



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 14-02262
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline G (alcohol consumption). Clearance is granted.

Statement of the Case

On May 29, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 22, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant. The action was taken pursuant to 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 (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines G (alcohol consumption) and E (personal conduct). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with national security to continue a security clearance for

Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On September 4, 2014, Applicant responded to the SOR. On January 8, 2015, Department Counsel indicated he was ready to proceed on Applicant's case. On January 15, 2015, the case was assigned to me. On January 23, 2015, DOHA issued a hearing notice, setting the hearing for February 13, 2015. The hearing was convened as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits (AE) A(1) through A(6), which were admitted without objection. Applicant did not call any witnesses, but did testify on his own behalf. DOHA received the hearing transcript (Tr.) on February 24, 2015.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e. He neither admitted nor denied SOR ¶ 2.a. After a thorough review of the record, I make the following findings of fact.

Preliminary Matters

Department Counsel moved to withdraw SOR ¶ 2.a. Without objection from the Applicant, I granted Department Counsel's motion. (Tr. 9-10.)

Background Information

Applicant is a 50-year-old project manager employed as a defense contractor since February 1995. He seeks to retain his top secret security clearance, which he has held since 2002. (GE 1; Tr. 27-32)

Applicant graduated from high school in 1982. Applicant does not have a college degree, but estimates that he has completed "somewhere around 80 to 90" college credit hours. (GE 1; Tr. 32-24) Applicant served in the U.S. Air Force from March 1983 to August 1985, and was discharged as an airman basic (pay grade E-1) having received a General, Under Honorable Conditions Discharge. (GE 1; Tr. 34, 38-42)

Applicant's was married from 1998 to 2006, and that marriage ended by divorce. He has not remarried. Applicant has a 19-year-old son and a 16-year-old daughter, and has had custody of both children since his 2006 divorce. His son is a college freshman and his daughter is high school junior. Applicant provides full support for his children and receives no child support from their mother. (GE 1; Tr. 34-38)

Alcohol Consumption

Applicant's alcohol-related incidents are contained in five separate SOR allegations. From 1982 to 2014, Applicant consumed alcohol, at times and to the point of intoxication. (SOR ¶ 1.a) In May 1985, while serving in the Air Force, he received non-judicial punishment for being drunk on duty, among other offenses. (SOR ¶ 1.b) In January 1986, Applicant was charged with driving under the influence (DUI), found guilty, and given probation before judgment. (SOR ¶ 1.c)

In October 2005, Applicant was charged with DUI, but found guilty of reckless driving and sentenced to 12 months of probation, ordered to perform community service and attend DUI school, and fined. (SOR ¶ 1.d; Tr. 45-52) In November 2011, Applicant was arrested and charged with DUI and leaving the crash scene. He was found guilty of reckless driving and sentenced to 12 months of probation, ordered to perform community service and attend DUI school, and fined. (SOR ¶ 1.e; Tr. 42-45, 53-59)

Following his 2011 arrest, Applicant was evaluated by a qualified medical professional. He was not found to be an alcohol abuser or as alcohol dependent and received a favorable prognosis. (Tr. 62; AE A(4)) However, since his last alcohol-related incident, he avoids drinking "for the most part." (Tr. 59) Applicant testified that there are some weeks he does not drink at all and on some weekends, when he is having a barbeque, he will have a drink at home. For example, during the Super Bowl, he watched the game with his children and did not drink at all. (Tr. 61) Applicant stated that his alcohol consumption can be summarized as "periodic drinking, not to excess." Alternatively stated, Applicant does not consume alcohol on a regular basis. (Tr. 62, 71-74; AE A(4))

Character Evidence

Applicant's work performance evaluations reflect that he is a solid performer, who is viewed as a valued and trusted employee. (AE A(1), AE A(2)) As a single parent, he is very involved with his two children. Both his son and daughter are straight A students. His daughter was recently recognized by their state senator as having achieved the highest reading level possible in the state comprehensive assessment test. (Tr. 63-64, 66; AE A(3))

Applicant submitted eight reference letters: (1) his company director of design and installation services, (2) his company general manager and vice president of the design and installation services business unit, (3) his company vice president of human resources, (4) his company director of security, (5) his co-worker and friend, (6) his neighbor and friend, and (7, 8) a couple described as lifelong and best friends. The collective sense of these letters describes Applicant as contributing to the national defense, a trusted and valued employee, and an excellent father and role model. (Tr. 64-65; AE A(5), AE A(6)) At his hearing, Applicant answered questions in a frank, forthright, and candid manner.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Alcohol Consumption

Under Guideline G (alcohol consumption), the Government’s concern is that 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 ¶ 21.

The Government established its case under Guideline G through Applicant’s admissions and evidence presented. A review of the evidence supports application of one alcohol consumption disqualifying condition, AG ¶ 22(a) “alcohol-related incidents away from work, such as driving while under the influence.”

Considering the totality of the circumstances in this case, I find application of two alcohol consumption mitigating conditions is appropriate with regard to Applicant’s alcohol-related offenses:

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; and

AG ¶ 23(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).

Applicant presented credible evidence of actions taken to overcome his alcohol-related incidents, has established that he is not an alcohol abuser or alcohol dependent, and during the infrequent times he consumes alcohol, he does so responsibly. His 1985 non-judicial punishment as a young airman occurred 30 years ago and at this point lacks security significance. Applicant’s work performance evaluations and compelling reference letters demonstrate Applicant’s work behavior has not been indicative of his having an alcohol problem. He is a valuable employee, who is reliable, dependable, and professional. Applicant’s sobriety and responsible use of alcohol is supported by his own credible testimony and evidence presented. At his hearing, Applicant

acknowledged the problems misuse of alcohol has caused him, demonstrated remorse, and a steadfast commitment to continue lifestyle changes consistent with responsible use of alcohol.

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) 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 discussion in the Analysis section under Guideline G is incorporated in this whole-person section. However further comments are warranted.

I was particularly impressed with Applicant's demeanor during his hearing and the apparent effect this process has had on him. Applicant has been willing to do whatever is necessary to recover from his alcohol-related incidents. The process has been costly for him, not only financially, but also personally and professionally. Applicant has dedicated the majority of his adult working life to the defense industry. His senior company management clearly have confidence in him and value him as an employee. He demonstrated the correct attitude and commitment to responsible alcohol consumption.

Also noteworthy is Applicant's past behavior, which serves as a reliable indicator of future behavior. In particular, he has successfully held a security clearance for the past 13 years. He has been cooperative throughout this process and recognizes the gravity of these proceedings. As a single parent, Applicant is very involved and can take considerable satisfaction in having raised two accomplished children. In sum, I find Applicant has presented sufficient evidence of rehabilitation.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the

whole-person factors” and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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.e:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 1.a:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT J. TUIDER
Administrative Judge