



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



In the matter of:)
)
) ISCR Case No. 13-01309
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: David Price, Esq.

06/23/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 21, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

Appellant answered the SOR on March 20, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 2, 2014. I convened the hearing as scheduled on June 11, 2014. The Government offered

exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant and three witnesses testified, and he offered Applicant's Exhibit (AE) A through D. The record was held open until June 16, 2014, to provide Applicant the opportunity to present additional documents, which he did. They were marked AE B-14 through AE B-16 and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on June 19, 2014.

Findings of Fact

Applicant admitted both allegations in the SOR with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old. He graduated from high school in 2002 and has earned some college credits. He is not married and has no children. He has worked for his current employer, a government contractor since 2010. He has held a security clearance since 2002 without incident.

Applicant participated in Junior ROTC as a high school student. He lived in an economically depressed area that experienced a high crime rate. His mother enrolled him in a high school outside of where they lived so he would have a better education. After he graduated from high school Applicant joined the Air Force. He served from approximately 2002 to 2007. He was involved in an incident and provided the police a false statement. He later admitted he provided a false statement. He went to a summary court-martial and was found guilty. This was a stressful period of time for Applicant and he sought counseling through the chaplain and counseling services.²

While in the Air Force, Applicant volunteered in a program that offered rides to Airmen who had been drinking. He would receive calls requesting a ride home. Two volunteers would go pick up the person, and one would drive the person home and the other would drive the person's car to their residence. Applicant volunteered in this program every other week.³

During counseling, Applicant was asked about his alcohol consumption. He indicated he consumed alcohol three to four times a week. He voluntarily attended the military Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program as an outpatient from November 2006 to April 2007. He was diagnosed as alcohol dependent in early remission by a clinical psychologist. Applicant was honorably discharged from the Air Force in June 2007.⁴

¹ Hearing Exhibit I is Department Counsel's memoranda.

² Tr. 60, 66, 77, 79.

³ Tr. 79, 80-82.

⁴ Tr. 60-61; GE 3.

Applicant was aware of his diagnosis of alcohol dependence and continued to consume alcohol from 2007 to 2014. During this period of time, he did not think there was a reason for him to abstain from alcohol consumption. He testified that he did not appreciate the significance of the diagnosis. He admitted that he continued to consume alcohol to feel its influence but he did not black out. He believed the last time he was intoxicated was likely August 2012. He was working overseas and alcohol was not available, so he would drink regularly when he was on leave. He did not drink and drive. He was unaware that consumption of alcohol, after being diagnosed as alcohol dependent, is a disqualifying condition for holding a security clearance. After he received the SOR, he immediately began abstaining from consuming alcohol.⁵

Applicant has told his family and friends that he no longer consumes alcohol. Alcohol was not an overwhelming influence in his life, but he concluded he is better off without it. He testified that the alcohol dependence diagnosis he received while in the Air Force was based strictly on the number of times he consumed alcohol a week and not based on any negative experiences he had. Since abstaining from alcohol consumption, Applicant has been to events where alcohol is present and has not consumed any.⁶

Applicant has worked hard at his job and has led a responsible life. He has earned his real estate salesperson certificate. He has saved his money and purchased three real estate properties, one of which his mother lives in. He has contributed regularly to his company's 401k retirement program. There is no evidence he has had any disciplinary action against him. He is focused on working hard to achieve his goals and alcohol is no longer a part of his life. He is not willing to jeopardize his career because of alcohol. He does not intend to consume alcohol in the future.⁷

Two friends of Applicant testified on his behalf. They grew up together, lived in the same neighborhood, but attended a different high school. They have known him most of his life. One witness stated regarding his high school classmates, that they were either dead or in jail. Both friends joined the military after high school and are successful in their careers. Both testified that they have personally observed Applicant abstaining from alcohol use in social settings. They are aware Applicant has made a decision between his career and alcohol consumption and chose his career. Applicant has told them and others that he no longer consumes alcohol. One witness noted that Applicant is always the designated driver and does not follow the crowd or succumb to peer pressure. He has a reputation for being a successful person, makes good decisions, and will not do anything stupid. The witnesses recalled a time when they went to Las Vegas with Applicant and despite the availability and temptation Applicant did not

⁵ Tr. 62-65, 69, 73-75.

⁶ Tr. 65, 84-87.

⁷ Tr. 52-53, 67-70.

consume alcohol while there. Both consider Applicant an honest, trustworthy and dependable person.⁸

Applicant's mother testified on his behalf. She confirmed Applicant began abstaining from alcohol use when he learned it could disqualify him from holding a security clearance. She confirmed that he has not consumed alcohol since he received the SOR.⁹

Applicant provided evidence of his military service.¹⁰ He provided evidence that he is fiscally responsible.¹¹ He also provided character letters that describe him as a leader, personable, hard worker, dependable, reliable, trustworthy, resilient, compassionate, and loyal. He has outstanding moral values, is a valuable asset, and exercises sound judgment. The letters also expressed their belief in Applicant's commitment to sobriety.¹²

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.

⁸ Tr. 23-44; AE B-1, B-14.

⁹ Tr. 44-59.

¹⁰ AE A 1 through A-18.

¹¹ AE D.

¹² AE B-1 through B-16.

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:

(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 alcohol dependence and completion of an alcohol treatment program.

Applicant was diagnosed with alcohol dependence by a psychologist in 2007. He was treated as an outpatient at ADAPT from November 2006 to April 2007. He continued to consume alcohol until March 2014. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 23, and the following are potentially applicable:

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions take to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if alcohol abuser).

Applicant has not been involved in any alcohol-related incidents. He referred himself for counseling because he was experiencing stress. He continued to consume alcohol after his alcohol dependence diagnosis. He credibly testified that he was unaware that consuming alcohol after being diagnosed with alcohol dependence could disqualify him from holding a security clearance. Once he received the SOR and became aware of the disqualifying factor, he abstained from alcohol consumption. Alcohol is no longer a part of his life. There was clear and convincing credible evidence that Applicant has not consumed alcohol since receiving the SOR, and he is committed to remaining abstinent. The above mitigating condition applies.

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 Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 30 years old. He served in the Air Force and was honorably discharged. He has been focused on pursuing his goals and has been a responsible employee. He earned a real estate salesperson certificate. He has three real estate

properties and he is fiscally responsible. He sought counseling when he was experiencing stress, and based on how often he consumed alcohol, he was diagnosed as alcohol dependent. He was unaware that consuming alcohol after being diagnosed as alcohol dependent could disqualify him from holding a security clearance. Once he became aware he immediately abstained from alcohol consumption. He is committed to abstaining from alcohol consumption. There is significant evidence that Applicant is a responsible and dedicated professional. There is no evidence that he has been involved in any alcohol-related incidents. 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 guideline.

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.b: 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