



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12143
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A Howry, Esquire, Department Counsel

For Applicant: *Pro Se*

October 15, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on October 4, 2006 (Government Exhibit 1). On February 12, 2008, 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 March 26, 2008, and requested a decision without a hearing. The Applicant subsequently requested a hearing before an administrative judge on April 29, 2009.¹ Department Counsel was prepared to proceed

¹See Transcript at 30-31 for the procedural history of this case between March 26, 2008, and April 29, 2009.

on April 30, 2009. I received the case assignment on May 1, 2009. DOHA issued a notice of hearing on May 27, 2009, and I convened the hearing as scheduled on June 16, 2009. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through E, which were also received without objection. DOHA received the transcript of the hearing on June 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant was 30 years old at the time of the hearing and single. He is employed by a defense contractor and seeks to obtain a security clearance 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 in subparagraphs 1.a., 1.b., 1.c. and 1.d. of the SOR. Those admissions are hereby deemed findings of fact. The Applicant denied subparagraph 1.e with an explanation.

1.a. The Applicant admits, and the records show, that he has had four alcohol-related arrests - in 1998, 2001, 2003 and 2004. The Applicant began drinking when he was a teenager in 1997. In 1998 he joined the Marine Corps and his drinking increased. He would drink to intoxication on an infrequent basis, maybe once or twice a year. As described further below, the Applicant's drinking has decreased significantly since 2004.

1.b. The first alcohol-related arrest of the Applicant occurred in June 1998. The Applicant was in the Marines at this time, finishing his advanced training. He was 20 years old and was arrested by the police at a beach in State A for underage possession of alcohol. The Applicant testified that he was released to his unit by the sheriff. (Government Exhibits 4 and 5; Transcript at 34-36.)

1.c. The Applicant's second alcohol-related arrest happened in December 2001. He was still in the Marine Corps, and due to ship out on an extended deployment. The Applicant and some friends traveled to the Applicant's home town in State B. They went to a club, where the Applicant had too much to drink, and he was arrested for Driving Under the Influence of Alcohol (DUI), Driving With Over .08% Blood Alcohol, and Open Container While Driving. The Applicant deployed the following week, and he admits that he basically forgot about the arrest.

The Applicant received an Honorable Discharge and left the Marines in September 2002. In May 2003 the Applicant and his girlfriend got into a fight. The police

were called and they arrested the Applicant when a records check revealed he had an active warrant for Failure to Appear on the DUI charge.

The Applicant appeared in court, and pleaded guilty to the DUI and Failure to Appear charges. He was placed on three years informal probation, fined, ordered to perform community service and attend a first offender alcohol program. He attended the alcohol program and performed the community service. (Government Exhibit 6; Transcript at 36-42.)

1.d. The Applicant's third alcohol-related arrest did not involve him drinking. Rather, he was arrested in January 2003 in State C for Providing Liquor to Underage Youths (two girls) and Giving a False Police Report. He received a fine for this offense. The Applicant stated that he did not know the girls were underage. (Government Exhibit 7; Transcript at 42-45.)

1.e. The Applicant's fourth and last alcohol-related arrest occurred in May 2004. The Applicant testified that it was his fault as he had been drinking that day and left to pick up a friend. He drove and was arrested by the police. He pleaded guilty and received a sentence including 60 days in jail, three years informal probation and a fine. He also had to perform community service, attend an 18 month Multiple Offender Alcohol Program and have an ignition interlock device installed on his car. (Government Exhibits 8 and 9; Transcript at 45.)

The Applicant successfully completed the 18 month program. (Applicant's Exhibit E.) He had problems with the interlock device and had to appear in court several times for alleged probation violations. However, the court records shows that the interlock device was malfunctioning and eventually replaced. (Government Exhibit 9 at 10-18; Transcript at 54-58.)

The Applicant testified that he found the 18 month program very useful, stating:

I did learn a lot. I had a lot of time to think about what I'd done in 18 months and how hard it was to do and all the things I had to go through to get back to where I wanted to be and pursue the things I wanted to pursue. I just - - basically, in this Program, I learned everything I didn't even know, and I know now that I was on a road I did not want to be on. (Transcript at 53-54.)

Since the 2004 incident the Applicant has vastly reduced his use of alcohol, not having anything to drink in the eight months before the hearing. The Applicant admitted that he was immature when these incidents occurred. He stated that he has learned his lesson, and that there have been no incidents in almost five years as of the hearing date. (Transcript at 45-53, 58-60, 67-69.)

Mitigation

Applicant's Exhibit D consists of 13 letters of commendation from co-workers. The first two letters are from the Applicant's first and second line supervisors. The Applicant is described as a person who is essential to the mission, "a trustworthy employee," someone with a "great work ethic," and a person who holds himself to a "high moral and ethical standard." Several of the writers indicate that they have knowledge of the incidents stated in the SOR.

The Applicant is successful in his educational career. He has received an Associate of Arts degree, has almost completed his Bachelor's degree, and has been admitted into a Master's program. (Applicant's Exhibits B and C; Transcript at 46.)

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 to be considered 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 overarching 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 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 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 1998 and 2004. The evidence also shows that the Applicant has used alcohol, occasionally to excess, during the same period. Since 2004, he has severely reduced his use of alcohol.

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, the following mitigating conditions apply to the Applicant's situation. AG ¶ 23(a) states that it can be a mitigating conditions 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." In addition, AG ¶ 23(b) states that it is also mitigating where, "The individual acknowledges his or her

alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome his problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).”

The record shows that the Applicant had four alcohol-related incidents within six years. While certainly nothing to be taken lightly, there is no evidence of a pattern of abuse here. His last incident occurred five years before the record closed and he has vastly reduced his alcohol use since 2004. The Applicant admitted that he made mistakes with alcohol when he was younger (he is only 31 years old now). He testified, and the record evidence supports, that he has matured as a person, worked hard to succeed in his career, and has decided that alcohol has no place in his future. These mitigating conditions apply and, when viewed along with the Whole Person Concept discussed 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 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) in making this decision:

(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 may have had an alcohol problem in his younger days. As described above, he has matured, changed his life, and is on the road to success. There is little to no evidence that these incidents show a pattern, or that he is alcohol dependent or an alcohol abuser. In viewing all the facts of this case, I find that the Applicant has mitigated the security significance of his prior conduct. Based on this record, I find that the conduct was not recent (AG ¶ 2(a)(3)); that there have been permanent behavioral changes under AG ¶ 2(a)(6); and that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no 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.

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 THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	For the 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.

WILFORD H. ROSS
Administrative Judge