



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



In the matter of:)
)
) ISCR Case No. 12-05850
)
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns related to his excessive alcohol consumption, his abuse of prescription medications, and his falsification of an affidavit he completed as part of the security clearance investigative process. Clearance is denied.

Statement of the Case

On August 31, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, alcohol consumption, and E, Personal Conduct. 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 adjudicative guidelines (AG).

Applicant answered the SOR on September 22, 2012, admitting all of the allegations except subparagraph 2.a. On November 9, 2012, the case was assigned to me. On November 27, 2012, a notice of hearing was issued scheduling the case for December 17, 2012. At the hearing, I received three Government exhibits marked as Government Exhibit (GE) 1 through 3, in addition to one Applicant exhibit (AE A), and Applicant's testimony. The transcript was received on January 2, 2013.

Findings of Fact

Applicant is a 28-year-old single man. He earned a bachelor of science degree in electrical engineering in 2005 and a master's degree in electrical engineering in August 2006. Applicant has been working for his current employer since May 2009. (GE 1 at 6)

Applicant began drinking alcohol in 2001 at age 17. For the next four years, he drank approximately once or twice per week. On each occasion, he would consume five alcoholic beverages. On four occasions during this period, he drank alcohol to the point where he blacked out.

Applicant's drinking increased after he obtained his master's degree in 2005. Although he continued to drink approximately once or twice per week, he became intoxicated each time. Between 2007 and 2011, he blacked out from alcohol consumption approximately 30 times. (Tr. 79-80) On two of those occasions, he woke up the next morning, realizing that he had driven home, with no recollection of driving. (Tr. 80) Typically, he would black out after consuming seven beers or mixed drinks within three hours. (GE 3 at 2)

Applicant admitted driving while intoxicated approximately 17 times between 2007 and 2011. (Answer at 1) Applicant testified that he misunderstood the meaning of the word "intoxicated" when he answered the SOR. Specifically, he interpreted intoxication to mean "buzzed," which he defines as being slightly under the influence of alcohol, but under the legal driving limit. (Tr. 31, 79) The only two times that he was legally intoxicated while driving were the times that he blacked out before getting in the car to drive, as described above. (Tr. 32) Applicant has never been arrested or prosecuted for drunk driving.

Applicant's alcohol consumption was heaviest in early 2009. During this period, he was getting intoxicated nearly every other day. (GE 3 at 3) On one occasion, after a night of overindulging in alcohol, Applicant passed out on a sidewalk and awoke the next day at his friend's house with no recollection of how he got there. On another occasion in 2009, Applicant, while in a drunken stupor, walked from a friend's house where he had been drinking to where he thought was his home. After unsuccessfully trying to enter either the house or the car in the front driveway, Applicant went to the backyard and fell asleep on a lawnchair. He did not realize he was not at his home until he awoke the next morning.

On one occasion in early 2010, Applicant took two prescription pain pills with a beer to get high. (GE 3 at 2) Later that year, he drank one-fourth to one-third of a bottle of prescription strength cough medicine together with a beer. (GE 3 at 2) Applicant has not abused prescription drugs since then.

In November 2010, another federal government agency initiated an investigation of Applicant for a security clearance. (GE 1 at 1) As part of the investigative process, Applicant was interviewed in February 2011. A few days before the interview, Applicant had blacked out after having drunk too much alcohol. (Tr. 82)

After the interview, Applicant was referred to a psychologist who worked for the agency's psychological services department. In May 2011, Applicant met with the psychologist and he was evaluated and diagnosed with alcohol abuse. (GE 3 at 4) The psychologist concluded that the risk that Applicant would continue to engage in high-risk behavior indicative of poor judgment in the future was high. (GE 3 at 4) In December 2011, the agency denied Applicant's security clearance application. (GE 2 at 1)

After meeting with the psychologist, Applicant decreased his alcohol consumption. (Tr. 31) Between May 2011 and April 2012, he drank approximately three to four times per week, but limited his consumption to four drinks per episode. (GE 2 at 2) Since approximately May 2011, Applicant has maintained a detailed log of his drinking. (AE A) It tracks the percentage of days he drinks, the average number of drinks per hour, and the events where his drinking occurs. According to the log, Applicant has consumed alcohol slightly more than every other day, and has consumed five or more drinks on 23 percent of the occasions when he has drunk alcohol. (AE A at 1)

Applicant has not undergone any substance abuse treatment or attended counseling. According to Applicant, "being an analytical person, [he] can get a handle on such things [himself]." (Tr. 70) While socializing with friends two days before the hearing, Applicant drank six alcoholic beverages over a six-hour period. (Tr. 85)

On April 3, 2012, Applicant completed a signed, sworn affidavit. (Answer at 1) In the affidavit, Applicant stated that he has never been "officially diagnosed as abusing alcohol or being alcohol dependent." (GE 2 at 3) When asked during cross-examination why he did not include the psychologist's May 2011 diagnosis of alcohol abuse, Applicant stated that he "just honestly did not realize that when they asked about an official diagnosis that the clearance process psychologist counted as an official diagnosis." (Tr. 68)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 to obtain a security clearance.

Analysis

Guideline G, 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’s history of binge drinking and driving under the influence of alcohol resulted in his being diagnosed as alcohol abusive. The following disqualifying conditions under AG ¶ 22 apply:

- (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;
- (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
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

The following mitigating conditions under AG ¶ 23(a) are potentially applicable:

- (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; and
- (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).

Applicant was never arrested for any alcohol-related charges. He has never been diagnosed with alcohol dependency. Conversely, he drank to the point of blacking out 30 times between 2007 and 2011, two of the blackouts occurred at some point while he was driving home, and he consumed six alcoholic beverages during an evening two days before the hearing. Applicant is oblivious to the seriousness of his alcohol problem, and his nonchalant attitude regarding both his past and current consumption of alcohol makes him a continued security risk. None of the mitigating conditions apply.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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.

In May 2011, Applicant was evaluated by a psychologist and diagnosed with alcohol abuse. Approximately one year later, Applicant executed an affidavit in which he stated that he had never been officially diagnosed with alcohol abuse. This raises the issue of whether 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. Applicant was evaluated and diagnosed by a psychologist from the psychological services department of the agency that was investigating him for a security clearance. Under these circumstances, his contention that he did not know that the diagnosis was official is not credible. AG ¶ 16(a) applies without mitigation.

Applicant's abuse of prescription medications was not frequent or severe enough to constitute a security concern under the drug involvement or criminal conduct security concerns. However, when considered together with his alcohol abuse, his episodes of drunk driving, and his falsification of the affidavit, it triggers the following disqualifying condition under AG ¶ 16:

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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 has a history of alcohol abuse. He has never sought counseling to address it. Under these circumstances, his current alcohol consumption remains too high. The fact that his recent alcohol abuse has not been accompanied by any concurrent prescription drug abuse has little probative value. Applicant has not mitigated the security concern generated by AG ¶ 16(d).

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.

I considered the whole-person factors in my evaluation of the disqualifying conditions and they do not merit a favorable conclusion.

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.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	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.

MARC E. CURRY
Administrative Judge