DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-02360
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

MASON, Paul J., Administrative Judge:

After a review of the SOR, Applicant's SOR answer, the exhibits, and the testimony, I conclude that Applicant has not mitigated the security concerns generated by the alcohol consumption guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 2, on December 11, 2013. On January 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under alcohol consumption (Guideline G). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was signed and notarized on February 9, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 24, 2015, for a hearing on September 21, 2015. The hearing was held as scheduled. Six Government exhibits (GE) 1-6 were admitted in evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on September 29, 2015. The record closed on the same day.

Rulings on Procedure

On June 15, 2015, the Government filed a motion to amend the SOR as follows:

1) In subparagraph 1.d, add the following three sentences:

> You missed several days of work and important deadlines due to your alcohol consumption. In lieu of termination, your employer offered you an opportunity to participate in their employee assistance program (EAP). This was your second violation of your employer's drug and alcohol policy.

As verification of his admission to the amended SOR 1.d, Applicant encircled "admit" and placed his initials next to the encircled word. He provided his signature and date (June 23, 2015) on the second page of the motion to amend. The motion was granted. The two-page motion and Applicant's two-page attachment are admitted in evidence as Hearing exhibit (HE 1) (Tr. 9-10).

Findings of Fact

The SOR alleges four allegations under the alcohol consumption guideline. Applicant admitted consuming alcohol occasionally since the age of 17 or 18 to at least January 2014 (SOR 1.a). He admitted driving while under the influence of alcohol (DUI) in May 1996 (SOR 1.b) and March 2010 (SOR 1.c). He acknowledged that an alcohol relapse in January 2014 caused him to miss work assignments; his employer offered him an opportunity (which he accepted) to participate in the employee assistance program instead of being terminated from employment for a second violation of the employer's drug and alcohol policy (SOR 1.d).

Applicant is 47 years old and single. After receiving a bachelor's degree in December 1990, he joined the U.S. Navy. In 1992, he received his Navy pilot certification and completed two deployments. He received a master's degree in May 1999. In February

2001, he received an honorable discharge from active duty, and joined U.S. Navy Reserve in the same month. He has held several positions over the past 14 years in the Reserve. He has been a senior analyst and program manager for a defense contractor since December 2006. In that position, he supports the U.S. Navy at three locations. He holds several positions in the Reserve. Applicant has held a security clearance since April 1993. (GE 1 at 14, 31; Tr. 32-34, 43-44)

When Applicant was 17 or 18 years old (1985), he began drinking infrequently. While in college between 1986 to 1990, his drinking increased though he could not remember his consumption pattern. He opined that he could not have consumed much alcohol given his scholastic achievements. Between 1990 and 1996, Applicant's drinking pattern was every other weekend either in a group setting or alone. After his 1996 DUI, he abstained for a period, but then resumed consumption (at the frequencies discussed below) until at least January 2014. (SOR 1.a) (Tr. 35, 41-46)

In May 1996, Applicant was driving to visit his family at their residence. At the hearing, he denied that he was drinking in his car, but his sworn statement (June 1999) indicates that he had a six-pack in his car and consumed four or five beers over a period of about two hours. He stopped drinking about 30 minutes before a deer jumped in front of his car. When he tried to avoid the deer, he lost control of his car and it flipped over. He was charged with DUI, amended to reckless driving (SOR 1.b). He was found guilty of reckless driving and fined, ordered to perform community service, and put on six months probation. His license was suspended for six months and he was ordered to attend driving school. He completed the conditions of his sentence. He also attended Navy counseling. He was not ordered for treatment and received no alcohol evaluation. He testified that he abstained for about two years after the 1996 DUI. However, he indicated in his June 1999 statement that he remained sober for about seven months. (GE 5 at 1, 3; Tr.36, 46-48)

Applicant resumed drinking after the 1996 DUI because he enjoyed the taste of beer. According to his 1999 statement, he drank about two or three beers every other evening at home. If he was attending social events, he would drink only two or three beers if he was driving home. Occasionally when he drank five or six beers at a friend's house, he would sleep at that location overnight. He would also become intoxicated about once every six weeks at a friend's house. (GE 5 at 3; Tr. 49)

In roughly a two-year period prior to Applicant's March 2010 DUI arrest, his father's health was deteriorating due to a serious medical condition that caused him to act strangely. His father's bizarre behavior, which prompted his mother to contemplate divorce, upset Applicant and caused him to increase his alcohol consumption. Because he did not go out to drink, he was spending more time drinking at home. (Tr. 50-54)

On the day of Applicant's March 2010 DUI arrest (SOR 1.c), he consumed four or five mixed drinks and a prescribed sleeping pill, then drove to his mailbox which is less than a block from his home. Later in his testimony, he indicated that he had not taken a sleeping pill. Rather, he testified that he was still experiencing the residual effects of the sleeping pill that he had taken the preceding day. He had talked with his doctor about the adverse effects of mixing sleeping pills with alcohol and recalled seeing the warning sign on the bottle of sleeping pills, but did not sense a concern since he had not taken the sleeping pill on the day of the arrest. Applicant could not comprehend why he needed to drive the short distance to his mailbox. (Tr. 36-37, 54-56)

Applicant pleaded guilty to the March 2010 offense. He received probation before judgment and the remaining three related offenses were dismissed. He was sentenced to a court fine, a suspended jail sentence, one year unsupervised probation, and ordered to complete counseling and aftercare that was recommended. He did not recall whether he abstained while on probation, but claimed that he consumed no alcohol for 9 to 12 months following his March 2010 arrest. During court-ordered outpatient counseling, which he completed in July 2010, he discovered he had an alcohol problem, but he was unaware of being evaluated with an alcohol-related condition. He initiated participation in Alcoholics Anonymous (AA) for the first time. In 2011, he resumed drinking about six beers every other weekend while watching sporting events. (GE 1 at 30-31; GE 4; Tr. 38-39, 56-59)

Applicant had an alcohol relapse in January 2014 that resulted in not reporting for work and enrollment in his employer's employee assistance program (EAP). (SOR 1.d) The relapse was triggered by becoming upset after observing his unhappy and seriously ill father during an otherwise joyful Christmas holiday with his cousins and mother. When Applicant did not appear at work on January 6, 2014, with technical information necessary for a contract, company employees made repeated unsuccessful attempts to contact him over three days. The former human resources director (HRD) and the vice president of his employer went to Applicant's house on January 9, 2014, to determine why he had not been to work.[1] The HRD indicated that during a discussion with Applicant, he told the HRD that, "at some point [Applicant] drank several beers and concluded he could handle alcohol.[2] Apparently, when he arrived home after leave, he continued with his belief of being able to handle the alcohol and downed a fifth of liquor in the course of two days." (GE 3 at 5) Applicant denied drinking any alcohol while he was with his mother and cousins. When he returned home, he felt he needed something to settle his nerves so he purchased and drank a fifth of liquor in a three-day period. Applicant agreed to return to work the following Monday, January 13, 2014. (GE 3 at 5, 7; Tr. 60-67, 69)

[1] Applicant has been close friends with the recently retired HRD since 2006. (Tr. 70)

[2] The vice president recalled Applicant stating that on the plane ride home, he started drinking. (GE 3 at 7)

The HRD submitted a report on January 14, 2014, chronicling the unsuccessful efforts to contact Applicant and the discussion the HRD had with him on January 9, 2014. At the conclusion of the report, the HRD stated that since Applicant had previously been through an investigation about alcohol-related issues, he was aware of what was going to happen and how to respond. The HRD was not confident in Applicant's commitment to achieve and maintain successful rehabilitation. Applicant did not believe the HRD's opinion was correct. (GE 3 at 5, 7; Tr. 60-67, 69)

At work on January 13, 2014, Applicant signed his employer's "Last Chance Agreement." Instead of being terminated from employment for drug and alcohol violations, the agreement, "provides the employee a final opportunity to agree to comply with all company policies and procedures." Applicant agreed to abstain from alcohol use while employed by his employer (the second section of the agreement). Since signing the agreement, Applicant has consumed a can of beer at a baseball game in 2014. He had a second can of beer after someone purchased a can of beer for him at another baseball game some time later in 2014, choosing not to reveal his "disease" to the people who purchased the beer. The third time he consumed alcohol was in 2015, when he tasted a mixed drink in response to a request from a female friend. He did not have his own drink because he was driving that night. (GE 3 at 2; Tr. 64-66)

After his January 14, 2014 relapse, Applicant resumed AA meetings on a regular basis. He provided logs of attendance between January and October 10, 2014. His attendance became occasional when he discovered he was not getting the desired benefit from regular attendance. He found that contacting his sponsor was more effective, though he did not contact his sponsor after the three drinking incidents in 2014 and 2015. His most recent AA attendance was the week before the hearing, and three times in July 2015. He attributed the reduced attendance to his work schedule requiring him to travel frequently. Applicant has completed the 12 steps of the AA program. When dealing with emotional stressors like his father's recent passing, he has contacted his sponsor or attended additional AA meetings. Applicant considered the effective strategy for dealing with alcohol consumption is not buying for his own consumption or "just actively not drinking alcohol." (GE 3 at 16-23; Tr. 40, 65-67, 71)

Character Evidence

The president of Applicant's employer participated in his hiring in 2006. He has observed Applicant every other day at work except when he is traveling on work assignments. The president is familiar with Applicant's March 2010 alcohol-related driving offense. After Applicant's relapse in January 2014, the president afforded him a last chance to continue employment. Except for the January 2014 incident, the president did not recall Applicant missing work because of alcohol use, or reporting to work in an intoxicated condition. In a recent conversation with Applicant about alcohol, he indicated that he had

a beer when offered at a baseball game. The president recommends Applicant for a position of trust because of his exceptionally detail-oriented performance, his honesty, and his professionalism. (GE 3 at 2; Tr. 19-31)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the disqualifying and mitigating conditions of the AG. These conditions must be evaluated in the context of the nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Alcohol Consumption

AG ¶ 21 sets forth the security concern for 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 lists six conditions that may be disqualifying:

> (a) alcohol-related incidents away from work regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
>
> (b) alcohol-related incidents at work, such as reporting to 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;

(d) diagnosis by a duly qualified medical professional 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 treatment program; and

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

Applicant has been consuming alcohol since he was 17 or 18 years old. His consumption initially was infrequent, but gradually increased until his first DUI in May 1996, followed by seven months of sobriety. I conclude the seven-month period of sobriety is more credible than Applicant's testimonial two-year claim because it appears in a signed sworn statement generated about three years after the 1996 offense. Then, Applicant resumed drinking every other weekend until the 2008-2010 time frame, before his second DUI in March 2010, when his consumption increased to every weekend. In 2011, 9 to 12 months after the March 2010 DUI arrest, he resumed drinking on every other weekend. In early January 2014, Applicant did not report to work for the week of January 6, 2014, because of binge consumption of alcohol to the point of impaired judgment. AG ¶¶ 22(a) and 22(c) apply. AG ¶ 22(b) also applies even though Applicant neither reported to work in an intoxicated condition, nor was drinking on the job. His employer was expecting him at work on January 6, 2014, to present technical information for a contract. AG ¶¶ 22(d), 22(e), and 22(f) do not apply. There was no diagnosis of alcohol abuse or alcohol dependence and no relapse after a diagnosis of abuse or dependence and completion of an alcohol rehabilitation program.

The conditions under AG ¶ 23 that potentially mitigate Appellant's alcohol consumption are:

(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 an inpatient or outpatient treatment counseling or rehabilitation along with any required after care, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of AA 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.

AG ¶ 23(a) has only limited application. In early January 2014, less than two years before the hearing, Applicant had a significant alcohol episode triggered by his father's serious illness. Though he has reduced his alcohol consumption to a sporadic level since then, the fact that he still is consuming alcohol after signing his employer's January 2014 last chance agreement to abstain from future alcohol use while working for his employer, raises continuing concerns about his good judgment and trustworthiness.

Applicant receives some mitigation under AG ¶ 23(b) for successfully completing outpatient treatment following his March 2010 DUI. Though he realized in 2010 that he had a problem with alcohol, which he described as a "disease" that he did not want to disclose, he has not taken persuasive action that demonstrates he comprehends the full scope and seriousness of his alcohol problem.

Applicant receives limited mitigation under AG ¶ 23(d) because he completed the outpatient treatment program in 2010 and began AA participation in the same year. The other elements of the condition do not apply because there is a lack of independent evidence to support a finding of a clear pattern of modified consumption and a favorable prognosis for the future by a medical professional or a duly qualified licensed clinical social worker.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of alcohol consumption. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

There is positive evidence supporting Applicant's security clearance. He received his bachelor's degree in December 1990 and joined the U.S. Navy where he became a pilot in 1992. After obtaining his master's degree in May 2009, he received an honorable discharge from the Navy in February 2001. He has held several positions in Navy Reserve since February 2001. The president of his employer recommends Applicant for a security clearance because of his honesty and favorable job performance.

The evidence supporting a denial of Applicant's security clearance is more substantial. Applicant committed an alcohol-related driving offense in May 1996, followed by seven months of abstinence. Though about 14 years passed before Applicant committed a second alcohol-related offense, he continued to consume alcohol every other weekend or every weekend until the 9 to 12-month period of abstention in 2010 and 2011.

The January 2014 alcohol episode has been discussed. Though the former HRD, a close friend of Applicant since 2006, was not confident about Applicant's resoluteness for long-term rehabilitation, Applicant agreed to certain conditions offered by his employer so that he could continue employment. Applicant's continued use of alcohol, albeit at a sporadic frequency, violates an essential condition of the agreement. Since Applicant's regular AA attendance between the January 2014 episode and October 2014, his recent AA attendance has decreased dramatically, specifically between July and September 2015. The reduced AA attendance undercuts his testimony of going to more AA meetings. He did not contact his sponsor about the three drinking incidents in 2014 and 2015. Considering the totality of the evidence, Applicant's evidence in mitigation falls short of overcoming the ongoing security concerns based on the alcohol consumption guideline.

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):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge