



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



In the matter of:)	
)	
)	ISCR Case No. 12-12128
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Bradley P. Moss, Esq.

12/12/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant continues to drink alcohol despite a 2007 diagnosis of alcohol dependence and a discharge recommendation to abstain from alcohol consumption. Clearance is denied.

Statement of the Case

On March 27, 2013, the Department of Defense Consolidated Adjudications Facility (DODCAF) 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 revised adjudicative guidelines (AG).

Applicant answered the SOR on April 25, 2013, admitting the allegations and requesting a hearing. The case was assigned to me on July 22, 2013. On October 17,

2013, DOHA prepared a notice of hearing, scheduling the case for October 30, 2013.¹ At the hearing, I considered the testimony of Applicant and two witnesses, and I received three Government exhibits² (GE 1-3) and four Applicant exhibits (AE A-D). At the hearing's conclusion, I left the record open, at Applicant's request, for him to submit additional exhibits. Within the time allotted, he submitted one additional exhibit, marked as AE E. I received the transcript on November 6, 2013.

Findings of Fact

Applicant is a 35-year-old married man. He has earned some college credits. Applicant works for a defense contractor as a commissioning and control specialist. (Tr. 42) His duties include investigating systems operations to make sure they are working correctly. (Tr. 42) According to the chief executive officer of the company where Applicant works, his clients have been "very complimentary" of Applicant's job performance. (Tr. 55)

Applicant drinks alcohol. He first tasted it at age 11, and began drinking it on a regular basis a few years later in his late teens.(Tr. 96) By the late 1990s, he was drinking approximately two to three days per week, and drinking to the point of intoxication a few times per month. (Tr. 124-125) By 2004, Applicant was drinking 10 to 15 beers daily. (GE 3 at 6) He continued drinking at this pace for approximately three years.

In 2007, Applicant lapsed into depression after becoming estranged from his best friend and his best friend's wife, and subsequently tried to commit suicide by overdosing on pain medication. (AE D at 5-6) During intake at the hospital, Applicant admitted to driving drunk, and frequently drinking to the point of blacking out. (AE D at 6) Also, he disclosed that he had been drinking 10 to 15 beers per day for three years, and that this use increased to 18 beers per day when he became depressed.³ (GE 3 at 1, 6) Efforts to stop drinking aggravated his depression. (GE 3 at 1)

Subsequently in 2007, Applicant was admitted for treatment, diagnosed with depression and alcoholism, and prescribed medications for both ailments, including Campral, a medication "used to stabilize the chemical balance in the brain previously disrupted by alcoholism." (AE D at 6; GE 3 at 2; Tr. 76) He received treatment for five days, undergoing individual, group, and family therapy. (GE 3 at 3) Upon discharge, Applicant was advised to continue therapy with a psychologist, attend Alcoholics Anonymous (AA), and abstain from alcohol use. (Tr. 80-81 87, 145)

¹Applicant waived his right to 15 days notice of hearing.

²I marked three additional Government exhibits, for identification purposes, as GE 4 through GE 6. (Tr. 21, 34-38)

³At the hearing, Applicant testified that he had never drank excessive amounts of alcohol every day until 2007. (Tr. 132)

Applicant attended four to five sessions of therapy, then stopped going. (Tr. 78) He also stopped attending AA after four or five sessions. (Tr. 141) He resumed alcohol use after six months of abstinence. Since then, he has continued to drink approximately two beers per day, two six-ounce glasses of wine per month, and one two-ounce shot of scotch per month. (Tr. 107; GE 2 at 3) He gets drunk approximately two to three times per year, drinking approximately five to eight beers during holidays and family gatherings. (Tr. 114, 145) His alcohol consumption pattern since undergoing treatment has never approached the 2007, pre-treatment level. Currently, Applicant is happily married, and is well-respected by both his current and former employers (AE A, C; Tr. 45)

In September 2013, a clinical psychologist evaluated Applicant. The evaluation consisted of two sessions over a three-week period, totalling four hours. (AE D) After conducting a blood toxicology profile, and considering Applicant's current psycho-social profile,⁴ together with the period of time that has elapsed since Applicant last abused alcohol, the psychologist concluded that Applicant was no longer alcohol dependent. (Tr. 69-72) Specifically, he noted that problem drinkers typically have a combination of issues such as troubled interpersonal relationships and high rates of job absenteeism or tardiness. Also, alcoholics often have visual indicators of alcohol abuse such as facial redness, spider angiomas, or jaundice, and biochemical indicators of alcohol abuse such as an abnormal accumulation of fat cells in the liver and scarring of the liver. (AE D at 2, 7) None of these indicators were present for Applicant.

The psychologist further noted that Applicant's ability to drink socially for six years without lapsing into alcohol abuse is further proof that he is not an alcoholic because "it is very unlikely that a true alcoholic would be able to maintain a social drinking pattern for an extended period of time." (AE D at 8; Tr. 70) He noted, however, that a person previously diagnosed as alcohol dependent who is engaged in the same amount of social drinking as a drinker who has never been diagnosed as alcohol dependent would have a higher risk of slipping into problem drinking. (Tr. 118)

Applicant's psychologist further opined that the 2007 diagnosis of alcohol dependence was incorrect because the diagnosing psychologist did not fully integrate the circumstances surrounding Applicant's drinking when he made the diagnosis. (AE D at 8; Tr. 67-68) The psychologist acknowledged that the 2007 diagnosis, though incorrect, was reasonable "because they couldn't look into the future to see what [Applicant] would do," and because "in order to get treatment for alcohol dependence for inpatient treatment, you need to have an alcohol dependence diagnosis for the insurance company to pay for it." (Tr. 67)

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

⁴Stable marriage, stable job, and stable interpersonal relationships.

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 excessive drinking, including drunk driving, and his relapse after a 2007 diagnosis of alcohol dependence triggers the application of the following adjudicative guidelines under AG ¶ 22:

- (a) alcohol incidents away from work, such as driving while under the influence . . . ;
- (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 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 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;

(b) the individual acknowledges his or her alcoholism . . . 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 modified consumption or abstinence in accordance with treatment recommendations, such as participating in meetings of AA or a similar organization, and has received a favorable prognosis by a duly qualified medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant completed a 2007 alcohol rehabilitation inpatient program, but failed to follow through with its outpatient requirements. He stopped drinking alcohol after completing the rehabilitation program, but resumed approximately six months later, and has been drinking socially since then. His social drinking includes getting intoxicated approximately two to three times per year. Conversely, a psychologist recently conducted a comprehensive evaluation and concluded that Applicant was no longer alcohol dependent, and that his casual drinking was not problematic. AG ¶ 23(b) is inapplicable and AG ¶ 23(d) is only applicable with respect to the favorable prognosis that he recently received from a qualified medical professional.

Whether AG ¶ 23(a) applies depends upon whether the most recent evaluation supersedes the first evaluation. After carefully considering the record evidence, particularly comparing both evaluations, I conclude that the second evaluation does not supersede the first evaluation. In essence, the psychologist who most recently evaluated Applicant evaluated him based on his flawed understanding that Applicant's heavy drinking was a symptom of his depression. However, according to the record evidence, Applicant had been drinking 10 to 15 beers daily for three years before complaining of depression. Moreover, when Applicant was admitted into the hospital in 2007, his alcohol consumption had peaked at 18 beers per day, he was frequently blacking out, and he had just attempted to kill himself. By questioning the alcohol-dependence diagnosis under these circumstances, and suggesting it may have been done simply to facilitate insurance coverage for an inpatient admission, the second psychologist trivialized the conclusion of the first psychologist who evaluated Applicant, and in doing so, undermined the probative value of his own evaluation.

Most important, the psychologist who most recently evaluated Applicant testified that a person previously diagnosed as alcohol dependent such as Applicant who is engaged in the same amount of social drinking as a drinker who has never been diagnosed as alcohol dependent would have a higher risk of slipping into problem drinking. Consequently, even assuming for the sake of argument that the most recent psychologist's evaluation supersedes the 2007 evaluation, the risk that Applicant's problem may recur is too high for him to be an acceptable candidate for a security

clearance. I conclude that AG ¶ 23(a) is not fully applicable, and that Applicant has failed to mitigate the alcohol consumption security concern.

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 is doing well on the job and is happily married. His alcohol consumption does not currently appear to be currently causing any problems. However, he is consuming alcohol despite a diagnosis of alcohol dependence. Under these circumstances, the likelihood of recurrence is too high for me to conclude that he has 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.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

