



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



In the matter of:)	
)	
)	ISCR Case No. 14-02571
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Michael Klopfer, Esq.

03/16/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his history of problem alcohol consumption. Clearance is granted.

Statement of the Case

On September 12, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on October 7, 2014, admitting all of the allegations and requesting a hearing. On December 1, 2014, the case was assigned to me. On December 3, 2014, a notice of hearing was issued scheduling the case for January 14,

2015. At the hearing, I received four Government exhibits marked as Government Exhibit (GE) 1 through 4, in addition to five Applicant exhibits marked as Applicant's Exhibits (AE A - AE E). Also, I took administrative notice (Hearing Exhibit I), at Department Counsel's request, of a discovery letter mailed to Applicant, and I considered the testimony of Applicant and a character witness.

The hearing was not completed by the close of the business day. Therefore, I scheduled its completion for January 22, 2015. That day, I considered the testimony of another Applicant witness and received another Applicant exhibit (AE F). I received the transcript from the first part of the hearing (Tr. I) on January 23, 2015 and I received the transcript for part two of the hearing (Tr. II) on January 30, 2015.

Findings of Fact

Applicant is a 49-year-old single man. Three previous marriages ended in divorce. His most recent marriage ended in 2008. Applicant is a high school graduate and has earned some college credits. He served honorably in the U.S. Marine Corps from 2004 through his retirement in 2004. Since 2009, he has worked as an aircraft mechanic for a defense contractor. (GE 3 at 4) He has continuously held a security clearance for 30 years. (Tr. I at 21)

Applicant has a history of problem alcohol consumption. In 2003, Applicant confided to his officer-in-charge that he was having serious marital and drinking problems. (Tr. I at 22) Applicant was drinking approximately a six-pack of beer three nights per week. The officer-in-charge then talked to the commanding officer, who ordered him to undergo a substance abuse evaluation. (Tr. I at 23)

Applicant underwent a substance evaluation, as ordered, and was diagnosed as alcohol dependent. (Tr. 24) Also, the clinician recommended that he attend a 12-week outpatient rehabilitation program. Applicant completed the program as recommended. (Tr. I at 24) As part of his Applicant's rehabilitation, he attended Alcoholics Anonymous (AA) sessions five days per week for eight months. (AE 2 at 3; Tr. 48) Applicant abstained from alcohol for approximately 18 months, then resumed drinking in late 2004, consuming a 12-pack of beer per weekend. (Tr. 50) Applicant attributes the resumption of his alcohol use to the revelation that his second wife was having an affair. (Tr. I at 52)

In September 2008, a coworker reported Applicant to their supervisor after Applicant came to work smelling like alcohol. Subsequently, Applicant voluntarily entered a 14-day inpatient alcohol treatment facility. (Tr. I at 55) He was again evaluated with alcohol dependence. (Tr. 56) He then stopped drinking alcohol for the next two months. In January 2009, Applicant's employer fired him, prompting Applicant to resume drinking. (Tr. I at 59)

One evening in May 2009, Applicant left his girlfriend's house after a heated argument and attempted to drive home. He had been drinking alcohol earlier while at

his girlfriend's house. Subsequently, a police officer stopped him, and after administering a breathalyzer, charged him with the following:

- 1) driving/attempting to drive while under the influence (DWI);
- 2) driving/attempting to drive while impaired by alcohol *per se*; and
- 3) driving/attempting to drive while under the influence *per se*

Applicant pleaded guilty to the second charge and received probation before judgment. Per the terms of the probation Applicant was to abstain from drinking alcohol. (Tr. 25) Also, Applicant's driver's license was suspended for 90 days or until he installed an ignition interlock, he was required to use the ignition interlock system for a year. (AE 3 at 14) The remaining charges were *nolle prossed*. (Tr. I at 61)

After the arrest, Applicant, upon the recommendation of his attorney, attended approximately 12 weeks of alcohol-related counseling. Applicant remained abstinent for six to eight months after the arrest. (Tr. I at 82) When he resumed drinking, his alcohol consumption consisted of an occasional drink with dinner and a 12-pack of beer over the course of a day on weekends. (Tr. I at 37; GE 3 at 15) His live-in girlfriend¹ characterizes this drinking as not as heavy as it was before the DUI arrest. (Tr. I at 37)

Applicant quit drinking again in August 2014. He has been abstinent since then. (AE F at 2) Applicant does not consider himself to be an alcoholic. (Tr. 63) However, he acknowledges that he used alcohol to help him with stress and wants "to break that cycle." (Tr. 62)

Since October 2014, Applicant has been evaluated by three therapists from three separate counseling centers. On October 7, 2014, he met with a certified alcohol and drug counselor to develop a treatment regime. (AE A at 1) The counselor evaluated him and concluded that he was not dependent on alcohol. In support of this conclusion, he reasoned that Applicant did not suffer from physical or psychological withdrawal symptoms, and was thriving personally and professionally. Moreover, Applicant's past issues with depression and insomnia, problems which sometimes prompted him to self-medicate with alcohol, were under control. (AE A at 3) Ultimately, he declined to develop a treatment regime, concluding that "no treatment [was] necessary." (AE A at 1)

Applicant has been engaged in weekly therapy with a licensed therapist since October 23, 2014. (AE C) She is helping him cope with his depression and helping him "feel better about [him]self," by "getting a lot of things out in the open." (Tr. I at 41) This therapist testified. Referencing the fourth edition of the *Diagnostic and Statistical Manual for Psychological Disorders*, she diagnosed Applicant as non-dependent on alcohol. (Tr. II at 17, 30) Specifically, since Applicant has been undergoing therapy with her, he has been abstinent, he has not been preoccupied with trying to obtain alcohol,

¹It is unclear from the record whether the therapist's doctorate is in psychology or counseling.

and he has not experienced withdrawal symptoms. (Tr. II at 18) Also, she noted Applicant's current social stability - maintaining a long-term relationship with his girlfriend, excelling on the job, and successfully managing his money - as indicia of non-dependence on alcohol. (Tr. II at 15)

On December 23, 2014, Applicant met with the program director, a licensed alcohol counselor with a Ph.D, of another treatment facility. After "a very intense, demanding evaluation," the therapist found no evidence that Applicant was unstable. (AE B at 2)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 classified information will be resolved in favor of national security."

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 to obtain a security clearance.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, "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). Counselors have evaluated Applicant with alcohol dependence twice between 2003 and 2008. Applicant's drinking problem led to a DUI arrest in 2009, and he has relapsed three times after therapists recommended that he not drink alcohol.

The following disqualifying conditions under AG ¶ 22 apply:

- (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;

(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;

(e) evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

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

The following mitigating conditions under AG ¶ 23(a) 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); 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 . . . 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.

The length of time Applicant has struggled with alcohol addiction, his history of relapses and the recency of the time that he has been abstinent renders AG ¶ 23(a) inapplicable. Applicant has been abstinent from alcohol use for seven months. He has been evaluated by three therapists, all of whom concluded that he is either non-dependent on alcohol, or that his dependence is in remission. With the help of the therapist with whom he continues to receive weekly treatment, he has learned to manage his stress and his depression, the principal triggers that cause him to want to drink alcohol. Under these circumstances AG ¶¶ 23(b) and 23(d) 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.

Applicant has been sober for seven months. This is not a particularly long time given his history of alcohol abuse and relapses. Conversely, the presence of rehabilitation is extraordinary, as three therapists from three separate treatment centers have concluded unequivocally that he is no longer alcohol dependent. Moreover, despite no longer being alcohol dependent, Applicant recognizes that his past issues with depression and anxiety triggered his desire to drink alcohol, and is prospectively addressing these issues even though they are currently not posing any problems. The presence of rehabilitation, together with the length of time Applicant has held a security clearance, is sufficient to outweigh the negative security inference generated by his history of relapse and the relatively recent period of time that he has been abstinent from alcohol. Considering this case in the context of the whole-person concept, I conclude that Applicant has mitigated the security concern.

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.d: For 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge

