



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



In the matter of:)	
)	
)	ISCR Case No. 14-05651
)	
)	
Applicant for Security Clearance)	

Appearances

For Government :Jeff Nagel, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

March 3, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 20, 2013. On June 24, 2015, 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 July 29, 2015. He answered the SOR in writing on August 5, 2015, 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 November 10, 2015. DOHA issued a notice of hearing on December 2, 2015, and I convened the hearing as scheduled on December 21, 2015. The Government offered Exhibits (GXs) 1 through

4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through E, which were received without objection. DOHA received the transcript of the hearing (TR) on January 4, 2016. I granted Applicant's request to keep the record open until January 4, 2016, to submit additional matters. On January 4, 2016, he submitted Exhibit F, which was received without objection. As the undersigned was on leave on January 4th, the record closed on January 5, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend Subparagraph 2.(a) of the SOR by adding the words "with a General Under Honorable Conditions." (TR at page 7 line 9 to page 8 line 22.) There was no objection from Applicant's Counsel; and as such, it was so amended. (*Id.*)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a., 1.b., 1.d., 1.e., 1.g. and 2.d. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.c. and 1.f. of the SOR, averring they were duplicates of Subparagraphs 1.b. and 1.e., respectively.

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

Applicant is a 32-year-old employee of a Federal Contractor, who served in the U.S. Navy for nine years. (TR at page 20 line 8 to page 22 line 23.) During his term of service, he was deployed to the Persian Gulf three times. (*Id.*)

1.a. Applicant admits that he consumed alcohol from 2005~2012, at times to excess, resulting in two alcohol related arrests (one in 2005 and one in 2012), which led to him being discharged from the Navy "Under Honorable Conditions (General)," in February of 2013. (TR at page 24 lines 2~12, at page 45 line 23 to page 47 line 6, and AppX F.)

1.b., 1.c. and 2.a. Applicant admits that in August of 2005, he was arrested on Base, by civilian police for Driving Under the Influence (DUI) of alcohol. (There was concurrent jurisdiction on this Naval Base; and as such, he was subject to both military and civilian courts.) As a result of an Article 15, Applicant was reduced in rank one pay grade; and as a result of a civilian conviction for the same incident, he served two days in jail and his driver's license was suspended. (TR at page 24 line 13 to page 26 line 3, and at page 43 line 11 to page 45 line 21.)

1.d. and 2.a. Applicant admits that in April of 2006, he was arrested for Driving While License Suspended/Revoked. (TR at page 26 line 4 to page 28 line 1, and at page 50 line 12 to page 52 line 3.) He mistakenly thought that the above-mentioned license suspension did not apply to his out-of-state driver's license. (*Id.*) As a result, he was convicted as charged, and served ten days of community service. (TR at page 26 line 4 to page 28 line 1, and at page 50 line 12 to page 52 line 3.)

1.e., 1.f. and 2.a. Applicant admits that in October of 2012, he was again arrested on Base, by civilian police for DUI. (TR at page 28 line 2 to page 32 line 3, at page 35 line 23 to page 36 line 22, at page 48 line 3 to page 50 line 11, and at page 52 lines 4~8.) As a result of an Article 15, Applicant was reduced in rank one pay grade, was restricted to post for 45 days, and also received 45 days of extra duty. (*Id.*) As a result of a civilian conviction for the same incident, he was fined and placed on probation for five years. He is still on probation. (TR at page 28 line 2 to page 32 line 3, at page 35 line 23 to page 36 line 22, at page 48 line 3 to page 50 line 11, and at page 52 lines 4~8.)

1.g. In January of 2013, Applicant was diagnosed, in part, as being Alcohol Dependent. (TR at page 32 line 4 to page 35 line 22, at page 40 line 13 to page 41 line 15, and at page 52 line 9 to page 53 line 22.) He has offered a more recent evaluation from October of 2015 showing no such diagnosis (AppX A); he has abstained from the consumption of alcohol since January of 2012, and has signed a "Statement of Intent" not to consume alcohol in the future, consenting to an "automatic revocation of . . . [his] security clearance" if he consumes alcohol. (TR at page 32 lines 19~21, and AppX B.)

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 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. AG 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 under the influence . . .*” may be disqualifying. Applicant has two alcohol-related convictions, one in 2005 and one in 2012. Subparagraph 22(b) is also applicable as there is a “*diagnosis . . . [of] alcohol dependence*” by the Navy in 2013. However, these are mitigated by the countervailing mitigation conditions of Subparagraphs 23(a) and 23(b). Under 23(a) “*so much time has passed [more than three years] . . . that it [the behavior] is unlikely to recur . . .*” Under 23(b) “*the individual acknowledges his . . . alcoholism . . ., provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . .*” Applicant has not consumed alcohol since January of 2013, and intends no future consumption.

Guideline J - Criminal Conduct

The security concern for Criminal 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 adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 31(a) provides that "*a single serious crime or multiple lesser offenses*" may raise security concerns. Under Subparagraph 31(d) when an "*individual is currently on parole or probation*" that fact may raise security concerns. Applicant has two convictions, and is still under probation as a result of his most recent conviction. I find two countervailing mitigating conditions that are applicable here. Subparagraph 32(a) requires that "*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.*" Applicant's last conviction was more than three years ago. The mitigating condition under Subparagraph 32(d) requires that "*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity . . .*" Applicant has ceased the consumption of alcohol, the root of his past Criminal Conduct.

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. Applicant is highly regarded in the work place. (AppXs C~E.) The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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.

Richard A. Cefola
Administrative Judge