



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



In the matter of:)	
)	
)	ISCR Case No. 12-06265
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 2, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Personal Conduct, Alcohol Consumption, and Criminal Conduct security concerns. Applicant was arrested three times, between 1990 and 2011, for alcohol-related offenses. He has abstained from alcohol use since August 2011 after completing court-ordered alcohol counseling. Recurrence is unlikely given his strong conviction to maintain sobriety. Doubts concerning his judgment and reliability are resolved. Eligibility for access to classified information is granted.

Statement of the Case

On September 15, 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). On December 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct; Guideline G, Alcohol Consumption; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR on December 23, 2013 (Answer). He requested a hearing before an administrative judge in his Answer. The case was assigned to me on February 10, 2014. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 10, 2014, and the hearing was convened as scheduled on March 6, 2014. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered Exhibits (AE) A through H, which were admitted without objection. Applicant testified on his own behalf and called three witnesses. DOHA received the hearing transcript (Tr.) on March 17, 2014.

Findings of Fact

Applicant is 55 years old. He has a high school education. He has been employed by a government contractor since 2009 and seeks a security clearance in connection with his employment. He is divorced and has one adult son with his first wife. He is engaged to be married to a witness who testified on his behalf. (GE 1; Tr. 30, 35, 61-63.)

The Government alleged that Applicant is ineligible for a clearance due to his personal conduct, alcohol consumption, and criminal conduct. Applicant admitted the SOR allegations contained in subparagraphs 1.a and 1.c. He denied SOR allegation 1.b. He admitted in part, and denied in part, allegations 2.a and 3.a. The concerns are set out chronologically below. (Answer.)

Applicant celebrated his birthday in 1990 over beers after work with some co-workers. He made a "poor choice," which was "influenced by alcohol" and drove his vehicle under the influence of alcohol. Applicant was stopped by the police for speeding on his way home. An outstanding warrant for an unpaid parking ticket led to his arrest. At the jail he was given a blood alcohol test. Applicant did not recall his blood alcohol content level, but as a result of the test, Applicant was charged with Driving Under the Influence (DUI). He was convicted of DUI and ordered to pay a fine, required to attend a 90-day alcohol counseling program, and his driver's license was restricted. (GE 2; Tr. 51-52, 64-74.)

In 1993 Applicant's mother "dared" him to not consume alcohol for a year. According to Applicant, she is a very religious woman who did not approve of alcohol use. He accepted her dare, but did not believe he needed to change his lifestyle. Applicant did not miss using alcohol after he successfully completed the dare and maintained sobriety for an additional 11 years. He abstained from alcohol use for a total of 12 years, before he resumed drinking alcohol socially. At the time he gave up using alcohol, he did not believe he had a problem with alcohol, but abstained from using it because he had no desire to drink alcohol. A note of encouragement from Applicant's mother to Applicant documented the dare. (AE A; Tr. 32, 37, 74-76.)

In 1994, during Applicant's 12-year period of sobriety, he was shooting pool at a local establishment that he frequented. A woman he had played pool with on other occasions was drinking and participating in their game. Applicant was on the losing team, and the rules of their pool game called for him to buy the winners a round of drinks. He did not know that the woman on the winning team was a minor or that she had been using a fake identification card to obtain alcohol. Undercover officers arrested the woman, Applicant, and a few others who also provided the woman alcohol. Applicant was charged with furnishing alcohol to a minor. Applicant provided documentation that shows that the case against him was dismissed and not prosecuted. He testified that he was never found guilty, as alleged in the SOR, and provided documentation from his state's superior court to that effect. (AE G; Tr. 41-50, 76-77.)

From 2005 to 2011, Applicant's alcohol consumption changed from an infrequent social habit that occurred while he was on camping trips to a more frequent occurrence. In early 2011, Applicant's alcohol intake included approximately three glasses of wine "almost every other night." (Tr. 32-33, 77-80.)

On or about August 25, 2011, Applicant consumed one and one-half bottles of wine while working at a friend's house before attempting to drive his vehicle. He did not see a vehicle that had stopped for an oncoming police car, and he collided with the stopped vehicle. Applicant was arrested and charged with DUI-2nd offense. His blood alcohol content was .19% and .20% at the time of his arrest. He self-reported his arrest to his facility security officer, immediately upon returning to work after his release from jail. He was convicted of DUI-2nd offense in November 2011. He was sentenced to five days community service; placed on probation for three years; and was required to complete a nine-month licensed 1st offender alcohol-counseling program. The nine-month alcohol counseling consisted of 6 alcohol classes, 23 group sessions, 6 monitoring sessions, and 19 self-help meetings. He completed all of the court-imposed requirements and the court terminated his probation seven months early. (GE 2; GE 3; AE B; Tr. 38-39, 51-53, 67-74, 77-85, 100-107.)

