



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



In the matter of:)
)
) ISCR Case No. 14-02380
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On September 29, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On April 2, 2015, Department

Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on May 20, 2015, and it was received on June 4, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and the documents were admitted into evidence. In response to the FORM, Applicant submitted additional information, which was included in the record without objection. The case was assigned to me on June 19, 2015.

Findings of Fact

Applicant admitted all the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He graduated from high school in 2004 and earned his bachelor's degree in 2012. He married in December 2013. He has no children. He did not serve in the military. He began working for a federal contractor in October 2013.

While attending college in 2005, Applicant was cited for underage possession and use of alcohol. He was required to complete an alcohol awareness class and pay a fine, which he did. He failed to disclose this information on his security clearance application (SCA) stating it was an oversight.¹

In 2008, when he was 23 years old, he was arrested for driving under the influence of alcohol (DUI). He had been drinking with friend A. He pled no contest and participated in a "first offender" program. As part of the program, he completed a DUI class and another class at his college. He was ordered to complete 50 hours of community service and was placed on probation for two years. He completed his community service and the court waived the remaining probation term. Applicant indicated that the arrest was expunged from his record. Applicant did not disclose this DUI arrest on his SCA. He indicated the reason was because he believed he did not have to because it was expunged.²

In 2012, when he was 27 years old, he was arrested for DUI. He had been drinking with friend A. He disclosed he consumed six 16-ounce beers and one mixed drink from 9:00 p.m. to 1:00 a.m. He did not believe he was impaired. He decided to drive home and was stopped by the police. He failed the field sobriety test and does not recall his blood alcohol level. He pled no contest; was fined; had his license suspended for 90 days; and was required to complete an alcohol evaluation and DUI class. He disclosed that the alcohol evaluation concluded that at times he abused alcohol and

¹ Items 1 and 4. Applicant's failure to disclose his arrest for underage possession and consumption of alcohol will not be considered for disqualifying purposes, but will be considered when analyzing his credibility and the whole person.

² Items 1 and 4. Applicant's failure to disclose his 2008 DUI arrest will not be considered for disqualifying purposes, but will be considered when analyzing his credibility and the whole person.

made poor decisions, but he was not dependent on alcohol and no further treatment was recommended. Applicant disclosed this DUI on his SCA.³

Applicant admitted he continued to consume alcohol to the point of intoxication, at times, from 2005 to 2014. He stated in his answer to the SOR that during these years he consumed too much alcohol and made poor decisions while under its influence. He stated that since his last incident he has not consumed alcohol in excess and has been a responsible adult. During his personal subject interview (PSI) on January 22, 2014, he indicated no longer drives after drinking alcohol. He indicated that he was last intoxicated at a friend's wedding in the summer of 2013. During a subsequent PSI on April 1, 2014, he indicated he will continue to consume alcohol and has done so since his last DUI. He indicated that his current use was no more than one glass of alcohol after work or with dinner two to three times a week or on weekends. He indicated that he usually shares the glass with his spouse. He seldom drinks alcohol other than at home because it is expensive at restaurants. He indicated his family and friends are aware of his DUI arrests.⁴

Applicant provided a character letter from his supervisor who has known him for two years. He described Applicant as highly professional and trustworthy. He is always respectful of the rules for private, sensitive, and proprietary information. He is an upstanding citizen and proactive member of the community.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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

³ Items 1 and 4.

⁴ Item 4 at pages 7 and 9.

⁵ Response to FORM.

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.

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, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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 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.

I have considered all of the disqualifying conditions under AG ¶ 22 and the following are potentially applicable:

(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; and

(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.

Applicant was arrested in 2005 for underage possession and consumption of alcohol. He was arrested in 2008 and 2012 for DUI. He pled no contest to both DUI charges. He admitted he continued to consume alcohol, at times in excess, and to the point of intoxication from 2005 to 2014. The above disqualifying conditions apply.

I have also considered all of the mitigating conditions under AG ¶ 23 and the following are potentially applicable:

(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's history shows a pattern of alcohol-related offenses. Despite taking a court-ordered alcohol awareness class after his 2005 citation, he was arrested in 2008, at the age of 23, for DUI. He was permitted to participate in a first-offender program and completed the required DUI class. He was arrested again in 2012 after consuming six 16-ounce beers and a mixed drink when he decided to drive home. He was 27 at the time. Applicant admitted he makes poor decisions when he is impaired, but did not believe he was impaired when he was arrested. Applicant's behavior is not infrequent and did not happen under unusual circumstances. Based on Applicant's past conduct after completing alcohol awareness and DUI classes, I am not convinced similar conduct is unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Applicant has not acknowledged his issues of abusing alcohol. He indicated he only consumes one drink two to three times a week and shares it with his wife. Both DUI arrests occurred when he was consuming alcohol with friend A. It is unknown if Applicant and friend A continue to socialize and consume alcohol together. He disclosed the last time he was intoxicated was in the summer of 2013. He admitted he continued to consume alcohol, sometimes to intoxication from 2005 to 2014. I am unable to make a credibility determination based on the limited information provided. I am unable to conclude that Applicant has overcome his issues and no longer abuses alcohol. AG ¶ 23(b) does not apply. There is no evidence Applicant participated in a counseling or treatment program. AG ¶¶ 23(c) and 23(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and concluded the following has been raised:

(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.

Applicant has three alcohol-related offenses from 2005 to 2012. It is unknown if his coworkers and supervisors are aware of his alcohol-related history. His conduct makes him vulnerable to exploitation and manipulation because it may affect his personal, professional or community standing. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate personal conduct security concerns. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

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

Applicant's alcohol-related offenses are not minor. He was beyond the age of youthful indiscretion when he was arrested in 2012. Despite having an opportunity to participate in a first-offender program in 2008, it did not deter him from drinking and driving again. Applicant did not provide evidence to show he has obtained counseling to change his behavior. He indicated he has reduced his alcohol consumption, but without additional evidence, I am unable to conclude he has taken sufficient positive steps to alleviate the circumstances and factors that caused his inappropriate behavior and to reduce or eliminate vulnerability to exploitation, manipulation or duress. Based on his repeated conduct and without additional evidence, I am unable to conclude his behavior is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions apply.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 29 years old. He has three alcohol-related incidents from 2005 to 2012, two of which are DUIs. He was not deterred from drinking and driving after he was permitted to participate in a first-offender program. He did not provide sufficient

evidence to overcome his burden of persuasion regarding the security concerns raised. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, alcohol consumption, and Guideline E, personal conduct.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge