



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



In the matter of:)
)
) ISCR Case No. 14-02819
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2015

Decision

CURRY, Marc E., Administrative Judge:

Since Applicant's most recent alcohol-related incident, he has successfully completed a rehabilitation program and remained sober for nearly five years. I conclude that he has mitigated the security concerns. Clearance is granted.

Statement of the Case

On November 10, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, alcohol consumption, and J, criminal conduct. 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR in an undated response, admitting the allegations and requesting a decision on the record. On March 25, 2014, Department Counsel prepared a File of Relevant Materials (FORM) consisting of documents supporting the Government's allegations. Applicant received the FORM on May 22, 2015, and was informed that he had until June 10, 2015 to submit a response. Within the time allotted, Applicant filed a response to the FORM, and on June 12, 2015, the case was assigned to me.

Findings of Fact

Applicant is a 52-year-old married man with two adult children. He has been married twice previously, from 1982 through 1989, and from 1990 to 2010, respectively. Both prior marriages ended in divorce. His two children are from his second marriage. (Item 3 at 24)

Applicant is a high school graduate. Shortly after graduating, he joined the U.S. Navy, where he served for four years, through his honorable discharge in 1985. While in the Navy, Applicant was an electronics technician. He continued working in this field for various contractors after leaving the Navy. (Item 3 at 13-14) Over the years, he has become a subject-matter expert in hull-mounted sonar systems, performing "hundreds, if not thousands" of on-board technical assists during his career." (Response, Enclosure 17) Since 2012, he has worked part-time as a subcontractor who handles various billing, data entry, and human resource matters for contractors. (Response, Enclosure 4)

According to Applicant's supervisor at his full-time job, he is an exemplary employee who was recently promoted. (Response, Enclosure 3) According to one of the contractors with whom Applicant performs part-time work, Applicant is a valuable asset to the team, and "has been completely trustworthy even when working from home with no supervision." (Response, Enclosure 4)

In November 1980, Applicant was arrested and charged with driving under the influence (DUI). The charge was later reduced to speeding. (Item 2 at 1) The court fined him \$400. (Item 3 at 47)

In October 1981, Applicant was arrested and charged with DUI. (Item 2 at 1) He was later found guilty and ordered to forfeit his \$275 bond. (Item 3 at 48)

In November 1981, Applicant was arrested and charged with being drunk on the roadway after the vehicle in which he was a passenger broke down. He was charged after a local police officer pulled to the side of the road to help Applicant and his friends and discovered that they were all intoxicated. (Item 2 at 1) He was later found guilty and ordered to forfeit his \$50 bond. (Item 3 at 48)

After the November 1981 arrest, Applicant's commanding officer ordered him to attend an inpatient 28-day rehabilitation center. (Item 3 at 55) He successfully completed the program. (Item at 55) Whether or not he was diagnosed as alcohol abusive or dependent is unknown from the record.

In January 1988, Applicant was arrested and charged with DUI and possession of marijuana. As part of a plea bargain, the state dropped the marijuana charge and Applicant pleaded guilty to the DUI charge. (Item 2 at 1) His driver's license was revoked for six months. (Item 3 at 49)

In October 1998, Applicant was arrested and charged with DUI. He was found guilty and ordered to attend an alcohol safety education program. (Item 2 at 51)

In November 2004, Applicant was issued a citation for being drunk in public. He was fined \$25. (Item 3 at 52) He was arrested and charged for two additional separate DUI incidents between 2005 and 2006. (Item 2 at 2)

Applicant's history of alcohol-related misconduct began to negatively affect his career. Specifically, in 1992, he was issued a security clearance. (Item 3 at 57) In 2009, as part of a reinvestigation, Applicant was evaluated by a therapist and diagnosed with alcohol dependence. (Item 2 at 2) In 2009, his clearance was renewed. He was cautioned that any additional alcohol-related incidents could result in the loss of his security clearance eligibility. (Item 3 at 59; Item 4)

In October 2010, Applicant was arrested and charged with another DUI. (Item 3 at 59) This arrest prompted DOD CAF to initiate the security clearance revocation process. (Item 4)¹

On October 28, 2010, Applicant voluntarily enrolled in counseling. (Response, Enclosure 11) For the next year, he remained abstinent from alcohol and attended group therapy twice per week through his church. (Response, Enclosure 6) Additionally, he received individual counseling services from a licensed professional counselor from October 2010 through April 2011. (Response, Enclosure 9) The counselor praised his active involvement in counseling and his commitment to abstinence. (Response, Enclosure 7)

On November 4, 2011, DOD CAF revoked Applicant's security clearance. Applicant appealed, and on November 11, 2011, the U.S. Navy Personnel Security Appeals Board (PSAB) sustained DOD CAF's decision. In doing so, they commended Applicant for abstaining from alcohol and "being seriously involved in a relapse-

¹Applicant was working for the federal Government at the time.

prevention program,” but concluded that it was too soon to conclude that his alcohol consumption no longer posed a security concern. (Item 4 at 1)

After Applicant’s clearance was revoked, he continued to attend group therapy for two more years, through October 2013. (Response at 6) Through counseling and therapy, Applicant finally “came to understand from an emotional and intellectual standpoint” that alcohol was a serious problem that he was using as a “crutch” to overcome intermittent personal problems. (Response at 3-4) Applicant no longer uses alcohol as a coping mechanism to confront stress, and continues his abstinence. Now, he combats stress by using techniques learned in counseling and by helping others faced with similar situations. (Response at 2)

In mid-2011, the director of the clinic where Applicant was receiving counseling invited Applicant to become a facilitator. Facilitators lead counseling sessions for several groups of men on a weekly basis. (Response, Enclosure 2) Per the director, facilitators are people who have excelled as participants in the counseling program and have successfully completed a rigorous leadership training program. (Response, Enclosure 2) Applicant excelled in his role as a facilitator. (Response, Enclosure 2)

The time demands of working both a full-time and part-time job compelled Applicant to stop participating in counseling and volunteering as a facilitator in 2013. (Response at 2) He remains welcome to return. (Response, Enclosure 2) Moreover, Applicant would resume counseling and make the time to attend by quitting his part-time job if he ever felt tempted to relapse. He understands that the negative repercussion of an alcohol relapse outweigh any additional money he earns on his part-time job. (Response at 2)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in 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 for obtaining a favorable security decision.

Analysis

Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶ 30) Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (*Id.*) Applicant’s history of criminal conduct triggers the application of AG ¶ 31(a), “a single serious crime, or multiple lesser offenses.”

Applicant’s criminal conduct was alcohol related, and spans 30 years. However, he has not committed a crime in nearly five years. Recognizing that he had an alcohol problem, he voluntarily enrolled in counseling, attending it consistently for three years. He has not consumed alcohol since his last arrest, and he is excelling both at his full-time and his part-time job. AG ¶¶ 32(a) “so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;” and 32(d), “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement,” apply.

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 has a history of excessive alcohol consumption. His alcohol abuse continued after completing an inpatient alcohol rehabilitation program in the early 1980s, and continued after a diagnosis of alcohol dependence in 2009. The following disqualifying conditions are applicable:

(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 . . . ;

(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 alcohol dependence; and

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

Applicant has not used alcohol for nearly five years. During that time, he immersed himself in counseling. The clinic director was so impressed that he selected Applicant to become a group counseling facilitator, a position which Applicant performed admirably until the time demands of a second job compelled him to quit. Applicant is chastened by the experience of losing his clearance in 2010, has gained insight into the cause of his alcohol abuse, and appears to have internalized the lessons learned through counseling, judging by his extended period of abstinence and his excellent job performance.

When Applicant lost his appeal of the revocation of his security clearance in 2011, the PSAB commended him for actively participating in counseling and abstaining from alcohol for one year, but concluded that it was too soon to conclude that he had mitigated the security risk, given the length of time of the alcohol abuse and its recurrent nature. Given the four additional years of abstinence, and Applicant's supplementation of the record with positive recommendations from the head of his treatment clinic, his supervisor, and one of his clients, I conclude that Applicant has now mitigated the security risk.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

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.

The amount of time since Applicant last used alcohol, the ample presence of rehabilitation, and Applicant's on-the-job success render the likelihood of a recurrence of his alcohol problems minimal.

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 J:	FOR APPLICANT
Subparagraphs 1.a-1.j:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge