



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



In the matter of:)
)
) ISCR Case No. 14-02520
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 16, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 12, 2013. On August 18, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 22, 2014. He answered the SOR in writing on August 22, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on December 8, 2014. DOHA issued a notice of hearing on December 10, 2014, and I convened the hearing as scheduled on January 20, 2015. The Government offered Exhibits (GXs) 1 through

3 which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on January 28, 2015. I granted Applicant's request to keep the record open until February 20, 2015, to submit additional matters. On January 24, 2015, he submitted Exhibit B; and on February 19, 2015, he submitted Exhibits C and D, which were received without objection. The record closed on February 20, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

Applicant is a 24 year-old high school graduate with some college credits. (TR at page 20 line 8 to page 21.) He has worked for a defense contractor for "just over two years." (TR at page 21 lines 2~8.)

Applicant started to drink alcohol, beer being his drink of choice, at about the age of 17, while in high school. (TR at page 23 lines 12~23.) He would drink, "maybe once a week . . . a couple" of beers. (TR at page 23 line 24 to page 24 at line 5.) He graduated from high school in "2008." (TR at page 25 lines 20~22..) While attending college, in 2009, his beer consumption increased to "maybe two times a week, from five . . . [to] seven" beers. (TR at page 24 line 18 to page 25 line 6, and at page 25 line 23 to page 26 line 1.)

In June of 2009, Applicant was arrested for, and subsequently convicted of, Driving Under the Influence of alcohol. (GX 3 at page 3.) He had consumed "about eight beers," over a period of "about three and a half [to] four hours." (TR at page 27 lines 15~21.) He was sentenced to probation for three years, attended a three months alcohol program, and was fined. (TR at page 28 lines 2~10, and GX 3 at page 3.) After this conviction, he abstained from the consumption of alcohol for "about a year." (TR at page 28 lines 11~17.) However, Applicant began drinking again; and by 2013, he was consuming five or six beers, "once a week." (TR at page 28 line 18 to page 29 line 25.)

In January of 2013, Applicant was again arrested for, and subsequently convicted of, Driving Under the Influence of alcohol. (GX 2.) He was sentenced to probation for five years, attended an 18 month alcohol program, and was fined. (TR at page 30 line 14 to page 31 line 25, and GX 2.) He successfully completed the alcohol program in November of 2014, and has not consumed alcohol since his arrest. (TR at page 33 lines 2~19, and AppX A.) However, he is still currently on probation. (TR at page 32 lines 1~6.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 the 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.

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

Paragraph 21 of the adjudicative guidelines sets out the security concern relating to Alcohol Consumption: “Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 22(a) is applicable and provides that “*alcohol-related incidents away from work, such as driving while under the influence*” may be disqualifying. Applicant has two alcohol-related convictions, one in 2009, and most recently, one in 2013. He is still on probation as a result of his most recent conviction. I can find no countervailing mitigation conditions that are applicable. However, if he continues his sobriety, he may be eligible for a security clearance in the future.

Guideline J - Criminal Conduct

The security concern for Personal Conduct is set out in Paragraph 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

The guideline notes several conditions that could raise security concerns. Under Subparagraph 31(a), “*a single serious crime or multiple lesser offenses*” may be disqualifying. Here, the Applicant has two convictions for Driving Under the Influence of alcohol. Subparagraph 31(d) is also applicable as the “*individual is currently on parole or probation.*” Again, I can find no countervailing mitigating conditions that are applicable. However, once he successfully completes his probation, he may be eligible for a security clearance in the future

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. Under AG Paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of his mother, his brother, and his girlfriend. (AppXs B~D.) However, at this time the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Alcohol Consumption and related Criminal 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline J:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge