



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-01357 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

03/06/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 20, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 3, 2014, detailing security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. The action was 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on September 9, 2014, and he answered it on September 25, 2014. Applicant requested a hearing before an administrative judge with

the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on December 5, 2014, and I received the case assignment on January 7, 2015. DOHA issued a Notice of Hearing on January 27, 2015, and I convened the hearing as scheduled on February 11, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 23, 2015. I held the record open until February 25, 2015, for Applicant to submit additional matters. Applicant timely submitted AE F, which was received and admitted without objection. The record closed on February 25, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 50 years old, works as a senior engineering manager for a DOD contractor. He began working for his current employer in February 2002. Applicant's performance evaluations from 2008 through December 21, 2013 rate him as exceeds requirements or higher every year. Applicant is respected by his peers and supervisors for his knowledge, work skills, and integrity.¹

Applicant graduated from college in 1987 with a bachelor's degree in electrical engineering. He holds two master's degrees, one in business and one in engineering. He received these degrees in 1996 and 1999. Applicant married in 1995 and divorced in 2014. He has two daughters, ages 18 and 15. He and his former wife share joint custody of his daughters. His oldest daughter attends college, and his younger daughter, a high school student, lives with his former wife.²

Applicant began consuming alcohol as a high school student. He would drink one to two beers with friends about once a month. As a college student, he only consumed alcohol a few times each semester. After college, he would meet friends for dinner and drinks about once a week. He usually drank two to three beers or glasses of wine. He described his alcohol use as social and not excessive. At times, he did not consume any alcohol for long periods of time.³

¹GE 1; AE A; Tr. 19, 64.

²GE 1; GE 2; Tr. 18-21.

³GE 3; Tr. 22-23.

In 2007, Applicant's wife told him that she wanted a divorce, which surprised him. He did not want his children to grow up in a broken home. When he agreed to his wife's request to pay for her to finish college and later nursing school, she agreed to remain married. While she attended school, he assumed more responsibilities at home, and his responsibilities at work also increased. He began to drink more. He advised that he would drink four to five glasses of wine two to three times a week at home. Over the next four years, his wife continued to talk about ending their marriage. He continued to drink alcohol at home regularly.⁴

Towards the end of 2011, following the completion of nursing school, Applicant's wife told him that she wanted to move forward with the divorce. Applicant advised that at this point, his alcohol consumption increased to four or five times a week. He usually drank two or three glasses of wine or vodka. Once a weekend, he would drink six or seven glasses of alcohol. At some point, alcohol became the mechanism for coping with his wife's desire for a divorce.⁵

In November 2012, Applicant moved out of the family home. He continued to drink to excess. In January 2013, on his own initiative, he started attending alcoholics anonymous (AA) two or three times a week after his older daughter confronted him about his alcohol use. He stopped consuming alcohol. In March 2013, he ceased attending AA because he felt better. Shortly after, he started drinking wine with dinner one to two nights a week. He thought he had control over alcohol. His level of drinking slowly began to change. By the early summer of 2013 and because he missed his time with his daughters, Applicant started drinking more. He returned to drinking two to three glasses of wine or vodka four or five times a week, and once a week, he drank six or seven glasses of wine or vodka. By July 2013, Applicant began adding vodka to the can of diet coke he drank during lunch at work once or twice a week.⁶

On October 14, 2013, a co-worker observed him putting alcohol in his diet coke and called security. When security asked him about consuming alcohol, he truthfully told them that he had put alcohol in his diet coke and that the quantity of alcohol was the equivalent of one drink. Security took him to the company medical officer, who examined him, then released him. His company placed him on paid administrative leave and referred him to their employee assistance program (EAP).⁷

Through EAP, Applicant was referred to a licensed clinical social worker, (Dr. P) specializing in alcohol addiction counseling. Applicant began treating with Dr. P on October 29, 2013. Applicant met with Dr. P for one-on-one sessions once a week for 60-90 minutes each meeting. During these sessions, Applicant talked about his alcoholism and the reasons for his need to drink alcohol. He also attended AA

⁴GE 3; Tr. 23-28.

⁵GE 3; Tr. 27-28, 48.

⁶GE 3; Tr. 29, 39-41.

⁷GE 3; Tr. 30-31, 46-47.

meetings. On January 27, 2014, Dr. P released him from treatment. Applicant has no recall that he was told that he was alcohol dependent, but he acknowledged that he and Dr. P discussed his dependence on alcohol regularly and his alcoholism. Applicant consumed his last alcoholic drink in November 2013. On one occasion in November 2013, he purchased a bottle of vodka and began to drink. He told Dr. P that someone had given him the alcohol and that he had drunk it. Two months later, he admitted to Dr. P that he had purchased the alcohol he consumed in November 2013. After three months of treatment, Dr. P released Applicant from treatment. Dr. P suggested that Applicant continue with AA, which Applicant did until the summer of 2014, when he ceased attending AA.⁸

Dr. P certified that Applicant could return to work in November 2013. As a condition of his return to work, his employer required him to undergo random alcohol and drug testing. After eight months, his employer ceased the testing as the test results were negative.⁹

Applicant reported his alcohol counseling with Dr. P on his e-QIP. He signed a release allowing the Government to obtain a copy of Dr. P records, which are part of the evidentiary record. Dr. P diagnosed recurrent major depression and noted a problem with alcohol dependence. Dr. P listed his one time use of vodka in November 2013 and discussed the dynamic of relapse with Applicant. On January 27, 2014, Dr. P's records state: "confessed that he bought liquor [with] which he relapsed". This statement appeared to indicate that Applicant had a second relapse and consumed alcohol. Dr. P's initial intake notes estimated that Applicant would need two to four years of treatment before he could be released. After the hearing, Dr. P wrote a brief note, stating that in January 2014, Applicant admitted that he bought the liquor in November 2013 that he consumed when he relapsed. Dr. P also stated that the two to four years for treatment should have been two to four months. During his treatment, Dr. P prescribed zoloft, an anti-depressant. Applicant also took campral, a drug to help balance chemicals in the brain for someone who is addicted to alcohol, but no longer consuming alcohol.¹⁰

Dr. P wrote a letter on Applicant's behalf. He verified the dates of Applicant's treatment, his depression, his serious abuse of alcohol, and his suspension from work. Dr. P indicated that Applicant maintained abstinence from alcohol and actively participated in AA. He advised that Applicant worked hard to maintain his sobriety and reports continued sobriety. Dr. P also recommended that Applicant remain abstinent and attend AA for the foreseeable future. When Applicant read this letter, he return to AA in January 2015 as his sobriety is important to him.¹¹

⁸GE 3; Tr. 31-32.

⁹Tr. 35.

¹⁰GE 3; AE F. See www.drugs.com/campral.html.

¹¹AE E; Tr. 33, 49-50.

Applicant last consumed any alcohol in November 2013. He is no longer using zoloft or campral or any other drugs. Applicant's relationship with his daughters has improved greatly since he began treatment and stopped drinking alcohol. Applicant's parents, daughters, former wife, supervisor, and co-workers know about his problem with alcohol. All are aware that he cannot consume alcohol. He considers his family and friends his best support system. For five weeks before the hearing, Applicant and his supervisor traveled for business. Each evening they ate dinner in the hotel bar. Applicant did not drink any alcohol even though people around him were. He states that he has no desire for alcohol. As for future use of alcohol, Applicant stated that he will "never, never, ever again" use alcohol as alcohol "took a lot out of his life". He considers himself an alcoholic, who has no desire or cravings for alcohol. He has changed his view and approach to life.¹²

Applicant has never been arrested for driving under the influence of alcohol or for any other alcohol related conduct. He stated that he made a strong effort not to drive if he had been drinking alcohol. He discussed two occasions when the issue of his driving after consuming alcohol arose. On one occasion, he started to drive with his older daughter in the car. She was concerned about his ability to drive and asked to drive. He let her drive. While at a state fair, he consumed several beers. His brother-in-law, a police officer who was off duty, asked him not to drive and offered to drive him home. Applicant agreed.¹³

Applicant's supervisor testified. He has known Applicant for more than 12 years and has been Applicant's supervisor for seven years. He verified Applicant's testimony about eating dinner in the bar and not drinking any alcohol. Except for the incident in October 2013, which brought out Applicant's consumption of alcohol at work, Applicant has never violated work rules and has never been disciplined or warned for any other conduct. He described Applicant as the ultimate professional, who always followed the rules. He described Applicant as dependable, reliable, and trustworthy. Applicant's performance appraisals reflected his knowledge of the job, and Applicant is respected by his peers and supervisors. He is 100% certain that Applicant would never compromise the security of the United States. Since this incident, Applicant is a changed person. Applicant is more open than in the past. His supervisor is proud of how Applicant handled his alcohol consumption problem. Two co-workers, who are also friends, wrote letters of recommendation on behalf of Applicant. Both are aware that he was suspended from work for violating a workplace rule. They advise that this conduct was out of character for Applicant. They are aware of his recent personal problems. Both describe him as a top professional as shown by his knowledge and integrity. His personal life has stabilized, and he is happy.¹⁴

¹²GE 3; Tr. 34-36, 40-41, 50-52, 57-62, 64, 67, 71-72.

¹³GE 3; Tr. 22-23, 40-41, 64.

¹⁴AE B; AE C; Tr. 68-79.

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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

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 pertaining to 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.”

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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.

When his marriage began to fall apart, Applicant began consuming alcohol as a coping mechanism. Over a period of four years, his consumption increased. By 2011, his use of alcohol was excessive and frequent. In 2013, he began consuming alcohol one to two times a week at work. In October 2013, a co-worker reported this conduct to security, which led to a suspension from work. A licensed clinical social worker diagnosed him as alcohol dependent. AG ¶¶ 22(b), 22(c), and 22(e) apply.¹⁵

The alcohol consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following are potentially applicable:

(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

¹⁵AG ¶ 20(f) “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program” does not apply as Applicant’s relapse occurred once early in the course of his treatment. Since the completion of his treatment, he has not relapsed.

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

Applicant acknowledges that he is an alcoholic. When he was suspended from work for consuming alcohol on the job, a violation of work places rules, Applicant realized he had a problem with alcohol and actively participated in alcohol counseling. During his counseling, he was treated with an antidepressant and a medication designed to balance the chemicals in his brain as related to alcohol. His sobriety is important to him and his ongoing goal, so he has stayed away from alcohol. He no longer desires alcohol. He returned to AA as one of his support systems after reviewing Dr. P's January 2015 report, which recommended that he continue with AA. He considers his parents, his daughters, his supervisor, and his co-workers to be part of his support system. He is able to discuss his alcohol issues with them, and he has learned to discuss issues which arise as he moves through daily living with them, not keep the issues to himself. His counselor released him after three months of treatment and has not indicated that Applicant is at a high risk to continue abusing alcohol. AG ¶¶ 23(b) and 23(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Applicant started consuming small amounts of alcohol at work in July 2013, a violation of work place rules. This conduct could place him in a position of vulnerability to exploitation, manipulation, or duress while working with classified information. AG ¶¶ 16(e) and 16(f) apply.

The personal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

When confronted about his use of alcohol by security at work, Applicant readily admitted his conduct. His employer placed him on administrative leave and directed him to seek help. Applicant acknowledged that he is an alcoholic. Applicant realized that he needed help, which he obtained. He actively participated in his counseling because he wanted to change his pattern of living. He also participated in AA and has returned to AA on the recommendation of Dr. P, whom he respects. He has developed better relationships with his daughters and co-workers by being more open about issues. His sobriety is important to him. He no longer consumes alcohol. He exercises daily and spends time with his younger daughter. He has lost weight and lives a healthier lifestyle. His work performance continues at a high level, and he is respected by his management and his colleagues. He has mitigated the security concerns about his personal conduct under AG ¶¶ 17(d) and 17(e).

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant started consuming alcohol occasionally in high school. His use of alcohol in college and afterwards was limited and on social occasions. He did not use alcohol for periods of time. In 2007, his wife told him she wanted a divorce. Surprised by her request, Applicant tried to change his wife's mind. He also began to use alcohol as a way to cope with his feelings about her request and his desire to remain married. His alcohol use increased between 2007 and 2011. His family noticed the change in his behavior. After his wife told him that she planned to move forward with the divorce in 2011, his alcohol consumption increased again. In early 2013, he voluntarily attended AA meetings for several months. When he felt better, he stopped attending AA, thinking that he had control over his alcohol consumption. He did not. His alcohol consumption continued and got worse because he started consuming alcohol at work in July 2013. Three months later, a co-worker reported his conduct, which he readily acknowledged to security and during this process. He returned to AA and began one-on-one counseling with a licensed clinical social worker and alcohol counselor. Through this process, he began to understand his need for alcohol and then, to remove alcohol from his life. Applicant acknowledges that he is an alcoholic and that he can never consume alcohol again. He returned to AA in January 2015 based on his counselor's recent letter suggesting that he do so. His life is better since he stopped drinking. He exercises and has a healthier life. His relationships with his daughters and his co-workers has improved. He continues to work at a high level and is respected by his superiors and co-workers. He has developed a support system, which includes his parents, his daughters, his co-workers, and AA. His primary goal is to remain sober and enjoy his present life.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol use and personal conduct under Guidelines G and E.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline G: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | 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.

MARY E. HENRY
Administrative Judge