



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



In the matter of:)
)
) ISCR Case No. 14-01660
)
Applicant for Security Clearance)

Appearances

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

11/14/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, 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 October 2, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 2, 2014, detailing security concerns under Guideline H, drug involvement, 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 June 10, 2014. He submitted a notarized, written response to the SOR allegations dated June 16, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on July 28, 2014. Applicant received the FORM on August 4, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on November 3, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegation in ¶ 1.a of the SOR. His admission is incorporated herein as a finding of fact. He denied the factual allegation in ¶ 1.b of the SOR.¹ 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 27 years old, works as a janitor for a DOD contractor. He began his current employment in July 2011. Applicant's supervisor described him as a dependable and reliable worker. He has a strong work ethic, and he is motivated to succeed. Quality control rates his work well above the required standards, and there are no customer complaints about his work. He recommended Applicant for a security clearance. Applicant worked as a mechanic from February 2009 until April 2010. At all other times since his graduation from high school in May 2005, Applicant was unemployed. Applicant married shortly after he completed his e-QIP. He does not have any children.²

Applicant began consuming alcohol when he was 18 years old while socializing with friends. He drank about six beers a week. He would drink to intoxication about once a month. On August 28, 2009, Applicant purchased beer after leaving work and consumed the beer while driving. A local police officer observed his vehicle cross the center and stopped him. The police officer smelled alcohol on him and arrested him for

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Items 4 and 5.

driving under the influence (DUI). A later breathalyzer test showed his blood alcohol level at .19%. Applicant appeared in court in October 2009, and he was found guilty of DUI. The court fined him \$1,100 plus \$300 in court costs; suspended his license for 90 days; directed that he attend alcohol awareness classes and participate in six months of random alcohol and drug testing; and placed him on unsupervised probation for one year. Applicant complied with the terms of his sentence and was released from probation. During his November 18, 2013 interview with the Office of Personnel Management (OPM) investigator, he told the investigator that his alcohol use negatively impacted his finances and his work. Since his court appearance in October 2009, he has not consumed alcohol. He has no future intent to consume alcohol. He attends Alcoholics Anonymous (AA) about once a month to assist him in his efforts to remain sober and has done so since June 2011.³

Beginning in August 2005, Applicant purchased 10 tablets of Lortab (correct spelling of Loritab) on the street illegally. Lortab is a prescription drug and controlled substance. It is similar to Oxycodone, and it is an opioid. Applicant used Lortab about three times a year until April 2010. During one of his random alcohol tests, he tested positive for Lortab. Since he did not have a prescription for the drug, he appeared in court. The court ordered him to an inpatient treatment program. Applicant completed a 20-day inpatient program. He stated that he was diagnosed with chemical dependence and drug abuse by this program. Applicant has not used Lortab or any other drug since enrolling in and completing this program. Applicant attends Narcotics Anonymous (NA) on a monthly basis to assist him with sobriety. On his e-QIP, he indicated an intent not to use Lortab or any other controlled substance in the future.⁴

The OPM investigation revealed a failure to appear warrant dated May 9, 2011 and an arrest. In his second interview with the investigator on January 22, 2014, the OPM investigator presented him with this information. Applicant did not discuss it separately because he thought it had been discussed during his previous interview. Applicant advised that he missed a meeting with his probation officer in late March 2011. He received a letter in April 2011 to appear in court on May 2, 2011. At this time, his probation officer told him that there was an arrest warrant on him for missing a previous court date. He did not receive a notice to appear for an earlier court date. Applicant completed his probation in February 2012.⁵

Applicant provided the information about his DUI arrest and sentence on his e-QIP. Likewise, he provided information about his Lortab use on his e-QIP. The Federal Bureau of Investigation criminal records report shows the 2009 DUI arrest only. The

³Items 5 - 7.

⁴Items 4 - 6.

⁵Item 8.

record does not contain any medical records showing a diagnosis of chemical dependence or any other medical evidence.⁶

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.

⁶Item 4; Item 6.

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 H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program.

Applicant purchased and used Lortab, a drug listed in the Controlled Substance Act, without a prescription for more than five years. To use this drug, he possessed it. A security concern has been established under §§ 25(a) and 25(c).

As for the possible diagnosis of chemical dependence, the record does not contain any medical records showing such a diagnosis by a qualified medical professional or a licensed clinical social worker. AG §§ 25(d) and 25(e) are not raised.

The Drug Involvement guideline also includes examples of conditions that can mitigate security concerns under AG § 26(a) through § 26(d), which are as follows:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant last used Lortab in April 2010, almost five years ago. He has avoided associating with his drug contacts because he no longer has a need to purchase this drug. He is married; he is employed full time and well-respected at his job; and he prefers to spend time with his wife and at church. On his e-QIP, he indicated that he did not intend to use this drug or any other controlled substance in the future. Finally, the court released him from probation after he successfully completed an inpatient drug treatment program. The record lacks any evidence of a relapse by Applicant. Applicant has mitigated the security concerns about his past drug use under AG §§ 26(a) and 26(b). AG § 26(d) does not apply because there is no medical report with a prognosis.

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:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

(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,

(g) association with persons involved in criminal activity.

SOR allegation 2.a concerns alcohol consumption, which is covered by Guideline G. SOR allegations 2.b and 2.c are addressed under Guideline H, previously discussed. AG ¶¶ 16(c) and (d) are not established. However, a security concern is established under AG ¶¶ 16(e) and 16(g). Applicant's conduct creates a vulnerability to exploitation, manipulation, or duress. His decision to purchase Lortab placed him in association with individuals who sold illegal drugs, a criminal activity.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns under AG ¶ 17(a) through ¶ 17(g), which are as follows:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant stopped consuming alcohol in October 2009 after his court appearance, which is more than five years ago. His use of Lortab ceased in April 2010, almost five years ago. Applicant has worked steadily for more than three years, and he has married. He attends AA and NA monthly to maintain his sobriety. He benefitted from inpatient treatment and from the alcohol education classes. These programs led to his decision to remain sober and to stop associating with those who sold him Lortab. He has mitigated any security concerns under AG ¶¶ 17(c), 17(d), 17(e), and 17(g).

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. As a young adult, Applicant consumed alcohol with friends to be included socially. He drank to intoxication about once a month. By 2009, his alcohol consumption had increased as shown by his decision to buy beer and drink it while he drove. This decision caused his DUI arrest and created financial and work problems. He realized he needed to change his drinking patterns, which he did. Shortly thereafter, he also made a decision to cease his drug use and did.

Applicant provided the information about his alcohol arrest and drug use on his e-QIP. He also provided the information that he was told by an unidentified individual that he had a diagnosis of chemical dependence to the OPM investigator. Without his admissions, the Government would not have any information about his past drug use or his possible diagnosis. He has been honest and forthright about his past drug and alcohol use, making his statements that he no longer consumes alcohol or uses any controlled substances credible. In the last five years and as he has matured, Applicant made changes in his lifestyle. His current lifestyle and his past conduct cannot put him in a position to be pressured or coerced to give classified information. There is little likelihood that he will return to his past conduct.

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 drug use and alcohol consumption under Guidelines H 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:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.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.

MARY E. HENRY
Administrative Judge