



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



In the matter of:)
)
-----) ISCR Case No. 07-07099
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: Pro Se

April 22, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 17, 2006. On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and G 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on March 5, 2008. DOHA issued a notice of hearing on March 7, 2008, and I convened the hearing as scheduled on April 4, 2008. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on April 14, 2008. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated February 13, 2008, Applicant admitted the factual allegations in ¶¶ 1.a- 1.c and ¶¶ 2.a and 2.b of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 26 years old. He is single. After his high school graduation in 2000, he attended college. After receiving his undergraduate degree in 2004, he began employment with a defense contractor (GE 1). Since 2006, he has worked as a logistics system engineer. He does not hold a security clearance (Tr. 14).

Applicant started drinking alcohol in high school with his friends. He drank beer on the weekends. In June 2000, he was charged with underage possession of alcohol. At the time he was at the beach for senior week activities. A complaint was received about the noise where he was partying with his friends. The police were called and found Applicant, age 18, and his friends drinking alcohol (Tr. 17).

In June 2003, Applicant was 21 years old. He went to the beach with some of his college friends. He was in a bar consuming alcohol. He and some other friends got into a physical altercation. The police arrived arrested and charged him. The charges were for (1) tumultuous behavior and (2) loitering in bar district. He was found guilty of charge one. Charge two was dismissed. Applicant was fined (Tr. 18; GE 4).

While he was in college, (freshman year) Applicant admitted drinking to the point of intoxication two times a week. He was disciplined for having alcohol in his dorm room. He took an alcohol class (Tr. 29).

In January 2005, Applicant and some friends attended a football game. He had been drinking during the game. After the game was over, he was walking in the streets. The crowd was rowdy and he got caught in the middle of a fracas. He was arrested for disorderly conduct and assault. He was hospitalized after the police put him down. He spent the night in jail. The charge was nolle prosequi. He completed 24 hours of community service. He also voluntarily attended an alcohol education class in his county (Tr. 20). He realized that he needed to change his drinking behavior, consume less alcohol and be more alert of his surroundings (*Id*).

At the time of the 2005 incident, Applicant was working for his current employer (defense contractor). He did not want them to find out about the incident for fear of losing his job (Tr. 21).

In July 2006, Applicant rented a beach house with some acquaintances. He was not familiar with the group of people at the house. One evening after socializing and drinking at the bars, he returned home. He asserts the guys were rowdy. A verbal confrontation led into a physical fight. One person head butted Applicant in his nose. He

was hospitalized and obtained seven stitches (Tr. 22). At the hearing, Applicant produced photos taken three days after the assault. The photos depicted the injury to his nose. He was humiliated and afraid to present himself at work. He did not want his managers to know the real reason for the injuries. He told them the injury resulted from a volleyball incident. He feared that he might lose his job if he told them the real reason (Tr. 23).

Applicant pressed charges against the person who attacked him. In return, charges were pressed against Applicant. Applicant returned to the beach town to face the charges. The police charged Applicant with terroristic threats and offensive touching (Tr. 25). The court nolle prossed the charge. The other person paid for Applicant's hospital bills. Applicant has decided not to return to the beach because the group binge drinks and he has changed his behavior (Tr. 26).

Applicant admits that he may have a drink three times a week, generally on the weekends. He is more cautious about where he drinks and with whom he drinks. He associates with other professionals who share the same lifestyle. He will go to a friend's house or go out to a bar with friends. He drinks in moderation because he realizes the impact this might have on his career. He weighs approximately 164 pounds and knows that after three beers he might be legally intoxicated. He does not stagger or have slurred speech but he realizes that he could be intoxicated using the legal definition (Tr. 39).

Applicant was credible in his testimony that he limits his drinking. He is more aware and alert as to the amount of alcohol he drinks and with whom. He associates with other like-minded career individuals (Tr. 41). He only drinks in what he considers a controlled or safe place.

Applicant's work performance is good. He is a hard worker. He is now aware that the party lifestyle interferes with a professional life and could jeopardize his career. He believes he has matured in the last years. He has a good deal of responsibility at work. He manages the operations of a department. He is part of a strategic development team for his company. He participates in discussions with vice-presidents, directors and managers of his company (Tr. 51). He recently purchased a home which he is refurbishing with the help of his Father.

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 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.

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. 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 J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “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.”

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying, “(a) a single serious crime or multiple lesser offenses,” and “(c) allegation

or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.”

Applicant’s alcohol-related charges and arrests from 2000 until July 2006, constitute criminal activity as envisioned under §§ 31(a) and 31(c).

AG § 32 provides conditions that could mitigate security concerns:

(a) 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;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement;

Applicant has had no infractions with the law since July 2006. He was younger when he was involved in the incidents that involved drinking. He does not associate with the same people as before. He is cognizant of his behavior and that drinking excessively could jeopardize his career. He has been employed with the same company for a number of years. He has a responsible job with management duties. He did complete an alcohol class after his 2003 incident. He has modified his alcohol consumption as described above. Applicant has mitigated allegations 1. a through 1.d by the passage of time and by a successful change in his conduct, drinking and associations. AG §§ 32(a) and 32(d) apply.

Guideline G, Alcohol Consumption

AG § 21 expresses the security concern pertaining to alcohol consumption, “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 § 22 describes conditions that could raise a security concern and may be disqualifying, “(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,” and “(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.”

In this case, Applicant had an underage alcohol possession charge in 2000. He was involved in an incident in college in 2003 after he had been drinking. The two charges for disorderly conduct and offensive touching in 2005 and 2006 were both nolle

crossed. He admitted he was drinking during those times to the point of intoxication. Thus, AG ¶ 22 (a) and (c) apply.

AG ¶ 23 provides conditions that could mitigate security concerns:

(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);

(C) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous 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.

Applicant's last incident involving alcohol was in July 2006. The incident was not totally his fault. In fact the charge was dismissed. Since that time, he has not had any other alcohol-related incidents. His career is important to him. He has changed his social life since his high school and college days. I conclude there is mitigation under 23(a).

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.

Applicant drank when he was in high school and college with his friends at parties and sometimes at a bar. He was drinking during his senior week when he was charged with underage possession of alcohol in 2000. Applicant was caught up in an incident with friends at the beach in 2003. He had been drinking. The charges in 2005 and 2006 for incidents involving alcohol were dismissed. Applicant explained the circumstances. The last incident resulted in a physical altercation after drinking and someone injuring him. He pressed charges and charges were then brought against him. He realizes that this kind of party lifestyle is detrimental to his career.

He has been employed with a defense contractor for several years. He has a position of responsibility. His demeanor at the hearing reflected his seriousness toward the issue of drinking to intoxication. He acknowledged at the hearing that he no longer associates with the group of people at the beach. He is aware of his alcohol consumption. He drinks with friends at home or in a safe environment. He has matured and accepted responsibility for the actions that occurred in the past.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence does not leave me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from criminal conduct and alcohol consumption.

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 J:	FOR APPLICANT
---------------------------	---------------

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2, Guideline G:	FOR APPLICANT
---------------------------	---------------

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge