



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



In the matter of:

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) ISCR Case No. 14-02740
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Applicant for Security Clearance

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel

For Applicant: *Pro se*

08/18/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant mitigated security concerns for alcohol consumption.

Statement of the Case

On May 31, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for his position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD adjudicators were unable to find that it is clearly consistent with the national interest to issue a security clearance. On February 13, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. These actions were taken 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 (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in DOD on September 1, 2006.

Applicant answered the SOR on May 6, 2014. He admitted the four allegations concerning alcohol consumption. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. DOD issued a Notice of Hearing on July 1, 2015, for a hearing on July 28, 2015. I convened the hearing as scheduled. The Government submitted seven exhibits which were admitted without objections as Government Exhibits (GX) 1 to 7. Applicant testified and submitted ten exhibits which were admitted without objection as Applicant Exhibits (AE) A through J. I received the transcript of the hearing (Tr.) on August 5, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is a 47-year-old retired Navy officer who has been employed by a defense contractor since 2009 as a combat systems port engineer. His duties include managing maintenance and modernization on a class of Navy ships. Applicant served on active duty in the Navy from 1986 until 2008 as an electronics technician and leading technician. He entered the Navy as an enlisted sailor and was commissioned an officer in 1998. He retired as a limited duty officer, Lieutenant (O-3E). He received an associate's degree in 2005 and a bachelor's degree in 2010. He married in July 1986, separated in September 2013, and divorced in February 2015. He has two grown children. (Tr. 10-11, 21-26; GX 1, e-QIP, dated May 31, 2011)

The SOR alleges that Applicant was arrested and convicted of driving under the influence of alcohol (DWI) in December 2004 (SOR 1.a), and again in July 2012 (SOR 1.b). It was also alleged that Applicant was diagnosed as alcohol dependent after alcohol treatment in January 2013 (SOR 1.c), and again as alcohol dependent after alcohol treatment in March 2013 (SOR 1.d). Applicant admitted the four allegations. The Government presented Federal Bureau of Investigation (FBI) records (GX 2) and court documents (GX 3 and GX 4) to confirm the convictions. The Government presented medical records to confirm the diagnosis of alcohol dependence (GX 6 and GX 7).

Applicant is well regarded by his employer. His performance reviews show an exceptional performance rating, the highest rating for his company. He has been commended for his work by his Navy customers. Applicant's training officer wrote that he has known Applicant for over six years, and that he trained Applicant for his civilian position as a combat systems port engineer. Applicant is an excellent worker who easily learned the requirements of the job. He considers Applicant to be responsible and trustworthy, and a person who can be trusted to manage classified information. He is aware of Applicant's DWIs, but he does not envision another DWI since Applicant has received counseling and alcohol-related training. He has been at social events with Applicant and has never seen him drink alcohol. He believes Applicant has resolved his

alcohol problems. (AX A and AX B, Performance Evaluations; AX C, Letter, dated June 12, 2015; AX D, e-mail, dated March 4, 2015)

Applicant was on active duty in the Navy when he was first arrested for DWI. Applicant was working a swing shift as a communications officer in December 2004. He had the day off and went Christmas shopping. He decided to drink alcohol while shopping. He was intoxicated and on his way home when he was stopped on a military installation for a traffic violation. He failed a field sobriety test and had a blood alcohol level of .19. This was his first alcohol-related incident. He considered the amount of alcohol that he drank that day as not typical, out of character, and an isolated incident. His alcohol consumption was not creating any work or family issues. However, he now recognizes that this incident was the beginning of an increased consumption of alcohol.

On March 23, 2005, he received a sentence of probation for a year, five days of home confinement, a restricted driver's license, and a \$500 fine. He was not punished by the Navy, but his next fitness report noted his arrest and conviction for DWI. This fitness report led to his non-selection for promotion to lieutenant commander (O-4). He was required to attend the Navy's outpatient alcohol counseling program. He attended the program for eight hours a day for five days in lieu of duty. The program was education and not rehabilitation. He did not believe he needed any further counseling or treatment after completing the program. He thought his alcohol consumption was under control. He had no additional incidents while on active duty. (Tr. 25-29, 32-33)

After he retired from the Navy, Applicant increased his consumption of alcohol. He was consuming about 12 drinks a day, usually a combination of beers and vodka drinks. He drank at home after work before going to sleep. He had incidents of blackouts and of drinking to intoxication. He never went to work intoxicated. His second DWI was in July 2012. He was waiting for one of his sons and drinking alcohol. He decided to drive and was stopped for a traffic violation. He refused a blood alcohol test. On October 25, 2012, he was convicted of DWI and sentenced to ten days in jail, two years of probation, no driving for four months and then a restricted driver's license for three years, and a \$500 fine. He was required to have an ignition interlock device installed in his car for six months. He had to attend an alcohol counseling and treatment program (ASAP). He attended a group therapy outpatient program once a week for approximately six months. He was released from the program in January 2013 because he violated the program's rule when he drank alcohol over the New Year's holiday. He failed an alcohol consumption test at the time. He continued to attend the program voluntarily until March 2013, and he continued to consume about 12 drinks each day. He was diagnosed as alcohol dependent by a licensed clinical social worker (LCSW) while he was in the alcohol counseling and treatment program. He eventually completed the program after receiving additional counseling and treatment as noted below. (Tr. 30-40; GX 6, Treatment Record, dated February 2, 2014; AX E, Completion Certificate, dated October 8, 2013)

After the second DWI and his failed attendance at the initial treatment program, Applicant realized he was still drinking heavily and that he had to do something about

his excess consumption of alcohol. His excess drinking was causing a problem in his family. The DWI was the catalyst causing him to seek further treatment. He admitted himself into a six-day residential treatment program at a medical treatment facility because he realized he would need medical supervision as he went through detoxification. He was diagnosed by a doctor as alcohol dependent. Applicant agrees with the diagnoses and does believe he is alcohol dependent. After completion of the program, his treatment plan was to continue with group sessions at the treatment center, daily attendance at AA meetings, and follow-up with a doctor at the treatment center. His prognosis was good. He is still under technical supervision with the state ASAP. He has had his last appointment with the counselors at ASAP, and he will be released from probation on October 25, 2015. He is in compliance with all of the ASAP requirements. (Tr. 40-43; GX 7, Report, dated March 23, 2013; AX H, ASAP} Letter, dated May 11, 2015)

Applicant's last consumption of alcohol was on March 20, 2013, just before he checked into the inpatient facility for detoxification. The stress from his marriage was a factor in his drinking. He is now divorced, but he is working with his wife to have a better relationship. They are still friendly and he has helped her establish a business. He has a better relationship with his sons, and he enjoys spending time with them as a sober person. He resumed running which he stopped while drinking. He now runs daily, and runs about 100 miles a month. He followed a rigorous training program and has completed a marathon. He could not run this much if he consumed alcohol. He has an active social lifestyle with a group from AA. He attends AA meetings about four or five times a week. He became the general service representative for his AA group, and is responsible for opening the facility, setting up for meetings, and providing refreshments. He has sponsored three people and is still a sponsor for one. He has his own sponsor as well as a list of AA members that he can call if needed. He has been tested for alcohol consumption but all tests have been negative. His stress level at the time of the hearing was high because of family issues, but he did not turn to alcohol to relieve the stress. (Tr. 43-52; AX F, AA Letter for Appointment as General Service Representative, dated July 2, 2015; AX G, AA Attendance Letter, undated; AX I, Running Graph; AX J, Marathon Completion and Time, dated March 15, 2015)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, the 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.

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 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 protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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 had two DWIs about eight years apart. He was diagnosed as alcohol dependent by a LCSW after the first DWI but continued to consume alcohol. After the second DWI, he entered an inpatient program and was again diagnosed as alcohol dependent by a doctor. He has not consumed alcohol since the latest diagnosis. Applicant admitted that he is alcohol dependent and that he consumed alcohol after receiving the first diagnosis of alcohol dependence. Applicant’s medical records verify that he is alcohol dependent, and that he consumed alcohol after the initial diagnosis. Applicant’s DWI arrests, his admissions concerning his use of alcohol, and the information in his medical records concerning alcohol consumption and treatment are sufficient to establish the following Alcohol Consumption Disqualifying Conditions under AG ¶ 22:

(a) Alcohol-related incidents away from work, such as driving while 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;

(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 profession (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

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

23: I considered the following Alcohol Consumption Mitigating Conditions under AG ¶

(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 action 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 licensed social worker who is a staff member of a recognized alcohol treatment program.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant admits to being alcohol dependent. After the first diagnosis of alcohol dependent, he consumed alcohol on various occasions to the point of intoxication. He has not had a drink of alcohol since March 2013, over two years ago. He completed a detoxification program, an intense inpatient substance abuse program, and he has been an active participant in AA aftercare programs for over two years. He not only attends meetings, but is responsible for setting up the meeting and meeting space. He has a sponsor and is a sponsor himself. In spite of his alcohol dependence, his work performance is excellent, and he is well regarded. He maintains a healthy lifestyle, and runs over 100 miles a month. He has completed a marathon.

Applicant has established a pattern of abstinence and shown sufficient evidence of action taken to overcome his alcohol consumption problems. He did not immediately participate in AA after detoxification and rehabilitation, but realized he needed the program to assist him in controlling his alcohol dependence. He is now an active participant in AA attending meetings four or five times a week. He also serves as his group's general services representative. He has not consumed alcohol in over two years. His over two years of abstinence from alcohol and active participation in AA is sufficient to show a change of circumstance. His abstinence from alcohol consumption since completion of detoxification and rehabilitation indicates that he can now control his alcohol consumption impulses. His two years of abstinence and his active participation in AA establishes a favorable opinion of his reliability and trustworthiness. The evidence shows that Applicant has been reformed or rehabilitated. I find that Applicant mitigated security concerns for alcohol consumption, and that he does not present a security concern based on his previous alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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 considered Applicant's excellent performance, career, and retirement from the Navy. I considered that Applicant is a good civilian employee with a record of excellent job performance. Applicant's admits he is alcohol dependent. He completed alcohol detoxification and an intense rehabilitation program. He has not consumed alcohol since entering those programs over two years ago. He is a very active participant in AA. He follows the treatment plans prescribed by his doctors for his alcoholism. Usually two years of abstinence from use of alcohol after many years of excess consumption of alcohol is not sufficient to show a change of circumstances. However in this case, the two years of abstinence is coupled with a new very healthy lifestyle and very active participation in AA. These factors indicate that Applicant has changed and has been reformed and rehabilitated, and that he is reliable and trustworthy, and will protect classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated alcohol consumption security concerns.

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.d: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge