



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-00443
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

October 27, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 7, 2013. (Government Exhibit 1.) On April 22, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, which detailed 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 Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 9, 2014, and requested a decision be made without a hearing before an administrative judge. Department Counsel requested a hearing in this case on May 29, 2014, pursuant to Paragraph E3.1.7. of the Additional Procedural Guidance at Enclosure 3 of the Directive. Department Counsel was prepared to proceed on July 10, 2014. This case was assigned to me on July 21, 2014. DOHA issued a notice of hearing on July 25, 2014. I convened the hearing as scheduled on September 10, 2014. The Government offered Government Exhibits 1

through 5, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript (Tr.) of the hearing on September 19, 2014. Applicant asked that the record remain open for the receipt of additional evidence. On September 24, 2014, Applicant submitted Applicant Exhibit A, which was received without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 55, married, and has a master's degree. He is a retired lieutenant colonel in the US Army. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for a clearance because he used intoxicants to excess. Applicant admitted the factual allegations of the SOR under this paragraph. Those admissions are findings of fact.

Applicant began drinking alcohol when he was in high school in the 1970s. His drinking increased in college and then was fairly stable during his 22-year Army career. While his drinking had no particular pattern, he testified that it was primarily on weekends and at home. He would drink a bottle of wine or a six pack of beer when he did drink. (Government Exhibit 3; Tr. 33.)

Applicant has never been arrested because of his drinking. He states it did not cause a problem during his Army career or during his ten-year career with his current employer, until May 2013. Earlier in 2013 Applicant, beginning to think that his alcohol use may be a problem, sporadically attended Alcoholics Anonymous (AA). This was after discussions with a co-worker who was also a member of AA. (Government Exhibit 3; Tr. 32-33, 44-46, 58-60.)

On May 17, 2013, Applicant showed up to work with alcohol on his breath. His employer required Applicant to participate in a mandatory recovery program for alcohol. As part of this program Applicant contacted his employer's Employee Assistance Program (EAP). The EAP counselor referred Applicant to a local therapist. (Government Exhibits 2, and 4; Tr. 39-41.)

Applicant contacted this therapist, who recommended that Applicant abstain from drinking and attend 90 AA meetings in 90 days. Applicant stopped drinking on May 27, 2013, and has remained abstinent since then. The therapist diagnosed Applicant as being alcohol dependent. He recently stated that Applicant's prognosis is, "Excellent as [patient] was compliant with recommendation to attend regular Alcoholics Anonymous meetings and maintain sobriety." The EAP organization also reported that Applicant had completed all their recommendations, which primarily concerned attendance at AA. (Government Exhibits 2, and 3; Tr. 42-43.)

As stated, Applicant stopped drinking in May 2013. He continues to attend AA meetings at least five times a week, and is an active participant in the program. His wife is fully supportive of his sobriety. He expressed a deep commitment to life long sobriety. (Tr. 46-58, 62-64.)

Mitigation

Applicant had a successful military career, in which he was decorated several times. He received the Legion of Merit when he retired in 2002, which specifically referred to his “caring and courageous actions on September 11, 2001 in response to a terrorist attack on the Pentagon.” (Applicant Exhibit A; Tr. 28-31.)

He also has a successful ten-year career with his current employer. The most recent evaluation from his employer shows that he “Meets” or “Exceeds” standards for all of his competency ratings. (Applicant Exhibit A.)

Policies

Security clearance decisions are not made in a vacuum. 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 AG list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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 avoided drawing 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, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline G - Alcohol Consumption)

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

Applicant has a long history of alcohol abuse, which resulted in his being counseled by his employer for having alcohol on his breath at work. As a result he has abstained from drinking any alcohol since May 2013, obtained therapy, attended 90 AA meetings in 90 days, and continues to attend meetings at least five times per week.

There are three Disqualifying Conditions that apply to this case under AG ¶ 22:

(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 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; 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.

Under the particular facts of this case, the following mitigating conditions currently apply to Applicant's situation pursuant to AG ¶ 23:

(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 actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); 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 clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant, by his own admission, was a problem drinker for many years. Early in 2013 he began to realize that fact. When he was confronted by his employer for having alcohol on his breath at work, he realized he needed to solve the situation. He went to his company's EAP program, then followed their care recommendations and those of the therapist they recommended he see. Applicant has abstained from drinking for over a year, continues to attend AA on a regular basis, and credibly states he will not abuse alcohol in the future.

In finding for Applicant I have particularly considered the span of time of Applicant's sobriety against the time of his use of alcohol. What is particularly noteworthy is the fact that, other than the single allegation in SOR ¶ 1.b., the record does not show any adverse alcohol-related incidents of any type in his life.

All the above mitigating conditions apply. When they are viewed along with the whole-person concept discussion below, the facts support a finding for Applicant under Paragraph 1 of the SOR.

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 the 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. My Guideline G discussion is applicable here as well.

Applicant had a long history of alcohol use, at times to excess. Finally, in May 2013, he was confronted by his employer for having alcohol on his breath. Rather than deny that fact, or rationalize it, Applicant took the steps necessary to determine that he had an alcohol problem. At that point he decided to abstain from drinking for life and to become an active member of AA.

Applicant's conduct was serious, but there is considerable evidence of rehabilitation. Applicant is an intelligent, trustworthy, and responsible man with a long history of outstanding achievement. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is very little likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his Alcohol Consumption. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance.

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. through 1.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge