



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



In the matter of:)
)
-----) ISCR Case No. 07-04479
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff A. Nagel, Esquire, Department Counsel

For Applicant:
John N. Griffith, Esquire
Autumn D. Springfield, Esquire

October 26, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application on June 25, 2002. (Government Exhibit 1.) On September 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G concerning the 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 on September 1, 2006.

Applicant submitted an Answer to the SOR on October 1, 2010, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 20, 2010. The case was assigned to me on January 26, 2011. DOHA issued a notice of hearing on February 9, 2011, and I convened the hearing as

scheduled on March 11, 2011. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, submitted Applicant Exhibits A through I, and called two additional witnesses. Pursuant to his request, the record remained open for the receipt of additional exhibits. Applicant submitted Applicant Exhibits J and K in a timely manner, which were also admitted without objection. DOHA received the transcript (Tr) of the hearing on March 24, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 48 and single. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

Guideline G - Alcohol Consumption

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess. The Applicant admitted the factual allegations of the SOR. Those admissions are hereby deemed findings of fact.

The Applicant has had four alcohol-related arrests. He was arrested twice for Driving Under the Influence in 1990 and 1994. He was also arrested twice for being Drunk in Public in 1987 and 2003. (Government Exhibits 2, 3 and 4.)

The Applicant began drinking when he was in college, starting in 1984. (Tr at 73-75.) He would drink to intoxication on an infrequent basis while in college and up to about 1990.

Applicant began working with his current employer in 1990. Until his entry into rehabilitation in April 2004, Applicant admits that he drank to excess on a regular basis. (Tr at 77-85.)

Based on the recommendation of work friends, as well as his personal sense of humiliation after his last alcohol-related arrest, Applicant decided to enter inpatient alcohol treatment in April 2004. At discharge, he was diagnosed, in part, as being alcohol dependent. (Tr at 85-90; Government Exhibit 6.) He successfully completed 30 days on inpatient treatment and then three months of living in a safe and sober housing arrangement.

Applicant remained abstinent from alcohol for about a year after completing his treatment. Starting in mid-2005 Applicant began drinking a glass or two of wine in the evening. He limits himself to no more than two glasses of wine at any sitting. He has not been intoxicated since 2003. (Tr at 90-95.)

At the hearing, Applicant presented Applicant Exhibit A, which stated that Applicant had the “intent to never abuse alcohol again.” As part of the exhibit, Applicant agreed to automatic revocation of his security clearance if there was any violation. (Tr at 94-96, 100-102.)

During his testimony Applicant stated that he was willing to give up drinking entirely effective immediately and sign a sworn statement to that effect. (Tr at 108-114.) After the hearing Applicant Exhibit J was admitted into evidence, which states, “I am submitting this statement as intent to never use alcohol again.” (Emphasis in original.) As with Applicant Exhibit A, it also contained a statement stating his consent to automatic revocation of his security clearance for any violation.

Mitigation

Two co-workers of Applicant testified, one of whom is also a personal friend. The co-worker who is a personal friend of the Applicant’s testified that she has known Applicant since approximately 1994. She works in human resources for the Applicant’s employer. The witness was the person who drove Applicant to his inpatient treatment program in 2004. She stated that he came back to work a different person after his attendance at the program. She stated that the Applicant is an excellent employee, very trustworthy, and recommended that the Applicant retain his security clearance. (Transcript at 21-38.)

Applicant’s immediate supervisor also testified on his behalf. This person has known the Applicant since 2001. He has been Applicant’s supervisor for a year. The supervisor testified that the Applicant is a valuable employee, above average, very trustworthy and honorable. The witness has knowledge of the incidents in the SOR and believes that Applicant has resolved his problems. He also recommends that the Applicant retain his security clearance. (Transcript at 41-64.)

Applicant has received several achievement and cash awards during his 20-year employment in the defense industry. (Applicant Exhibit F.) He also submitted his last three annual performance evaluations. (Applicant Exhibits G, H and I.) They show he is a talented and respected employee, trusted by his supervisors as someone who, “Accepts personal responsibility to meet commitments.”

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 ¶ 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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." 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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by the President in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The Applicant was involved in four alcohol-related incidents between 1987 and 2003. The evidence also shows that the Applicant has used alcohol, occasionally to excess, from about 1980 until early 2004. He had treatment in 2004, followed by a year of abstinence from alcohol. Since 2005, he drinks on an extremely moderate basis.

There are three Disqualifying Conditions that arguably apply to this case. AG ¶ 22(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." AG ¶ 22(d) states a concern is, "Diagnosis by a duly qualified medical professional (e.g., physician . . .) of alcohol abuse or alcohol dependence." In addition, AG ¶ 22(f) states a concern is, "Relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

Under the particular facts of this case, the following mitigating condition currently applies to the Applicant's situation. AG ¶ 23(a) states that it can be a mitigating condition when, "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."

The record shows that the Applicant had four alcohol-related incidents. Three between 1987 and 1994, the last occurring in 2003. After the 2003 incident, Applicant attended a 30-day inpatient treatment program in 2004 and was abstinent for a year. For the last six years, he has used alcohol moderately without any incidents. Under the particular facts of this case, his continued use of alcohol can be mitigated because of his long history of good work, lack of alcohol-related incidents, and positive recommendations. Applicant has restricted and controlled his drinking for six years, and has now made a commitment to not drink at all. What is particularly telling is the compelling, credible, testimony of the Applicant, and his two witnesses, including his direct supervisor. These two people have intimate knowledge of the Applicant and his conduct on and off the job, and both recommend him for a position of trust and see no evidence of an alcohol problem. In addition, Applicant credibly stated his intent not to use alcohol in the future. While this statement was made at the hearing, precluding any extensive current history of abstinence, the evidence supports a finding that it is credible and believable. This mitigating condition applies and, when viewed along with the Whole-Person Concept discussion below, supports a finding for the Applicant.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a hard-working, respected, professional person who has had four alcohol-related incidents in his life, the last in 2003. After treatment, and gaining significant insight into himself, Applicant began using alcohol at a severely reduced rate. He has now indicated a credible intent not to use alcohol at all in the future. Applicant fully understands how alcohol use, particularly any alcohol use in the future, can affect his security clearance eligibility. Under the particular circumstances of this case, Applicant has shown that there is little likelihood of recurrence of his alcohol abuse.

In viewing all the facts of this case, I find that the Applicant has mitigated the security significance of his prior conduct. As set forth at length above, I find that the conduct, specifically abusive drinking, was not recent (AG ¶ 2(a)(3)); that there have been permanent behavioral changes under AG ¶ 2(a)(6); and that the likelihood of continuation or recurrence is close to nil (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has mitigated the security concerns arising from his alcohol related incidents.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

