



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



In the matter of:)
)
) ISCR Case No. 12-06794
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2015

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has been sober for the past eight months, it is too soon to conclude that he has mitigated the security concern regarding his alcohol consumption given his history of excessive drinking, diagnosis of severe alcohol dependence, and multiple relapses. Applicant failed to mitigate the security concern. Clearance is denied.

Statement of the Case

On April 30, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. 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 May 30, 2014, admitting all of the allegations and requesting a hearing. On December 5, 2014, the case was assigned to me. On December 11, 2014 a notice of hearing was issued scheduling the case for January 7, 2015. At the hearing, I received 11 Government exhibits marked as Government Exhibit (GE) 1 through 11, in addition to one Applicant exhibit (AE A), and Applicant's testimony. Also, at Department Counsel's request, I took administrative notice of the discovery letter mailed to Applicant, and marked it as Hearing Exhibit I. At the close of the hearing, I left the record open at Applicant's request for him to submit additional documents. Within the time allotted he submitted an additional document that I marked and incorporated into the record as AE B. The transcript was received on January 16, 2015.

Findings of Fact

Applicant is a 66-year-old married man with three adult children. He is a U.S. Navy veteran, serving on active duty from 1968 through his retirement in 1988. While in the Navy, he earned several awards and accolades including the Navy Expeditionary Medal. After retiring from the Navy, Applicant began working in the information technology field, primarily with satellite communications technology. Also, he finished college, majoring in information technology and business administration in 1994. In 1997, he earned a master's degree in information systems. (Tr. 19-20) For the past three years, he has worked as a systems analyst for a defense contractor. He has continuously held a security clearance for 45 years. (Tr. 20-21)

Applicant has been drinking alcohol heavily nearly his entire adult life. He attributes much of his heavy drinking during his late teens and early 20s to the culture of the Navy.¹ (AE B at 146) As Applicant matured, his alcohol consumption lessened to what he considered a normal amount - wine with dinner followed by "nightcaps" before going to bed, and drinks on holidays and at Super Bowl parties. (Tr. 25)

Applicant lost control of his alcohol consumption in 2003 when he began using alcohol to self-medicate the pain associated with a bout of severe back pain. That year, he began drinking a six-pack of beer per day on weekdays and a 12-pack of beer per day on weekends. (Tr. 26) By 2007, Applicant had begun taking excessively long lunch breaks and going to daily happy hours after work to drink alcohol. (Tr. 30) Also, he was spending approximately \$100 weekly on alcohol, charging it on a credit card account that he concealed from his wife to prevent her from knowing the extent of his alcohol abuse. (AE B at 84, 146)

In 2010, Applicant's boss became concerned about his excessive drinking, and ordered him to attend counseling through their company's employee assistance program. (Tr. 26, 33) Appellant attended the counseling and quit drinking for

¹During an intake interview with an alcohol treatment center in 2014, Applicant described a bar that catered to Navy clientele that had seatbelts on the bar stools so that patrons could drink all day without falling on the floor. (AE B at 143)

approximately seven months. (Tr. 33) In November 2010, Applicant, during a weekend when his wife was out of town, resumed drinking, going to a bar to eat dinner and watch a football game. (Tr. 34) While on the way home, he blacked out and drove his car off the road, suffering serious injuries requiring overnight hospital treatment. His blood-alcohol content was nearly triple the legal limit. (GE 6 at 299)

After Applicant was discharged from the hospital, the police arrested him and charged him with driving while under the influence of alcohol. (Answer at 1) While the trial was pending, in January 2011, Applicant began attending an intensive inpatient alcohol treatment program. (GE 6) During the 28-day program, he received various types of treatment “including processing, psycho-educational, relaxation, 12-step, nursing . . . and Alcoholics Anonymous [AA].” (GE 6 at 9) The medical director of the facility diagnosed him as alcohol dependent. (GE 6 at 9-10)

Applicant successfully completed the program in February 2011. (Tr. 36) He remained sober for the next three months before relapsing in May 2011. After resuming drinking, Applicant increasingly began calling in sick from work from hangovers, arriving late, leaving early, and taking excessively long lunch breaks. Consequently, he lost his job. (Tr. 36, 55; GE 6 at; AE B at 111) He was unemployed from May 2011 to April 2012.

On May 16, 2011, the court held his DUI trial. (AE 10 at 4) Applicant was found guilty, sentenced to 30 days in jail, suspended, and placed on one year of probation. Also, his driver’s license was suspended for a year, and he was ordered to attend counseling and abstain from alcohol.

Applicant complied with the court order, successfully completing counseling by October 2011. (GE 8-9) He remained sober for the next 15 months. Also, during that time, he attended weekly Alcoholics Anonymous (AA) sessions. (Tr. 15) In December 2012, Applicant relapsed. (Tr. 38) He was drinking up to four glasses of wine daily. (Tr. 41)

Applicant’s consumption increased. On one occasion in May 2014, Applicant sought emergency room treatment after drinking rubbing alcohol after running out of drinking alcohol. (AE B at 96)

On May 10, 2014, Applicant was arrested and charged with assault and battery after becoming intoxicated and pushing his wife. (AE B at 110, 112) Subsequently, in June 2014, Applicant voluntarily began receiving treatment from an intensive outpatient facility. (AE B) He received four days of detoxification treatment. (AE B at 105) While there, he was diagnosed with alcohol dependence. (AE B at 81) In October 2014, Applicant received a certificate for successfully completing the program. (AE A)

Applicant has not drunk any alcoholic beverages since June 7, 2014. (AE B at 5) He has learned to identify issues that trigger his alcohol consumption such as loneliness and anxiety, and address them through therapy. In addition, he has once again become active in AA, and the treatment regime for his back pain is under control. (Tr. 16)

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 alcohol dependence has led to two alcohol-related arrests and contributed to a job loss in 2011. Applicant readily acknowledges his drinking problem and has voluntarily sought professional help over the years. However, he has relapsed multiple times after attempting to quit drinking. 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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

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); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of . . . abstinence in accordance with treatment recommendations, such as participation in meetings of AA or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant successfully completed a rehabilitation program in October 2014, and he has been sober for the past eight months. Conversely, although he received a certificate of completion from the treatment facility, there is no record evidence of a long-term prognosis. Moreover, eight months of sobriety is not long given the severity of Applicant's alcohol addiction, his history of relapses, and the length of time that he has abused alcohol. Consequently, AG ¶ 23(a) is inapplicable, and AG ¶¶ 23(b) and 23(c) are only partially applicable.

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.

Applicant has continuously held a security clearance for 45 years. This is not enough to overcome the negative security ramifications of his severe alcohol dependence, the length of time Applicant has been abusing alcohol, and his history of unsuccessful attempts to abstain from drinking alcohol. Considering this case in the context of the whole-person concept, I conclude that Applicant has not mitigated the security concern.

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.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.

MARC E. CURRY
Administrative Judge