



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13512
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

November 25, 2008

Decision

HOWE, Philip S., Administrative Judge:

On June 18, 2007, Applicant submitted his Security Clearance Application (SF 86) electronically as an e-Quip. On May 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines J (Criminal Conduct) and G (Alcohol Consumption).. 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 acknowledged receipt of the SOR on May 19, 2008, and answered it in writing on May 28, 2008. On August 6, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August

11, 2008. Applicant did not file a Response to the FORM. I received the case assignment on October 10, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated May 28, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 2.a of the SOR, with explanations. He denied the factual allegations in ¶¶ 2.b of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 21 years old, unmarried, and works for a defense contractor. He has an associate college degree. (Items 2, 4)

Applicant was arrested on September 12, 2005, and charged with possession of marijuana. Applicant denied the pipe and marijuana in his car were owned by him, but he pled guilty to the charge as a first offender. He received a restricted driving license for six months, 24 months of community service, and was required to undergo random urine screenings for controlled substances. Also, he paid a fine of \$100 and \$141 in court costs. He complied with all requirements. (Items 2, 5-9)

On November 4, 2006, Applicant was arrested for DUI, speeding (100 m.p.h. in a 60 m.p.h. zone), having a blood alcohol level of .15 to .20, and the purchase and possession of alcohol by a person under 21 years of age. He pled guilty to the DUI, and his driving license was suspended for one year. The court issued Applicant a work-related restricted driving permit, fined him \$500, and assessed him \$191 in court costs. He spent 10 days in jail. Applicant was ordered to attend an alcohol safety awareness program. He also received three years of unsupervised probation, which extends into 2010. (Items 2, 5-9)

Applicant started drinking alcohol at 17 years of age, and regularly attended parties where he drank alcohol while under the age of 21 years. He built his tolerance to 10 to 15 beers per drinking session from the age of 18.5 years to 19 years when he received the DUI after drinking 15 beers between 8 p.m. and 2:30 a.m., the day he was arrested. Applicant claims he does not consume alcohol anymore, but did not submit any objective testing data to support his statement. He further claims his drinking never affected his education or work. He attributes the drinking to the college environment. (Items 2, 5-9)

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 and 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 five conditions that could raise a security concern and may be disqualifying. The following four conditions may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and,
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has two arrests within a 14 month period. Both arrests occurred when Applicant was under 21 years of age. The first arrest was for possession a marijuana, and the second arrest for speeding, DUI, and possession of alcohol by an underage person pursuant to state law. Applicant pled guilty to both offenses. AG ¶ 31(a) applies. Applicant admitted these offenses. AG ¶ 31(c) applies. He is currently on a three year probation. AG ¶ 31(d) applies. He violated his marijuana probation when arrested for DUI in 2006, resulting in a longer probation until 2010, and a one-year driving privilege suspension. AG ¶ 31(e) applies.

AG ¶ 32 provides four conditions that could mitigate criminal conduct 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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and,
- (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.

In Applicant's case, AG ¶ 32 (b) and (c) are clearly not applicable because he admitted he committed the driving offense freely and without coercion. The marijuana offense he denied because he contended the pipe and residue was not his, but there was sufficient evidence from the police officer to support the offense, and Applicant pled guilty to it.

The first offense occurred in September 2005, and the second in November 2006, all within the past three-year period. That time is not enough to trigger the application of AG ¶ 32 (a). Nor were there any unusual circumstances in either of these incidents. This mitigating condition does not apply.

Finally, mitigating condition AG ¶ 32 (d) requires successful rehabilitation. Applicant earned his college degree, and apparently a good work record, but did not submit any recommendations from his supervisors to confirm that he is a good and dutiful worker; however, he remains on probation. This mitigating condition has limited application.

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 seven 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;

(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;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and,

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Of these seven disqualifying conditions, AG ¶ 22 (a) and (c) are applicable. Applicant received a DUI in 2006 for drinking and driving, when he was under his state's legal drinking age of 21 years. He pled guilty to the offense, and had his driving privileges suspended. His Answer and statements show that over a three-year period of time from age 17 that he built an alcohol tolerance of up to 15 beers a night. He demonstrated impaired judgment by driving drunk, and speeding at 100 m.p.h. in a 60 m.p.h. zone.

AG ¶ 23 provides four 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 showed a strong pattern of excessive consumption of alcohol, resulting in dangerous misconduct as shown by his DUI arrest. His statements show the pattern of his alcohol consumption. AG ¶ 23 (a) does not apply.

Applicant admitted alcohol caused him some problems, and allegedly ceased his consumption to avoid further problems. But he did not submit any objective evaluations, or other evidence of actions he has taken to avoid the problems in the future. AG ¶ 23 (b) does not apply to Applicant. Nor does AG ¶ 23 (c) apply because there is no evidence to support it.

AG ¶ 23 (d) applies only if there is evidence of counseling and rehabilitation, with required aftercare, participation in Alcoholics Anonymous or a similar organization, and a favorable prognosis from a medical professional or licensed clinical social worker who are staff members of a recognized alcohol treatment program. Applicant has submitted no evidence to support the application of this mitigating condition. The alcohol

education program he attended as part of his court disposition in the DUI case does not meet these criteria either.

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 a 21-year-old male with two arrests for violations of state laws on possession of marijuana, and possession of alcohol as a minor, DUI, and speeding. This frequent misconduct within a 14 month period indicates immaturity and irresponsibility. His actions were voluntary, especially his speeding and DUI. There is a strong likelihood of recurrence based on Applicant's past immature and selfish actions, in addition to the lack of evidence of substantive evidence of alcohol rehabilitation .

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 did not mitigate the security concerns arising from his criminal conduct and alcohol consumption misconduct. I also conclude the "whole person" concept against Applicant.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Paragraph 2, Guideline G:

AGAINST APPLICANT

Subparagraph 2.a:

Against 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge