



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



In the matter of:)
)
) ISCR Case No. 12-11795
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esquire, Department Counsel
For Applicant: S. Ricardo Narvaiz, Esquire

03/04/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate his history of alcohol abuse and criminal behavior. His contradictory statements raise questions about his credibility and the validity of his favorable evidence. On balance, I find that not enough time has passed for me to conclude that Applicant has overcome his alcohol dependence, that he is living sober, and that he has made permanent lifestyle changes to prevent any future alcohol relapses and criminal behavior. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 6, 2011. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant or deny Applicant's eligibility for a clearance. On February 6, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (alcohol consumption) and Guideline E (personal conduct).¹ Applicant answered the SOR on March 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 1, 2015.

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

On August 10, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling Applicant's hearing for September 30, 2015. Applicant's hearing was held as scheduled. Department Counsel offered eight exhibits into evidence (GE 1 through 8), and Applicant offered one exhibit into evidence (AE A, comprised of Tabs 1 through 3). Applicant testified and presented the testimony of three witnesses. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on October 8, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.g, and 2.b through 2.d, with explanations. He denied the factual allegations in SOR ¶ 2.a. His admissions to the SOR and at his hearing are incorporated as findings of fact. After a complete and thorough review of the evidence, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 31-year-old security event monitor working for a federal contractor. He attended college from 2002 to 2008, and received a bachelor's degree in Information Science and Systems. He has never been married and has no children. Applicant has been working for his current employer, a federal contractor, since October 2010. This is his first security clearance application.

In May 2005, Applicant was driving while intoxicated and was involved in an accident. He was charged with hit and run. Applicant stated that the charge was later dismissed. In November 2006, Applicant was charged with driving with a suspended license. The charge was not prosecuted. (GE 7, Tr. 111)

In July 2007, Applicant drove while intoxicated and hit some cars on the side of the road. He was charged with driving-attempting to drive a vehicle while impaired by alcohol. He claimed he did not realize he had hit the cars and drove home. The police arrested him at his home. In January 2008, he was given probation before judgment, placed on one-year supervised probation, paid a fine, and required to attend substance abuse counseling. (GE 5)

In his January 2011 SCA, Applicant disclosed that in 2006 he tested positive during a drug-screening test and was terminated from his job. In response to questions on Section 22 (Police Record), Applicant disclosed several criminal offenses. In November 2009, he was charged with reckless driving. He pled guilty to a reduced charge of speeding and paid a fine.

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

In response to Section 23 (Illegal Use of Drugs or Drug Activity) of his 2011 SCA, Applicant disclosed that he illegally used marijuana with varying frequency between July 2002 and July 2007. While in college, he occasionally smoked marijuana for recreational purposes. He disclosed his use of marijuana during his court-ordered alcohol abuse counseling after his 2007 DUI, and he was treated for both alcohol and marijuana. Applicant claimed that he has not used marijuana since 2007. (GE 3)

In July 2012, Applicant was interviewed by a government background investigator. During the interview, Applicant discussed the criminal incidents he disclosed in his 2011 SCA, and his alcohol consumption. He stated that he started drinking at age 17. His average alcohol consumption was three glasses of vodka or brandy. The average amount of alcohol consumed to intoxication was a bottle of vodka or brandy.

During the interview, Applicant disclosed one additional incident, that in December 2011, he was arrested and charged with DWI. The subsequent investigation disclosed the following charges from his December 2011 incident: driving while under the influence of alcohol (DUI); failure to control vehicle speed in highway to avoid collision; following closer than reasonable and prudent; and negligent driving in careless and imprudent manner endangering property, life, and person. Applicant pled guilty to the last three charges and the first two charges were *Nolle Prosequi*. (GE 3 and 4)

In January 2012, Applicant was required to enroll in a 26-session intensive, outpatient treatment program. He was discharged from the program in October 2012. The discharge document indicates that at the time of his admission, Applicant had a three-year history of pathological use of alcohol. He was prescribed Antabuse and Doxepin.

In 2012, Applicant twice violated the Interlock system installed in his vehicle. He claimed that one violation was due to the food he consumed, and the second violation was because he used a face wipe to clean his face. He claimed he never consumed alcohol while he had the Interlock system in his car. During the substance abuse treatment program, Applicant was diagnosed with alcohol dependence. He completed the mandated 26-session treatment program, but he did not complete the recommended continuing care rehabilitation plan. Applicant suddenly stopped attending the continuing care treatment program and attempts to contact him were unsuccessful. (GE 2) In his answer to the SOR, and at his hearing, Applicant explained that he stopped attending the aftercare program because he no longer needed it.

In his answer to the SOR (certified in March 2015), and in his response to DOHA interrogatories (certified in January 2014), Applicant admitted that he had continued consuming alcohol after he was diagnosed with alcohol dependence in 2012. He stated his intent to continue consuming alcohol in moderation. At his hearing, Applicant claimed that nobody informed him about his alcohol dependence diagnosis, and he did not know about it. Applicant further claimed that he had not consumed any alcohol since December 2011 – “I have not touch a drink since.” (Tr. 100) He testified that he did not

intend to consume alcoholic beverages in the future. (Tr. 100) He disclosed; however, that he received another speeding ticket in August 2015.

I do not find Applicant's hearing statements to be credible. Applicant's Facebook post of June 20, 2014, shows that at least on or about June 20, 2014, he consumed alcoholic beverages to intoxication. Considering the evidence as a whole (including Applicant's answers to DOHA interrogatories and his answers to the SOR), I find that he continued to consume alcoholic beverages after his 2012 alcohol dependence diagnosis. I also find that up until the day of his hearing, he had stated his intent to continue consuming alcohol in moderation.

Applicant expressed remorse and regret for his alcohol-related and criminal behavior. He explained that many of the incidents occurred when he was young and immature (around 21 years old). He is now 31 years old and believes that he has matured and learned from his mistakes. Applicant claimed he refrained from alcohol consumption for one year after his 2007 DWI. He started consuming alcohol in 2008, but in moderation. He acknowledged he made a mistake by drinking and driving in 2011. He did not believe he was intoxicated and refused a breathalyzer test.

Applicant claimed that he voluntarily enrolled in the 2012 substance abuse treatment program. He wanted to take every step necessary to prevent jeopardizing his future. He also wanted help to ensure he never engages in similar criminal behavior. Applicant testified that the judge only ordered him to complete the program he had started. Applicant averred he started his rehabilitation efforts in earnest after his 2011 DWI charge and substance abuse treatment program. He considers that treatment his turning point. He realized he needed to control his alcohol consumption to take control of his life and protect his future. Applicant acknowledged that in the past he consumed alcoholic beverages to excess; however, he does not believe that he has a drinking problem.

Applicant believes that he has made significant changes in his lifestyle to avoid consuming alcohol to excess and to prevent any future alcohol-related misconduct. He claimed that he is now more conscious of his health and what he eats. He attends the gym three times a week. He uses the gym to release stress and frustration, and to prevent consuming alcohol. He claimed he is now in a stable relationship and he is dedicated to his live-in girlfriend. They have been together for six years, and living together during the last two and one-half years. He is also dedicated to his family and his work.

Applicant presented three witnesses (two supervisors and a coworker) and a statement from another supervisor. He is considered by all to be a valuable employee who displays excellent performance and always meets or exceeds his job requirements. Applicant pursues advanced training and certifications, increasing his technical expertise and value to his employer. His references believe that Applicant demonstrates integrity, deals well with ethical issues, and is responsive and well-liked by his customers.

Applicant's excellent performance was recognized by his peers with nominations as employee of the month in May, June, and October 2014. His managers also recognized his performance and awarded him pay bonuses in July 2014 and August 2015, and an appreciation award in November 2014. All of his references lauded Applicant's judgment, character, and trustworthiness. He is trusted to provide services and to communicate with senior clients. Applicant's references strongly recommended his eligibility for a clearance.

Applicant's supervisors testified that they have never observed any signs that would make them believe Applicant has an alcohol consumption problem. He is always at work on time, never calls in sick, and he is always available and willing to work overtime or during emergency situations.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the

loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

Under Guideline G the Government's concern is that 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 consumed alcohol, at times to excess, from 2005 to at least December 2011. He exercised questionable judgment by consuming alcohol to excess and engaging in criminal misconduct on two occasions (2007 and 2011). He was diagnosed with alcohol dependence in 2012. Despite his diagnosis, Applicant has continued to consume alcoholic beverages, and stated his intention to do so in the future, at least up to the day of his hearing.

Disqualifying conditions AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;" AG ¶ 22(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 AG ¶ 22(d): "diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence," apply.

Four of the Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

- (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.

All of the above mitigating conditions partially apply, but do not fully mitigate the alcohol consumption concerns. Applicant has been consuming alcoholic beverages since age 17. He has a history of abusing alcohol and exercising poor judgment. Between 2005 and 2011, he was involved in three driving while intoxicated offenses, two of them involved accidents with other cars. He received extensive alcohol counseling in 2007 and 2012. Notwithstanding his 2011 diagnosis of alcohol dependence, Applicant continued to consume alcoholic beverages and stated his intent to do so in the future, at least up to the day of his hearing.

I note that Applicant was not convicted of any of the DWI violations. However, he admitted that he drove while intoxicated and was involved in two accidents (2005 and 2011). There is no evidence to show that Applicant has been involved in any further alcohol-related misconduct since December 2011. However, the evidence suggests that he consumed alcohol twice while he had the Interlock system on his car. Furthermore, Applicant's Facebook post of June 20, 2014, indicates that at least on or about June 20, 2014, he consumed alcoholic beverages to intoxication.

At his hearing, Applicant repeatedly claimed that he has been abstinent since 2011. His testimony is in contradiction with his sworn answer to the DOHA interrogatories, and with his answer to the SOR, wherein he admitted to consuming alcoholic beverages, albeit in moderation. Moreover, in his answer to DOHA interrogatories he expressed his intent to continue consuming alcoholic beverages in the future. At his hearing, he claimed he no longer intends to consume alcohol in the future.

Applicant testified that since 2011, he has been dedicating himself to living a life of sobriety. He noted his dedication to his health, girlfriend, family, and his work. When asked why he stopped attending his aftercare treatment program, he stated that he did not need it anymore. He presented no evidence to show that he is participating in any substance abuse counseling. He also failed to submit a current favorable diagnosis and prognosis from a duly qualified medical professional.

Notwithstanding Applicant's steps in the right direction, his contradictory statements concerning his use of alcohol since 2011, raise questions as to Applicant's ability or willingness to remain sober. I find that not enough time has passed since his last alcohol-related incident for me to conclude that Applicant has overcome his alcohol dependence, that he is living sober, and that he has made permanent lifestyle changes to prevent any future relapses.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern about 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.

The personal conduct security concerns are based, primarily, on the same conduct that led to the alcohol consumption security concerns. Additionally, in 2009, Applicant was charged with reckless driving (pled guilty to speeding); in 2006, he was charged with driving with a suspended license (*Nolle Prossed*); he illegally used marijuana between July 2002 and July 2007; in 2006, he tested positive during a drug screening test and was terminated from his job; and in 2005, he was charged with hit and run (*Nolle Prossed*). Applicant's conduct triggers the applicability of the following disqualifying conditions under AG ¶ 16:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

AG ¶ 17 lists three conditions that could potentially mitigate the personal conduct security concerns:

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

For the same reasons discussed under Guideline G, incorporated herein, I find that none of the above personal conduct mitigating conditions fully apply. I carefully considered Applicant's claims of lifestyle changes and evidence of rehabilitation and mitigation. Notwithstanding, his contradictory statements concerning his use of alcohol since 2011, his expressed intent to consume alcohol in the future, and the Interlock violations raise questions about his credibility. His lack of credibility in turn raises questions about his testimony concerning lifestyle changes and other favorable evidence.

On balance, I find that not enough time has passed for me to conclude that Applicant has overcome his alcohol dependence, that he is living sober, and that he has made permanent lifestyle changes to prevent any future alcohol relapses or criminal behavior. Applicant's history of alcohol abuse and criminal behavior continues to cast doubt on his current reliability, trustworthiness, and judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines G and E in my whole-person analysis.

Applicant is a 31-year-old employee of a federal contractor. He has been working for his current employer since 2010. Applicant's supervisors consider him to be a valuable employee who displays excellent performance. He was commended for his desire to continue learning to increase his technical expertise and value to his employer. His references believe that he demonstrates integrity, deals well with ethical issues, and is responsive and well-liked by his customers.

Applicant's excellent performance was recognized by his peers and by his managers. All of his references lauded Applicant's judgment, character, and trustworthiness. They recommended his eligibility for a clearance. His supervisors have no reason to believe Applicant has an alcohol consumption problem.

Notwithstanding, once a security concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated alcohol consumption and personal conduct considerations concerns lead me to conclude that granting or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. Applicant's alcohol consumption and personal conduct security concerns are not mitigated. His access to classified information is denied.

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, 1.f, and 1.g:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b, and 2.d:	Against Applicant
Subparagraph 2c:	For 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.

JUAN J. RIVERA
Administrative Judge