Applicant has not consumed alcohol since the accident on August 25, 2011. He testified that he "doesn't care to be around friends that are drinking." He stated that there is no place for alcohol in his life and that it is not acceptable to the standards he tries to live by. He testified that he has never formally been diagnosed with alcohol dependence or alcohol abuse, but he recognized that he needed to fully abstain from future alcohol use. He has not attended any additional alcohol treatment or self-help programs outside of meeting the court-ordered requirements. However, he is active in his local church and has obtained counseling through his church. He has no alcohol in his home and his fiancée does not drink alcohol. He is committed to total sobriety. (GE 2; Tr. 35-38, 75, 87-88.)

Applicant is well respected by those who know him, as verified by the witnesses that spoke on his behalf and the letters of recommendation that attest to the high quality of his character. He is known by his family, friends, and colleagues to be honest and trustworthy. The letters from colleagues and professional contacts reflect that Applicant performs well on the job and is a highly valued employee. He has received recognition

for his exceptional on-the-job efforts through certificates awarded for his work performance. His friends report they are aware of his conviction to refrain from alcohol use and report he has maintained sobriety in their presence. He is reported to lecture others about the dangers of drunk driving and is known to share his experiences in hopes of helping others. He has contacts at his church that hold him accountable to his promise of sobriety. (GE 2; AE A; AE C; AE D; AE E; AE F; AE H; Tr. 53-58, 89-107.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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

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. The disqualifying conditions raised by the evidence are:

(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 was convicted of two DUI incidents in 1990 and 2011, after he consumed alcohol to the point of impaired judgment. He also was charged with furnishing alcohol to a minor, although Applicant was not aware of the minor's age. He was not in an alcohol-impaired state when he provided the minor alcohol. The DUI incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns. The following mitigating conditions fully apply:

(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 has acknowledged that he has issues with alcohol. He is determined to maintain total abstinence in the future. He completed the court-required counseling. He has further received counseling from his church. He is a man of strong convictions and will power, as demonstrated by the testimony of his witnesses and his extended 12 years of sobriety after the dare from his mother. While his resumption of alcohol consumption after a 12-year period of sobriety is cause for concern, Applicant adequately explained that his sobriety in the past was not based on acknowledgement of issues with alcohol, but instead on the dare and his lack of any desire to drink during that time. He now acknowledges the dangers of alcohol and is adamant that alcohol has no role in his life. He has no alcohol in his home, does not care to be around friends that are drinking, and has surrounded himself with friends and family that are supportive of his sober lifestyle. The likelihood of recurrence is low, and his past two DUIs do not cast doubt on Applicant's current judgment.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person'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 generate a security concern and may be disqualifying. The condition potentially raised by the evidence is AG ¶ 31:

(a) a single serious crime or multiple lesser offenses.

Applicant was arrested three times, between 1990 and 2011, for criminal offenses including two DUIs and furnishing alcohol to a minor. AG ¶ 31(a) is raised by the record.

AG ¶ 32 provides conditions that could mitigate criminal conduct security concerns. The mitigating conditions applicable in this case are as follows:

(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's DUIs occurred because he has a problem with alcohol. As noted above, Applicant has been sober since August 2011. He has demonstrated that future instances of criminal behavior are unlikely to recur, because he is committed to

maintaining a sober lifestyle. He demonstrated successful rehabilitation through significant remorse for his past criminal actions, participation in counseling, community involvement, and a good employment record. Substantial mitigation was established under AG ¶¶ 32(a) and 32(d) .

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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. 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 past alcohol abuse and criminal behavior demonstrates questionable judgment. AG ¶ 16(c) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; and

Applicant has been sober for over two years now. His coworkers, supervisors, family, and friends are all aware of his past problems with alcohol. He is committed to sober living, and has demonstrated that his past alcohol abuse and criminal involvement do not cast doubt on his current reliability, trustworthiness, or good judgment. Further,

he has successfully rehabilitated himself and has taken steps to avoid ever using alcohol in the future. He is unlikely to return to the use of alcohol. Mitigation under AG ¶ 17(c) and 17(d) was established.

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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant's life has changed in the past two years. He has admitted to himself he has problems with alcohol. He is dedicated to continued sobriety. He has no alcohol in his house and is engaged to a woman who is supportive of his sobriety. She does not consume alcohol either. He surrounds himself with good influences and is active in his church. These changes, as attested to by Applicant's fiancée, facility security officer, and friend, are likely to be permanent. The potential that he would be subject to pressure, coercion, exploitation, or duress is low, given his lifestyle choices since August 2011. There is little likelihood of recurrence.

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:	FOR APPLICANT
Subparagraph 1.a-1.c:	For Applicant
Paragraph 2, Guideline J:	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.

Jennifer I. Goldstein
Administrative Judge