



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



In the matter of:)	
)	
)	ISCR Case No. 13-00304
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/06/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline E, personal conduct and Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On July 17, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct and 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 2, 2013, and requested a hearing before an administrative judge. The case was assigned to me on November 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

November 19, 2013. I convened the hearing as scheduled on December 11, 2013. The Government offered exhibits (GE) 1 through 7, and they were admitted into evidence without objection. The record was held open so Applicant could provide documents. He submitted Applicant Exhibit (AE) A, which was admitted into evidence without objection.¹ Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on December 19, 2013.

Findings of Fact

Applicant denied all the allegations in SOR except ¶ 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 23 years old. He was born in Afghanistan. Applicant's father worked for an American company in Afghanistan. In approximately 1998, his father was taken captive by the Taliban. In 2000, Applicant and his family fled to Pakistan where they were refugees. In 2002, they immigrated to the United States. During his father's period of captivity, Applicant and his family were unaware if their father was alive. In 2004, Applicant's father joined his family in the United States. Applicant has six brothers and sisters. He is the eldest son. He did not graduate from high school, but later earned a General Equivalency Diploma. Applicant became a naturalized citizen of the United States in 2007. Applicant's father became ill with cancer and passed away in 2009.²

Applicant disclosed on his 2011 security clearance applications (SCA) that he was arrested in 2007, 2008, twice in 2009, and in 2010, for being a minor in possession of alcohol. He also was arrested in 2008 for disturbing the peace. He was suspended from school for 180 days for this incident. Applicant denied the SOR allegations as written. The allegations were based on Applicant's disclosure on his 2011 SCA. He admitted he was arrested in October 2010 for possession of alcohol by a minor. The charge was reduced to littering and he paid a \$150 fine. He admitted he was charged twice more for possession of alcohol as a minor. For the 2008 charge, he was placed on probation for two years. For the July 2009 charge he pled guilty and was fined \$500. He admitted that all of his alcohol-related charges were committed before he was 21 years old. He stated he had a difficult time recalling the different incidents that took place when he was younger.³

Applicant attributes his repeated failures to comply with the alcohol consumption laws to his difficulty adjusting to the United States, he was associating with the wrong people, and he was under a lot of pressure from his father. He and his father had a tumultuous relationship. Applicant explained that he changed while his father was away, and when his father returned, they did not get along. Applicant felt he could never be

¹ Hearing Exhibit I is the Department Counsel's memorandum indicating he had no objection to AE A.

² Tr. 47, 55-56, 78-81.

³ Tr. 25, 30-36; 42-49, 74-76; GE 1, 4, 5.

the son his father wanted. His father was very critical of Applicant, expecting him to be an “A” student and set an example for his siblings. He also expected him to be responsible for taking care of the family. He explained it was a difficult period in his life and he found comfort in being around his friends. He understands now that he made poor choices and these friends were not helping him. He no longer has regular contact with these friends. Some are attending college or have gotten married.⁴

On Applicant’s 2010 and 2011 SCAs he disclosed that in 2007, while working part-time in high school, he had been terminated from employment at a restaurant chain for being tardy and unreliable. He was employed at other part-time jobs and left by mutual agreement with the employer agreeing that it might not be the right place for him. He disclosed that he felt that the boss at one job was being too critical of him and they agreed it was not the right place for him to work. Applicant disclosed in his counter-intelligence focused security screening questionnaire that he had been fired from two other jobs. He testified he could not recall other instances of when he may have lost a job. He worked at other jobs, but only for a few weeks before he decided the job was not right for him. He did not list these jobs because they were for short periods of time. He explained it was a difficult period in his life, and he was not intentionally failing to disclose information.⁵

Applicant recently became engaged to be married. His fiancé is from Afghanistan, and he has known her most of his life. He is trying to live a good life. He has not consumed alcohol in over a year because of his fiancé. She has had a positive influence on his life. He plays on a select sports team and is committed to physical fitness. Applicant recently enrolled in a technical college with the goal of becoming an orthodontist.⁶

Applicant worked in Afghanistan for a month and a half in 2010. He deployed again from April to October 2011 and was stationed with an international Special Forces unit. Applicant has extensive language skills and served as a linguist. Although there were many linguists, due to his skills, he was often one of only three who could listen and translate conversations. His assignments were often dangerous and required that he be out in the field on patrol for two to four weeks at a time. He volunteered for many assignments. He excelled at remaining calm and translating conversations. He did not carry a weapon, but wore body armor and carried 40 to 50 pounds of gear. He traveled by helicopter and vehicles with the constant threat of being attacked and coming in contact with mines. He stated he was good at what he did and left on patrol more than any of the other linguists. He stated while serving in Afghanistan he always followed orders.⁷

⁴ Tr. 25-29, 49-54, 57-61, 76.

⁵ Tr. 29, 61-68; GE 7.

⁶ Tr. 25-29, 77-78, 81.

⁷ Tr. 68-74.

Applicant accepted full responsibility for the mistakes he made when he was younger. He believes he has matured and learned from his mistakes. He understands the gravity of his conduct. He wants to be a good role model for his family, now that his father is no longer alive.⁸

Applicant provided a character letter from a Chief Warrant Officer of the Task Force he was deployed with in Afghanistan. The letter stated:

[Applicant's] exceptional performance and steadfast dedication to duty ensured critical intelligence flowed to the Task Force commander, tactical war fighters, government agency leaderships and United States forces deployed in harm's way fighting the Global War on Terrorism.

* * *

His assistance and ability to react to any given situation allowed for a more thorough exploitation process. [Applicant] assisted above and beyond his normal duties as an interpreter, working exceptionally long hours, often taking the initiative to integrate himself and to maximize his linguist and cultural skills. His unwavering dedication, professionalism, and linguistic skill are unparalleled and led to mission accomplishment and were directly responsible for enhancing the capabilities of the Task Force Headquarters and subordinate strike forces to function at peak levels of efficiency.⁹

Another military coworker provided a character letter stating:

I feel confident in saying that he is capable of handling any situation with thoughtfulness and maturity. He frequently relayed critical information to our team in a very timely manner which was influential in the Commander's decision process. He is always quick on his feet, with sensible reactions in all the circumstances I've seen him in.

[Applicant's] knowledge of the area and people was an extreme asset to our team. He is organized, efficient, extremely competent, and has an excellent rapport with people of all ages which was essential in the work that we did. His communication skills, both written and verbal, are excellent. [Applicant] is intelligent, capable, dedicated, and [a] personable person.¹⁰

⁸ Tr. 52-54, 83-84.

⁹ Answer to SOR, character letter.

¹⁰ AE A.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 for 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.

I have considered all of the disqualifying conditions under AG ¶ 22, and the following is potentially applicable:

(a) alcohol-related incidents away from work, such as driving 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

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent.

Appellant had six alcohol-related arrests from 2007 to 2010. The above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 23, and the following 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 alcohol abuser).

Applicant acknowledges he was abusing alcohol and was associating with the wrong people when he was younger. He has not had any alcohol-related incidents since December 2010. He credibly testified that he no longer drinks alcohol because he is engaged to be married. He has not consumed alcohol for approximately a year. Applicant's alcohol-related incidents occurred when he was a minor. He is now 23 years old and has established a pattern of abstinence. Applicant attributes his alcohol issues to a period of his life when he had a tumultuous relationship with his father. A sufficient

period of time has passed and Applicant has overcome his alcohol problems. The above mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following potentially apply:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but 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, 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.

Applicant disclosed on both his 2010 and 2011 security clearance applications that he had been fired from a job in 2007. There were other instances when he was working part-time during high school when he left jobs because they were not the right fit for him for a variety of reasons. He also disclosed on a counter-intelligence security screening questionnaire that he had been fired from two jobs. I found Applicant's testimony credible and do not believe he intentionally omitted his job history. He willingly disclosed derogatory information about it to put the Government on notice of such issues. The above disqualifying conditions do not apply to SOR ¶¶ 2.b and 2.c.

Applicant had six arrests for possession of alcohol by a minor over a four-year period. AG ¶¶ 16(d) and 16(e) apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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.

Applicant acknowledged he repeatedly made poor decisions by consuming alcohol under age. He repeatedly was arrested for his offenses and did not alter his behavior for several years. It has now been three years since he was last arrested. He has been working in Afghanistan in a dangerous environment. He is engaged to be married and no longer consumes alcohol. He has received exemplary reports for his efforts with the international Special Forces. Applicant attributed some of his problems to stress and the relationship he had with his father. Applicant has matured and is now making responsible decisions. Although Applicant's offenses were minor, it is the repeated conduct that raised a security concern. It appears Applicant has grown and changed his ways. He is attending school and has a career goal. He is involved in physical fitness and plays on a sports team. He has taken positive steps to change his behavior. I believe his irresponsible conduct is unlikely to recur. I find the above mitigating conditions apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 23 years old. He was arrested numerous times as a minor for alcohol consumption and alcohol-related conduct. He comprehends the gravity of his past actions. He has been working in Afghanistan assisting international forces. He has earned high praise from those who worked with him. Reliable military personnel serving with him in Afghanistan laud his duty performance and contributions to mission accomplishment. He has put himself in harm's way, working alongside United States and allied forces. He has made contributions to national security, fully aware of the risks to himself. All these circumstances demonstrate Applicant's maturity and recognize his commitment to the mission. Applicant has matured and grown into a responsible young man worthy of a second change. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the alcohol consumption and personal conduct guidelines.

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
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge