines (AG), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 11, 2014. He requested a hearing before an administrative judge. The case was assigned to me on May 6, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2014, with a hearing date of June 5, 2014. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. I marked Department Counsel's exhibit list as hearing exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through D which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 16, 2014.

Procedural Ruling

At the hearing, Department Counsel moved to amend the SOR to conform to the expected evidence. The specific amendments included: (1) substituting the words "was dismissed" for the words "is pending" in SOR ¶ 1.a; (2) replacing the language in SOR ¶ 2.a with "You consumed alcohol prior to the arrest alleged in SOR ¶ 1.a above;" and (3) replacing the language in SOR ¶ 3.a with "That information set forth in SOR ¶¶ 1.a and 2.a above." Applicant had no objection to these amendments and the motion was granted.¹

Findings of Fact

In Applicant's answer to the SOR, he admitted portions of all the allegations, but denied particular language in SOR ¶¶ 1.a and 3.a. After a thorough and careful review of all the evidence submitted, I make the following findings of fact.

Applicant is 47 years old. He has been married to his wife for 29 years. At the time of the hearing they were separated, but in the process of reuniting. He has three children. Since June 2009, he has worked for a defense contractor as an analyst. He has 60 hours of college credits. He retired from the Army after 24 years of honorable service as a sergeant first class (pay grade E-7) and held a security clearance his entire Army and subsequent civilian career.²

Applicant's conduct raised in the SOR includes: (1) in September 2013, being arrested and charged with assault on family members, but the charge was dismissed; (2) consuming alcohol before the arrest; and, (3) the above stated conduct also amounting to a personal conduct concern.

In September 2013, Applicant was home on a Sunday with his family. His mother-in-law recently passed away. He was grilling food, watching football, and drinking hard liquor. He drank about eight to ten one-ounce shots of liquor. His wife became concerned about the amount he was drinking and asked him several times to

¹ Tr. at 15-17.

² Tr. at 6-7; GE 1; AE D.

stop drinking. He became angry and at some point kicked her and pulled her down from behind. Applicant's two sons became involved in the altercation with the younger son jumping on his father's back in an attempt to separate his father from his mother. Applicant's wife called 911 and the police arrived shortly thereafter. Applicant remained "aggressive" toward the responding officers and was threatened with a Taser gun. He was arrested and removed from the home. Neither his wife nor his son was willing to bring charges against him. This was a domestic violence incident so the county pursued domestic violence charges. The county attorney dismissed the charges after talking with all the parties. Applicant reported the incident to his security officer immediately.³

Applicant's wife testified that he has never struck her in any manner before this incident or after it. She had never seen him as intoxicated as he was in September 2013. She believes it was a one-time occurrence. She moved out of the family home in October 2013, but remained in daily contact with the Applicant. They are now in the process of moving back together. They have sought informal counselling through their pastor at church. Applicant has given up drinking hard liquor. He now only has a social drink consisting of either wine or beer. He had never been arrested before this incident. He has never been diagnosed as alcohol dependent or as an alcohol abuser. Applicant presented letters from two coworkers who attested to his trustworthiness and his integrity.⁴

Policies

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 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, 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 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 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.

³ Tr. at 36-40, 87; GE 3; AE A; Answer.

⁴ Tr. at 41-43, 53-55, 57-59, 61-62, 77, 79, 82; GE 2; AE B-C.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant’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 in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and

- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was arrested and charged with a domestic assault offense. The charge was ultimately dismissed, but Applicant acknowledged his actions. I find that the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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; and

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

Applicant admitted his wrongdoing when he consumed too much hard liquor in September 2013, which led to the events ending in his arrest. He has never before or since been involved with a similar situation, which his wife corroborated. He also has never been arrested before. As a result of this incident, Applicant stopped drinking hard liquor and now only drinks wine or beer at social gatherings in a responsible manner. He and his wife have sought informal counseling with their church pastor. Applicant is well respected at work. He also immediately reported the arrest to his security officer. Based upon the foregoing, I find that Applicant's actions happened under unusual circumstances, that the behavior is unlikely to recur, and that it does not cast doubt on his reliability, trustworthiness, or good judgment. I further find that there is sufficient evidence of successful rehabilitation, including no additional criminal involvement, remorse, and a good employment record. Both AG ¶¶ 32(a) and 32(d) apply.

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. Two are potentially applicable in this case:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(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.

Applicant's drinking binge in September 2013, which led to the physical altercation with his family and resulted in his arrest meets the conditions set forth in AG ¶¶ 22(a) and (c).

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and considered the following relevant:

(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.

The same rationale that supported application of mitigating factors under the criminal conduct guideline also applies here. AG ¶¶ 23(a) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant's criminal behavior caused by his excessive alcohol use in September 2013 supports a whole-person assessment of questionable judgment. AG ¶ 16(c) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(c) the offense is 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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The same rationale that supported application of mitigating factors under both the criminal conduct and alcohol consumption guidelines also applies here. AG ¶¶ 17(c) and 17(d) 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 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) 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 considered Applicant's age, honorable military service, his commitment to responsible use of alcohol, and his character references. I am convinced that Applicant learned his lesson from his past binge activity and is committed to responsible alcohol use in the future, which will also avoid future criminal conduct.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline J, criminal conduct; Guideline G, alcohol consumption; and Guideline E, personal conduct.

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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge