



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



In the matter of:)	
)	
)	ISCR Case No. 14-02263
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Larry D. Younger, Esq.

05/13/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On July 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. A notice of hearing was sent on March 23, 2015, scheduling the hearing for April 23, 2015. The Government submitted two exhibits (GX 1-2), which were admitted into the record. Applicant submitted 12 exhibits (AX A-L), which were admitted into the record. Four witnesses testified on behalf of Applicant. Based on a review of the pleadings, submissions, testimony and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In his answer to the SOR, Applicant neither admitted nor denied the factual allegation under Guideline G (Alcohol Consumption), SOR 1.a, and denied being intoxicated under SOR 1.b.

Applicant is a 55-year-old employee of a defense contractor. He served in the United States Air Force on active duty and retired as a Lieutenant Colonel in 2001. (AX D) He graduated from a military academy in 1981, and he received a graduate degree in 1984. Applicant divorced his first wife of 31 years in 2012. He remarried in December 2013. He has one adult son. He has worked in the defense contracting field since 2001. Applicant held a security clearance while in the military and from 2001 until April 2012. Applicant has been employed with his current employer since April 2013.

The SOR 1.a alleges that after Applicant was diagnosed as alcohol dependent and completed an inpatient alcohol program in 2010, he continued to consume alcohol. In 2012, Applicant was charged with driving under the influence of alcohol following a traffic accident. The charge was later dropped. Following a diagnosis of alcohol abuse, from about May to August 2012, Applicant attended and completed an alcohol counseling program. The SOR 1.b alleges that in about April 2012, Applicant's employer suspected Applicant of reporting to work in an intoxicated or impaired condition. Pending an investigation, Applicant's access to government work sites and classified material was suspended.

Alcohol Consumption

Applicant faced stressors in 2010 that included the ending of a 31 year marriage, possible loss of a job contract, an unintended move to another state and company down sizing. He admitted that he was starting to drink more than he knew was good for his health. He was quite concerned about his health.

Applicant acknowledged that during his marriage of 30 years, alcohol was a part of their lifestyle. They had wine with dinner and consumed alcohol when going to parties or entertaining. It was just a part of their life. He also acknowledged that he drank because he was unhappy. (Tr. 75)

Applicant voluntarily entered an inpatient alcohol rehabilitation program in September 2010 because his health was not good. He had surgery and was informed that his liver was not in good shape. He acknowledged that he was drinking too much. Applicant was credible when he explained that he was never given a written report, nor did he know that he was given a diagnosis of alcohol dependence. He successfully completed the 22-day program. He attend AA meetings until 2011. (Tr. 58) Applicant intended to stop drinking alcohol after the completion of the program. However, he believed he could drink responsibly. (Tr. 28) There was no evidence entered into the record concerning an alcohol dependence diagnosis.

Applicant did not drink for about eight months. He resumed drinking in or about April or May of 2011. Applicant reports that he would go out after work a few times a week. He was separated from his wife at that time. He realizes that this was a stupid thing to do. (Tr. 60)

An incident report reflects that Applicant's employer knew about the 2010 self-admission to the program. (GX 2) There were no known security incidents related to the event. The employer received a letter stating that the Applicant successfully completed the program and was participating in a group counseling program. He was also attending AA daily. The management considered the issue resolved, but will continue to monitor. (GX 2) The report is mentioned in the incident report, but there is no diagnosis noted.

According to an incident report on April 5, 2012, Applicant was removed from his employment facility for "suspicion that he reported to work in an intoxicated or impaired condition." (GX 2) The report goes on to say that it is possible that some underlying condition, other than alcohol or drugs, may have caused him to act inebriated. (GX 2) Applicant was escorted from the building. There was no other evidence that he was intoxicated or impaired. He maintains that he was stressed and tired.

In April 2012, Applicant was involved in a traffic accident. He hit a car after he came over a hill and could not stop his car in time to avoid hitting a car on the road. He was charged with DUI. (Tr. 32) Applicant maintained that he was not drinking. (Tr. 68) He was taken to the hospital for some injuries. No blood tests were taken. The charge of DUI was dismissed. Applicant's counsel who represented him told him that there were no other charges. Applicant has never had any DUIs. (Tr. 35)

In May 2012, Applicant entered a faith-based alcohol rehabilitation program which addressed his needs. He was still going through a divorce and started drinking about every night. He drank two or three glasses of wine. He obtained information about counseling from a church and learned about an adult recovery center. Applicant wanted to get help with his use of alcohol. Applicant successfully completed the inpatient program in August 2012. (Tr. 40) The director of the program told him that the prognosis was good when Applicant achieved sobriety. (AX A) Applicant stopped drinking in September 2012.

During an investigative interview in May 2013, the director of the inpatient program told the investigator that Applicant had self-referred himself, attended AA, and group therapy. There was no other interview in the record; although an 2011 interview was mentioned.

On April 1, 2015, a physician at the military medical center noted that Applicant was seen at the Liver Clinic for monitoring of alcohol-related chronic liver disease. The report states that Applicant has stopped drinking all alcohol since September 2012 and has done well clinically. His liver tests have remained normal and there is no evidence of further decompensation. A random alcohol blood test was negative. The physician

noted that Applicant is encouraged to continue abstaining from alcohol. He is expected to do well. (AX C)

Applicant's primary care physician in a letter dated August 29, 2014 stated that after reviewing his records, Applicant has alcohol-related liver damage. His liver enzymes during active alcohol consumption demonstrated a classic pattern of alcohol related damage. The letter continued to note that since Applicant exercised abstinence from any alcohol since 2012, his liver-associated enzymes have returned and remained at normal levels. His physician noted that although this does not provide definitive evidence of Applicant's abstinence from alcohol consumption since 2012, it does suggest the elimination of the offending toxin, which in this case was alcohol. (AX B)

Applicant was a patient at the liver clinic beginning in October 2013. The report noted that Applicant stopped drinking in September 2012 and attended AA and church meetings. Applicant has a history of significant liver disease secondary to alcohol. The physician emphasized that the only way the remarkable improvement in Applicant's liver is possible is due to abstinence from alcohol. The September 2014 report states that Applicant has had random blood alcohol tests and all were negative. Applicant is aware that this disease progresses and is life-threatening in a short period of time. There is no medication or procedure to alleviate the liver disease. The physician opined that only abstinence could accomplish what the results reveal about Applicant's liver at the present time.

Applicant has no intent to consume alcohol in the future for a number of reasons. He cites to his health and the fear of more liver damage, his divorce and remarriage, and his renewed faith. He has no desire to drink. His new life does not revolve around alcohol. (Tr. 53) He is content and happy in his new life. He does not want to destroy his new marriage. He now knows that there are other ways to deal with stress. (Tr. 96)

Several witnesses testified at the hearing. The lead engineer for his company has known him since 2013. He describes Applicant as mature and responsible. Applicant's demeanor is always calm despite stress. (Tr. 80) He is aware of the security concerns in the SOR and has seen Applicant at evening work dinners many times. He has never seen Applicant drink alcohol. He has also traveled with Applicant for work and has never seen him have any alcohol. Another colleague testified that Applicant is very professional. (Tr. 103) He also affirmed that in either work travel or social situations he has not seen Applicant drink alcohol. (Tr. 106) He recommends him for a clearance.

A third colleague, who has traveled extensively with Applicant on work missions, states that he has never seen Applicant have alcohol at dinner or any social activities. He has never seen Applicant drink at work or appear intoxicated. He recommends Applicant for his trustworthiness. (Tr. 114)

Applicant remarried after his divorce in 2013. His wife testified that she met Applicant in 2012. She offered him alcohol but learned that he did not drink. He later explained to her that alcohol played a role in his life and now he did not drink.

Applicant's wife occasionally drinks if they go out to dinner. As a rule, she does not drink at home with dinner. She stated that alcohol does not have a role in their life. (Tr. 119) She has never seen him drink during their marriage. She noted that she serves wine at Thanksgiving, but Applicant does not have any alcohol. She emphasized that during this stressful time of the security clearance investigation, she has never seen him tempted to drink. He enjoys outdoor activities. They are active in the community and with the church.

Applicant submitted six letters of recommendation. His colleagues refer to him as a solid team player. The letters acknowledge the fact that Applicant has not been drinking alcohol since 2012. They have traveled with him on numerous occasions and have had many dinners and social events from which to observe Applicant. Each recommends Applicant for a security clearance.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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 conditions that could raise a security concern and may be disqualifying:

(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, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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;

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

(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;

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant entered alcohol treatment programs in 2010 and 2012. He has liver disease that is the result of alcohol use. Applicant continued to drink after his 2010 treatment. There were suspicions of incidents at work of being intoxicated or impaired, but there was no evidence. Applicant entered another program in 2012. He was given a diagnosis of alcohol abuse. Applicant was involved in a traffic accident and was charged with DUI. AG ¶¶ 22(c) and (e) apply.

AG ¶¶ 23 provides conditions that could mitigate security concerns:

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant acknowledged that it was stupid on his part to continue to drink after his 2010 inpatient program. He used the alcohol as a way of dealing with stress. He acknowledged in 2010 that he was drinking too much. He entered the 2010 program on his own. He also acknowledged that in 2012 he was charged with a DUI. He maintains that he was not drinking. The DUI charge was dropped, and Applicant has never had one before or after that time. Applicant realizes that he could die due to liver damage if he would continue to drink. He stopped drinking in 2012. He successfully completed an inpatient treatment program in 2012. He has remarried and has a support group. After considering the mitigating conditions, I find that, given the information in this record, he has mitigated the alcohol concern.

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 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 55 years old. He is a graduate of a military academy and has a graduate degree. He retired from the military and served his country. Applicant has had a security clearance for about 30 years. He has worked in the defense field since his retirement from the military. Applicant was married for 30 years, but divorced in 2012. He has an adult son.

Applicant admits using alcohol and drinking too much. His way of life for 30 years included the use of alcohol. When he was getting a divorce, he turned to alcohol to handle stress. He was diagnosed with liver damage due to alcohol. He voluntarily entered an inpatient program of 21 days in 2010. He completed the program and his employer knew about the program. It was not associated with any security violation. In 2010, the company considered the issue resolved.

Applicant believed he could drink responsibly after the 2010 program. He continued to have major stress in his life. He entered another program in 2012. This inpatient program provided him with tools. He knew he had a problem with alcohol and had an accident with a charge of DUI in 2012, which was dropped. He also was under suspicion of coming to work in an impaired condition, but the company itself could not substantiate the fact. He attended AA. His divorce was final in 2012, and he remarried. He has stopped drinking. He has a new life. He submitted evidence from physicians that show liver results have improved due to lack of the toxin of alcohol in the system. He submitted references from colleagues who have known him the past years who have never seen him drink. He has mitigated the security concerns under the alcohol consumption guideline and under the whole-person concept as well.

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-1.b:	Against 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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge