



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-06506
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro Se*

May 21, 2008

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 23, 2006 (Government Exhibit 1). On October 30, 2007, 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 revised adjudicative guidelines (AG) promulgated by President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on November 26, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 7, 2008. I received the case assignment on January 9, 2008. DOHA issued a notice of hearing on February 6, 2008, and I convened the hearing as scheduled on February 25, 2008. The Government offered Government

Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through G, without objection. The Applicant requested that the record remain open and, on March 10, 2008, he submitted Applicant's Exhibit H, without objection. DOHA received the transcript of the hearing on March 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 48. He is employed by a defense contractor as a Lead Man 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 all of the factual allegations in the SOR, subparagraphs 1.a. through 1.e. Those admissions are hereby deemed findings of fact.

The Applicant has a long history of abusing alcohol. He first began drinking when he went into the Armed Forces at 17 years old in 1977. His alcohol use has gone up and down over the years. As of the date of the hearing, the Applicant had not consumed any alcohol since receiving the SOR in November 2007, a period of five months. That is the longest time that he has gone without consuming any alcohol since he began drinking. He expresses a credible intent not to drink in the future. (Transcript at 52, 58-59.)

The excessive drinking by the Applicant has resulted in numerous alcohol related incidents. The first incident was administration of Non-Judicial Punishment in 1978. This was for being Drunk and Disorderly in Quarters. (Transcript at 27-28.)

The Applicant was arrested and convicted five times between 1979 and 1987 for Driving Under the Influence of Alcohol. These incidents occurred in 1979, 1982, 1984, 1985 and 1987. The Applicant was required to attend Alcoholic's Anonymous meetings or get counseling as part of his sentences for these offenses. He did not feel that these meetings were helpful to him at the time. The Applicant admitted that there were other occasions when he would drive after drinking to excess. (Transcript at 39-47, Government Exhibit 4 at 1-3.)

The Applicant is currently married, but has been separated for many years. He was charged with a domestic violence offense involving his wife in 1990. According to the Applicant, his wife tried to attack him and in defending himself he hit her in the eye. They were both intoxicated at the time. He was ordered to attend anger management classes and the charges were dismissed after he completed the course. (Transcript at 50-52, Government Exhibit 5.)

The Applicant and his fiancé have been together for 12 years. An incident of domestic violence happened involving the two of them in January 2006. They got into a heated argument and the Applicant assaulted her. He plead No Contest to Inflicting Corporal Injury on a Spouse and was sentenced to three years probation, one year of domestic violence classes and a fine. He completed the domestic violence program and his probation was terminated in March 2007. He was intoxicated at the time of this offense. (Transcript at 53-54, Government Exhibit 2 at 3-4.)

The Applicant testified that the domestic violence classes he attended after the last incident were very helpful to him. He now understands the impact that alcohol has had on his life. His relationship with his fiancé is much better now. (Transcript at 65-69.)

Records were submitted by the Applicant showing that, after the hearing, he has begun a program of alcohol treatment through his health care provider. As of the time the record closed the Applicant had two sessions and a Blood Alcohol Level test taken on each date read "0.0." (Applicant's Exhibit H at 5-8.)

Mitigation

The Applicant submitted documentary evidence showing that he is a highly respected person and employee. Several friends and work associates submitted letters on his behalf. The Applicant is described as someone who is "trustworthy," "conscientious," and has "integrity." (Applicant's Exhibit E.) He has received several certificates of recognition and spot awards during his current employment. (Applicant's Exhibit H at 9-35.)

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 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 common sense 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 own common sense, as well as his 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 President Eisenhower 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 Criminal Conduct 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 a series of alcohol related incidents from 1979 until January 2006. He has used alcohol habitually, and occasionally to excess, from 1977 until November 2007. The Applicant only stopped using alcohol because he received the SOR.

There are two Disqualifying Conditions that 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.” In addition, AG ¶ 22(c) states a concern is, “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.”

Under the particular facts of this case, none of the mitigating conditions currently apply to the Applicant’s situation. While it has been over two years since the last alcohol related incident, the fact is the Applicant has only been completely abstinent from alcohol for five months as of the date the record closed. He does acknowledge his issues with alcohol, but has no pattern of abstinence or responsible use. He has just begun alcohol counseling, and it is too early to say that it will be worthwhile.

The Applicant is a motivated man who is a fine employee. Based on the available evidence, it is simply too soon into the Applicant’s complete abstinence and treatment to conclude that he will no longer engage in alcohol related incidents. If he continues to abstain from alcohol and engage in counseling he may well be eligible for a clearance in the future. The Applicant has not mitigated the security significance of his alcohol consumption and Paragraph 1 is therefore found against 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 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) 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. The Applicant is a hard-working, respected, professional person who has just begun to address his long-standing alcohol problem. In viewing all the facts of this case, I find that the Applicant has not mitigated the security significance of his prior conduct. As set forth at length above, I find that the conduct was recent (AG ¶ 2(a)(3)); and that there has been insufficient time to determine that there have been permanent behavioral changes under AG ¶ 2(a)(6).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his alcohol related incidents.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	Against the 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge