



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



In the matter of:)
)
) ISCR Case No. 07-11093
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Department Counsel
For Applicant: *Pro Se*

July 16, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant has a 20 to 25 year history of excessive alcohol consumption. At times, he acknowledged he was drinking too much. He has previously acknowledged he was an alcoholic, but no longer believes this to be true. Applicant had an 18 month to two year period where he illegally used Tylox and Valium while holding a security clearance. I conclude Applicant has not rebutted or mitigated the government’s security concerns under Guideline G, alcohol consumption, or Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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

Applicant a Statement of Reasons (SOR) on December 20, 2007, detailing security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct.

On January 14, 2008, Applicant answered the SOR, and requested a hearing. On December 20, 2007, I was assigned the case. On March 12, 2008, DOHA issued a notice of hearing scheduling the hearing held on March 27, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A and B, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On April 8, 2008, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. C. On April 17, 2008, the transcript (Tr.) was received.

At the hearing, Department Counsel moved to amend the SOR to add SOR paragraph 1.g to read, "In October 2005, Applicant was ticketed for public intoxication and paid a fine of approximately \$90." (Tr. 28) Applicant did not object and the motion was granted. (Tr. 29)

Findings of Fact

In his Answer to the SOR, Applicant admits the factual allegations in the SOR, with explanations, except for ¶ 1.f, which he denied.

Applicant is a 40-year-old scientist/engineer who has worked for a defense contractor since November 2002, and he is seeking to maintain a security clearance. Co-workers and supervisors state Applicant has worked tirelessly and reliably, to be of excellent character, maintained a high level of performance for extended periods of time, and demonstrated excellent performance. He is reliable, punctual, organized, and careful in his preparation. (Ex A, Tr. 30) His evaluation ending December 2004, listed his duty assessment between having "met some expectations" to "exceeded expectations." His evaluation ending December 2005 evaluates him as having some "met expectations" but more "exceeded expectations." An evaluation ended December 2006, rates him as "exceeded expectations" and "far exceeded expectations."

In February 1985, Applicant then age 17, drove into a ditch when driving home from a high school party. He was found guilty of Driving Under the Influence (DUI), ordered to complete an Alcohol Safety Awareness Program, and fined \$50.

In June 1992, Applicant married and has five children who are between the ages of 2 and 13. (Ex. 1, Ex. B, Tr. 32) Six months before the wedding, Applicant, then age 24, asked his uncle for some Antabuse because Applicant thought he was drinking too much and believed he might have a drinking problem. (Tr. 99) He "would drink a lot on the weekends at that time." (Tr. 102) He did not drink the six months before the wedding.

guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

From April 1995 until July 1999, he illegally used the prescription drugs of Tylox and Valium approximately several dozen times. His abuse of prescription medications was coupled with alcohol use. (Ex. 2) Applicant suffered from head aches. (Tr. 85) On a trip to visit his in-laws, his mother-in-law offered him Tylox and Valium for which she had a prescription for chronic back pain the result of a car accident. (Tr. 132) After taking the medication, Applicant felt great. Applicant would visit his in-laws every three to six months.

On his next trip to his in-laws, he took another pill. On following trips he would take one, two, or three pills. (Tr. 34) This progressed to the point where he was taking home handfuls of the pills. (Tr. 35) He never asked for the pills, but simply knew where they were stored in the medicine cabinet. (Tr. 86) Applicant possessed a security clearance while taking the drugs. (Tr. 48)

For two years in 1997 through 1999 (Tr. 149), Applicant attended Alcoholics Anonymous (AA) and stop drinking for a few months at a time. He was encouraged to go because his wife and mother told him he was drinking too much and had an alcohol problem. (Tr. 36, 72, 105) He would go three months without alcohol. Then he would visit his in-laws, get new pills and start drinking again. (Tr. 156) When taking the pills, Applicant did not drink as much. (Tr. 36) His drinking increased when he ran out of the pills. This pattern continued for 18 months to 2 years. (Tr. 157)

In 1999, at his child's birthday party, Applicant passed out in a chair due to his Tylox and Valium usage and efforts to wake him failed. Applicant's wife and her parents confronted him and forced him to seek help. They were concerned about his drinking prior the incident. (Tr. 36) At that time, Applicant believed he was an alcoholic. (Tr. 38) At the hearing, he no longer believes he is an alcoholic, but considers himself to have a lifelong "predisposition for alcohol/prescription drug dependency." (Ex 2, page II – 3, Tr. 95, 122) He currently believes he is not an alcoholic because he is not addicted to alcohol. (Tr. 122)

From July 1999 through September 1999, Applicant attended alcohol and drug outpatient treatment for his abuse of Tylox, Valium, and alcohol. He attended outpatient treatment three hours a day, three times a week. Applicant found this program to be extremely successful. He was highly motivated because he was "sick and tired" of being "sick and tired." During the first two-weeks of treatment he underwent daily urinalysis, which continued to be positive for drug use. (Tr. 37) Applicant claims he had stopped his drug usage. (Ex. 2) Applicant's insurance refuse to pay for continued treatment so Applicant paid \$1,500 to complete the eight week program. (Ex 2, Tr. 37) Applicant stopped drinking the six months he was in and following treatment. (Tr. 44) For three to four months following treatment, Applicant went to AA, where he would introduce himself as an alcoholic. (Tr. 74)

For about 18 months, his job was not going well. He was getting depressed, eating too much, getting little exercise, and gaining weight. (Tr. 38) From August 2003

to November 2006, he was treated for depression, insomnia, anxiety, hypertension, and alcoholism. (Tr. 39-40) At that time, he requested a prescription for Antabuse. It was not until early 2007, after he had completed his SF 86, that he learned the diagnosis included treatment for alcoholism. (Tr. 40) After learning he had been diagnosed as suffering from alcoholism he never confronted his doctor about the diagnosis. (Tr. 96, 133) Applicant disagrees with the diagnosis of alcoholism, but says his doctor is entitled to his expert opinion. (Tr. 97) Applicant has seen this doctor for four and a half years. (Tr. 98) His doctor told him he need to cut down on his alcohol consumption. (Tr. 105)

Eight or nine years ago, in 1998 or 1999, Applicant had four beers with a late lunch, not intending to return to work, but then did return to turn off his computer. (Tr. 120) He talked with a co-worker who turned him in when she smelled alcohol on him. (Ex. 2)

In 1994, Applicant began taking Paxil for depression anxiety attacks. (Tr. 65-66) Applicant's first suffered from anxiety when he was working on his senior project in college and thought he was going to die. (Tr. 139) He thought he was having a heart attack. The first attack was followed almost continuously by anxiety attacks for a six month period. (Tr. 141) In 2001, he had a hypermanic episode. He felt great, felt happy, but could not sleep. (Tr. 61) His thoughts would race. He lost 20 pounds; he suffered from anxiety attacks for six months that left him unable to think. From late 2001 to August 2003, he was treated for depression and received one week inpatient treatment. (Ex 1, page 29, Tr. 63, 66) In 2004, he started taking a sleep aid twice a week. (Tr. 59-60)

In 2005, Applicant felt it was safe to resume drinking. However, in October 2005, he was arrested for public intoxication. He was away from home performing business related activities. The work was done and he had a late morning flight home the next day. He parked his rental car at the hotel and walked to a restaurant bar near the hotel where he intended to have a few drinks following dinner. (Tr. 46)

After eating, Applicant spent the night in the restaurant's bar with some people he had just met. The evening started out well with Applicant buying rounds of drinks for them. During the evening, he had six to eight Long Island Iced Teas. (Tr. 113) Applicant acknowledged he "did have a lot to drink" that evening. (Tr. 47) Those he was with "had gotten pretty drunk." (Tr. 114) The people turned hostile, got angry at him, and he left. (Tr. 46) He thought they were going to harm him, so he paid his bill, and quickly left the restaurant bar. Upon leaving, he did not return to his hotel, but saw a police officer in the parking lot and sought the officer's protection. The officer noticed Applicant's intoxicated state and arrested him for public intoxication and took Applicant to the police station. (Tr. 47) No chemical test was given to prove intoxication; however, Applicant freely admitted he was intoxicated. (Tr. 139) He paid a \$90 fine.

Applicant maintains a prescription of Antabuse as a precautionary measure in case he believes his drinking is becoming excessive or should he wish to avoid drinking for special situations. He has used 30 tablets every two to three years. (Ex. 2) He last had his prescription filled a year ago. (Tr. 70, 145)

In September 2007, Applicant completed written interrogatories. (Ex. 2) He stated over the past month he was drinking a quart of beer every other night. He also stated there were several months when he consumed three to five drinks at one time. (Ex. 2, Tr. 119) He acknowledged there were times during the past years when he drank for entire weekends or had six to eight drinks every day for two or three weeks in a row. (Ex. 2, Tr. 119)

Applicant stated he was getting mildly intoxicated at least two or three times a week after having consumed two or three beers. (Ex. 2, Tr. 119) Applicant states he was last intoxicated a year ago. In September 2007, following the receipt of the written interrogatories, Applicant stopped drinking. (Tr. 43) At Thanksgiving, he resumed drinking. He is not sure but believes he may have gotten intoxicated during Christmas time 2006. (Tr. 57) In the summer of 2006, he remembers being drunk. (Tr. 56, 121) He knows he is drunk when the room starts spinning and he starts to feel sick. (Tr. 58) Applicant stated:

I mean, I don't worry about my drinking too much, but, I mean, I occasionally drink too much, you know. So there's always the possibility that if I start to drink too much, then I'll get myself into trouble. I worry about that. (Tr. 127)

Following the hearing, Applicant met with his doctor who provided a letter (Ex C) stating the doctor he saw no evidence of alcohol problems in recent years and thought Applicant should be granted a clearance. The doctor has not seen the SOR. (Tr. 125) Applicant did not tell his doctor about his October 2005 arrest for public intoxication, being intoxicated in the summer of 2006, or at Christmas time 2006. (Tr. 133) Since June 2007, Applicant had seen the doctor once before requesting the letter.

In January 2008, following the receipt of the SOR, Applicant renewed his intention to stop drinking. (Tr. 108) Applicant had been unaware of the gravity of his alcohol use until the hearing. (Tr. 160)

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

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.”

Applicant is 40 years old and has a problem with alcohol consumption for 20 to 25 years. In 1985, Applicant, then age 17, was found guilty of DUI. In 1999, he attended an alcohol and drug outpatient treatment program. Applicant has been diagnosed as an alcoholic. In 2005, he was arrested for public intoxication. He has frequently drunk to the point of intoxication. The last time he was intoxicated was Christmas time 2006. 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,” and AG ¶ 22 (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,” apply.

Eight or nine years ago, Applicant returned to work after a late lunch to turn off his computer and was confronted by a co-worker when she smelled alcohol on Applicant. Applicant had drunk alcohol during lunch, but the record is insufficient to establish he reported for work intoxicated or in an impaired conditions. AG ¶ 22 (b) “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” does not apply. I find for Applicant as to SOR ¶ 1.f.

I do not find it a security concern that Applicant has a proscription for Antabuse, but is not currently using the medication. I find for Applicant as to SOR ¶ 1.d.

At age 24, Applicant knew he was drinking too much and sought Antabuse from his uncle to help him with his problem. The six months before his 1992 wedding he did not drink. However, his sobriety did not continue. For an 18 month to 2 year period from April 1995 until July 1999, he illegally used the prescription drugs of Tylox and Valium approximately several dozen times and drank excessively, while possessing a security clearance. His abuse started slowly when his mother-in-law offered him Tylox and Valium for a head ache. His use continued to the point where he was taking home handfuls of the pills. His drinking increased when he ran out of pills.

Applicant’s wife, in-laws, and mother told him he was drinking too much. From 1997 through 1999, he received some help through AA and would stop drinking for a few months at a time. The he would return to his in-laws, obtain more drugs, and the cycle would start again. The matter came to a head at in 1999 at a birthday party. He had taken Tylox and Valium, passed out, and could not be woken up. At that time, he believed he was an alcoholic. He no longer believes he is an alcoholic, but considers himself to have a lifelong “predisposition for alcohol/prescription drug dependency.”

For six months following treatment, Applicant abstained from alcohol usage. However, in 2005 Applicant believed it was safe to drink again. In October 2005, having finished his work, Applicant went to a restaurant bar with the intention of having a few drinks. Over the course of the evening, he drank too much and admits he was intoxicated. When he sought protection from a police officer he was arrested, taken to the police station, and later fined for public intoxication.

Applicant’s doctor diagnosed Applicant as suffering from alcoholism. Since learning of the diagnosis, Applicant has not asked his doctor about the diagnosis. Applicant believes the diagnosis is wrong, but believes his doctor is entitled to his expert opinion. His doctor had told Applicant to reduce his drinking. Applicant supplied a letter from his doctor stating his doctor had seen no evidence of an alcohol problem in recent years and believed Applicant should receive a clearance. However, Applicant never told

his doctor of his October 2005 arrest for public intoxication. Each time Applicant saw his doctor, his doctor asked him about his alcohol usage, but Applicant did not think it important to tell his doctor about his arrest.

Applicant never told his doctor he had been intoxicated during the summer of 2006 and during Christmas time 2006. Nor did Applicant show his doctor the SOR. There is no evidence his doctor ever changed his diagnosis that Applicant suffered from alcoholism.

Even though Applicant attended an alcohol and drug outpatient treatment in 1999 and was diagnosed by his treating doctor with alcoholism there is no diagnosis of alcohol abuse or alcohol dependence. Therefore, AG ¶ 22 (d) "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," and AG ¶ 22 (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program," do not apply. Without a diagnosis of alcohol abuse or dependence, AG ¶ 22 (f) "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program," can not apply.

None of the mitigating factors listed in AG ¶ 23 apply. Applicant last drank alcohol the end of December 2007. In his past, Applicant had frequently experienced periods of abstinence last from three or four months before resuming his drinking. At the time of the hearing, it had been three months since his last drink. It is too early to predict Applicant's alcohol problem is a thing of the past. He was last intoxicated during Christmas time 2006. AG ¶ 23(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," does not apply because his usage is recent, it was not infrequent, nor did it happen under unusual circumstances.

AG ¶ 23 (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)," does not apply because Applicant fails to acknowledge his alcoholism. He once thought his was an alcoholic and for two years introduced himself at AA meetings as an alcoholic, he now does not think he is an alcoholic because he does not believe he is addicted to alcohol. He believes he suffers from a lifelong "predisposition for alcohol/prescription drug dependency." He currently does not worry too much about his drinking.

Neither AG ¶ 23 (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" nor AG ¶ (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,” apply. There is no favorable prognosis. His doctor’s letter is undercut by his doctor’s lack of knowledge of Applicant’s drinking, intoxications, and 2005 arrest for public intoxication.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant abused Tylox and Valium for an 18 month to 2 year period when he held a security clearance. Additionally, the alcohol problems listed above are alleged under Guideline E, personal conduct.

Under AG ¶ 16 conditions that could raise a security concern and may be disqualifying include AG ¶ 16 (d) “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations,” apply to the drug abuse. None of the mitigating conditions set forth in AG ¶ 17 apply. I find against Applicant as to SOR ¶ 2 b.

Since the alcohol problems are specifically covered by Guideline G, alcohol consumption, I find Guideline E, personal conduct, does not apply to the alcohol allegations. I find for Applicant as to SOR ¶ 2 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) 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.

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. Applicant is 40 years old and has had problems with excessive alcohol consumption for 20 to 25 of those years. Others have told him he was drinking too much. At times, Applicant believed he was drinking too much and took steps to stop drinking. Each time he stopped, he would eventually return to excessive alcohol consumption. He once thought he was an alcoholic, but now believes he has a lifelong "predisposition for alcohol/prescription drug dependency." His doctor thinks him an alcoholic, but Applicant never questioned his doctor about the diagnosis and believes the doctor is entitled to his opinion even though it is wrong. If Applicant does not believe he had a problem he is unlikely to correct it.

At that time of the hearing, Applicant had abstained from alcohol for three months. I give little weight to this because Applicant has abstained from alcohol in the past only to return to excessive alcohol consumption. I also give little weight to Applicant's doctor's most recent letter, because the doctor did not know about Applicant's most recent incidents of excessive alcohol consumption and it is unclear what material formed the basis of the letter.

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

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, Alcohol :	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against 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's request for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge