



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 12-09592

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

12/17/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his history of alcohol-related arrests and convictions. He is still on probation for his most recent drunk driving conviction. His request for a security clearance is denied.

Statement of the Case

On April 26, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew a security clearance required for his job with a defense contractor. After reviewing the results of his background investigation, which included Applicant's responses to interrogatories¹ from adjudicators for the Department

¹ Authorized by DOD Directive 5220.6, as amended (Directive), E3.1.2.2.

of Defense (DOD), it could not be determined that it is clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On May 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct).³ Applicant timely responded to the SOR and requested a decision without a hearing. On July 13, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on July 22, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed without any response to the FORM from Applicant. The case was assigned to me on October 5, 2015.

Findings of Fact

Under Guideline G, the Government alleged that between September 2003 and July 2012, Applicant was charged five times with alcohol-related offenses, including one charge (later dismissed) of liquor prohibitions (underage possession or consumption of alcohol) in 2003 (SOR 1.a), and four charges and convictions for operating a vehicle while intoxicated (OVI) (SOR 1.b - 1.e). Applicant's most recent OVI conviction occurred in 2012, and Applicant is still on probation for that offense. Under Guideline J, the Government cross-alleged as criminal conduct Applicant's alcohol-related misconduct alleged in SOR 1.a - 1.e (SOR 2.a). Applicant admitted all of the SOR allegations. (FORM, Items 1 and 4) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 31 years old and works as a customer service representative for a defense contractor, who hired him in February 2012. Applicant has never been married. He attended college from 2002 to 2004, and attended technical school from 2005 to 2007. He did not earn a degree or certification at either school. (FORM, Item 5)

In 2003, before Applicant turned 21, he was charged with underage possession of alcohol. The charge was later dismissed. Other than the court record of the charge and its dismissal (FORM, Item 7), there is no other information before me about this event. Likewise, this charge was not discussed with Applicant when he was interviewed by a Government investigator in June 2012. SOR 1.a and its cross-reference as criminal conduct in SOR 2.a are resolved for Applicant.

Starting in January 2005, Applicant was arrested, charged and convicted of OVI four times. For his offense in 2005, he served three days in jail and was on probation until 2007. For his offense in 2009, he served six days in jail and was placed on probation for two years. When he was arrested for OVI in November 2009, his probation

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included 11 exhibits (Items 1 - 11) proffered in support of the Government's case.

was extended for 15 months and he spent 10 days in jail. One of the terms of his probation was that he abstain from alcohol and illegal drugs. His driving privileges were also suspended with each conviction. (FORM, Items 4 - 10)

During an appointment with his probation officer in June 2011, Applicant tested positive for alcohol and cocaine. His probation was revoked and he was ordered to serve the balance of a previously suspended jail sentence, as well as additional jail time for his probation violations. In all, he served 170 days in jail. (FORM, Items 5 and 6)

Between April and June of 2010, Applicant received in-patient treatment for alcohol dependence. He was diagnosed as alcohol dependent and advised to abstain from alcohol. His aftercare plan included attendance at Alcoholics Anonymous (AA) meetings. However, Applicant consumed alcohol after his discharge from treatment to at least June 2011. In his EQIP, and when he was interviewed by a Government investigator in June 2012, he claimed to be a “proud member of AA” and that he had been sober for a year as of the interview. (FORM, Items 5 and 6)

In July 2012, Applicant was arrested and charged with OVI “High Levels.” In December 2012, he was convicted and sentenced to 150 days in jail, of which 120 days were suspended. He served 30 days in house arrest and is on probation until December 2017. His driving privileges are suspended until July 2017. In his response to the SOR, Applicant averred that he is “now a grateful recovering alcoholic and an active member of Alcoholics Anonymous and [his] community.” (FORM, Items 4 and 11)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified

⁵ Directive. 6.3.

information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Alcohol Consumption

Notwithstanding the resolution of SOR 1.a in Applicant's favor, available information, including Applicant's admissions to the SOR allegations, establishes that Applicant has consumed alcohol, at times to the point of excess and intoxication, for his entire adult life. He has been charged and convicted four times for alcohol-related offenses in the past ten years. This information raises a security concern expressed at AG ¶ 21, as follows:

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.

More specifically, available information requires application of the following AG ¶ 22 disqualifying conditions:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

I have also considered the potential application of the mitigating conditions at AG ¶ 23(a):

(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;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous 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.

None of these mitigating conditions apply. Despite repeated incarceration and completion of an inpatient alcohol treatment program, Applicant continued to drink until at least July 2012. His current claims of sobriety and commitment to AA ring hollow in light of his long history of probation violations resulting from an inability or unwillingness to abstain from alcohol consumption. Applicant is under court-ordered abstention from alcohol until December 2017, he cannot drive until July 2017, and he risks an additional 120 days in jail if it is found he has consumed alcohol. All of the foregoing precludes a finding that Applicant will abstain from alcohol of his own volition. His use of alcohol is still a security concern.

Criminal Conduct

Notwithstanding the resolution of SOR 1.a in Applicant's favor, available information shows that Applicant's alcohol-related conduct since 2005, as alleged in SOR 1.b - 1.e, also constitutes criminal conduct. This information is sufficient to raise a security concern that is addressed at AG ¶ 30, as follows:

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.

More specifically, this record requires application of the following AG ¶ 31 disqualifying conditions:

- (a) a single serious crime or multiple lesser offenses;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

I have also considered the potential applicability of the following AG ¶ 32 mitigating conditions:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; 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.

For the same reasons the AG ¶ 23 mitigating conditions do not apply, I do not find any support for mitigation under this guideline. The underlying cause of Applicant's criminal conduct is his addiction to alcohol. Unless and until he can demonstrate, which he failed to do here, that his use of alcohol is no longer a concern, his inability or unwillingness to obey the law will disqualify him from eligibility for access to classified information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines G and J, I have reviewed the record before me in

the context of the whole-person factors listed in AG ¶ 2(a). Applicant claims to be sober and that he is committed to AA. His prior history and his current probation status undermine the credibility of his claims and make it more likely than not that his alcohol-related criminal conduct will recur. This record sustains serious doubts about Applicant's suitability to hold a security clearance. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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:	For Applicant
Subparagraphs 1.b - 1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge