



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



In the matter of:)	
)	
)	ISCR Case No. 14-02946
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant mitigated the concerns raised by his April 2012 and February 2013 alcohol-related arrests. Furthermore, he did not try to conceal the April 2012 arrest from his employer. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on October 15, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and personal conduct guidelines. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on April 16, 2015, I admitted Government's Exhibits (GE) 1 through 7, and Applicant's Exhibits (AE) A through C, without objection. Applicant testified and presented the testimony of three witnesses. After the hearing, Department Counsel submitted GE 8 and Applicant submitted AE D. These documents were also admitted without objection. DOHA received the transcript (Tr.) on April 24, 2015.

Findings of Fact

Applicant, 55, has worked as an electrical engineer for a federal contractor since 2000. Before working as a federal contractor, Applicant served in the U.S. Army, retiring as a senior noncommissioned officer (E-8) under honorable conditions. He has held a security clearance for 35 years.³

This adjudication began with an incident report filed in the Joint Personnel Adjudication System (JPAS) by Applicant's employer in June 2013, regarding Applicant's February 2013 arrest for driving while intoxicated (DWI). On the security clearance application Applicant submitted in April 2013, he disclosed the February 2013 arrest and an earlier alcohol-related arrest in April 2012. The resulting SOR alleged, under the alcohol consumption guideline, both arrests as well as Applicant's history of alcohol use dating back to age 17. The arrests are also cross-alleged under the personal conduct guideline along with an allegation that Applicant received a security violation from his employer in May 2012 for failing to timely report the April 2012 arrest. Applicant admits the allegations in the SOR.⁴

Although not alleged, Applicant admits two additional arrests. In 1986 for DWI; however, that charge was dismissed because Applicant was the passenger in the vehicle. Applicant also admits receiving an Article 15 in 2000 for fighting with another soldier at a company carwash charity event while on active duty. The soldier attempted to play a prank on Applicant that resulted in him being hit with a bucket. Applicant slapped the soldier. Applicant admits that he had consumed alcohol during the event, but was not intoxicated. He was demoted one pay grade and fined.⁵

In April 2012, Applicant was arrested for public intoxication after the police were called to his apartment complex to intervene in a conflict between him and a neighbor. The neighbor was being evicted because the neighbor's child burglarized Applicant's apartment as well as several others in the complex. When the police arrived, they

² The discovery letter from Department Counsel is appended to the record as Hearing Exhibit (HE) I.

³ Tr. 44, 46-48; AE B.

⁴ GE 1, 6-7.

⁵ Tr. 70-79; GE 2-3, 5.

arrested Applicant, who had been drinking beer on the stoop of his apartment, for public intoxication/open container. He pleaded no contest to the charge and was sentenced to 60 hours of community service.⁶

Applicant reported the incident to his supervisor the next business day. The facility security officer (FSO) learned of the incident a few days later after someone left a local publication containing Applicant's arrest photo on display in the breakroom. According to the internal policy in effect at the time, cleared employees and their supervisors were required to report adverse information to the FSO. The policy did not specify what constitutes a timely report. Applicant's supervisor reported the incident to the FSO, but it is unclear when he made the report. In May 2012, Applicant's FSO issued a security violation to Applicant. The corresponding memorandum acknowledges that the April 2012 incident occurred and represented a security concern under the alcohol consumption guideline. The memo also informed Applicant that another alcohol-related incident would result in an incident report being filed in the JPAS. The memo did not discuss the timeliness or lack thereof of Applicant's report.⁷

Ten months later in February 2013, Applicant was arrested for DWI in a neighboring state. Because the arrest occurred on the weekend, Applicant was jailed until the next business day. He reported the incident to his supervisor when he was released. Applicant's supervisor reported the arrest to the FSO, as required. Concerned about the two arrests in a short period, Applicant's employer offered him the opportunity to participate in an alcohol-rehabilitation program. Applicant declined. Leading up to the February 2013 arrest, Applicant described his drinking history as moderate, even though he began consuming alcohol in his late teens. He would drink a few beers on the weekend while watching sporting events, he seldom drank alcohol during the work week, and he reported drinking to intoxication no more than four times per year. However, after the DWI arrest, Applicant decided to abstain from alcohol and did so for the following 13 months.⁸

As required, Applicant kept the FSO apprised of the status of the DWI case, including his conviction, by bench trial, in December 2013. Applicant completed the terms of his sentence, which required participation in an alcohol-education program. He was not diagnosed with either alcohol dependence or abuse. Applicant continues to drink moderately. He has not consumed alcohol to the point of intoxication since August 2014.⁹

Between 2010 and 2014, Applicant was rated a high performer by his employer. Applicant presented three witnesses at the hearing, a co-worker who is also a friend, his current supervisor, and his former supervisor. Each witness has worked closely with

⁶ Tr. 50-54; GE 2, 4.

⁷ Tr. 67-70, 80-82; GE 7-8.

⁸ Tr. 54-58, 63-64, 83-85; GE 2-5; AE D.

⁹ GE 7.

Applicant for at least 10 years, often traveling together to remote locations for long periods. None of the witnesses have observed any behaviors that indicate Applicant has an alcohol problem or an inability to properly handle or safeguard classified information.¹⁰

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 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.

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 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

¹⁰ Tr. 17-44; AE A.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Alcohol Consumption

An applicant’s history of excessive alcohol consumption becomes a security concern when it is direct evidence of questionable judgment and a failure to control impulses.¹¹ Applicant’s two alcohol-related arrests in the 10 months between April 2102 and February 2013 legitimately raise concerns about his ongoing suitability for handling classified information.¹² However, the record contains sufficient mitigating evidence. The April 2012 public intoxication/open container incident happened under unusual circumstances not likely to recur. Given the circumstances, it is more than likely that any interaction between Applicant and his former neighbor would have resulted in a confrontation. The February 2013 DWI arrest, and subsequent conviction, happened over two years ago. Applicant completed the terms of his sentence and has not engaged in any other alcohol-related misconduct. Furthermore, the record does not support a finding that Applicant has ongoing alcohol issues. He is a moderate drinker and does not have a diagnosis of alcohol abuse or dependence. Accordingly, the two arrests do not cast doubt on Applicant’s current ability to properly handle classified information.¹³

Personal Conduct

An applicant’s personal conduct becomes a security concern when he acts in a way that raises questions about his judgment or his ability to protect classified information.¹⁴ The SOR alleges that Applicant’s two alcohol-related arrests are also disqualifying under the personal conduct guideline. As discussed in the analysis of the alcohol consumption mitigation conditions, these incidents do not support a negative whole-person assessment indicating that Applicant is incapable of handling or safeguarding classified information.¹⁵ Nor do the incidents serve as a potential source of vulnerability to exploitation, manipulation, or duress. Applicant’s supervisors and several co-workers know about his alcohol-related arrests. These incidents have not diminished or tarnished Applicant’s personal or professional standing.¹⁶

¹¹ AG ¶ 21.

¹² AG ¶ 22(a).

¹³ AG ¶ 23(a).

¹⁴ AG ¶ 15.

¹⁵ AG ¶ 16(c)

¹⁶ AG ¶ 16(e).

The SOR also alleges that Applicant received a security violation, not for the compromise of classified information, but for failing to timely report the April 2012 public intoxication/open container incident. The allegation is not supported by the record. The issue of timeliness is not mentioned in the security violation memorandum.¹⁷ Nor does company's reporting policy contain a provision regarding the timeline for reporting adverse information.¹⁸ While Applicant received the security violation memorandum the month after the incident occurred, there is nothing in the record to explain the delay. Even if Applicant was delayed in reporting the incident to the FSO, it was not done with the intent to hide the incident from his employer. He reported the incident to his supervisor soon after it occurred. After receiving the memorandum, Applicant continued to update his FSO about the status of the case. He also promptly reported the February 2013 incident and supplied the necessary follow-up information, showing his willingness to comply with company policy.¹⁹

Whole-Person Concept

Based on the record, I have no doubts about Applicant's ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Nor is the purpose of a security clearance adjudication to punish applicants for past misconduct. All that is required is that an applicant's past is not indicative of a current inability to properly handle and protect classified information. Here, it is not. Applicant has held a security clearance for 35 years and worked in his current position for the last 15 years. While he has made mistakes in his personal life, there is no indication that these mistakes reflect negatively on his current security worthiness.

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, Alcohol Consumption:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

¹⁷ GE 7.

¹⁸ GE 8.

¹⁹ GE 7.

Conclusion

In light the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

Nichole L. Noel
Administrative Judge