



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



In the matter of:)	
)	
)	ISCR Case No. 07-15276
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

September 9, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 7, 2007. On March 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, 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.

In April 2008, Applicant answered the SOR and requested a determination be made in his case without a hearing. On May 20, 2008, Department Counsel prepared a File Of Relevant Material (FORM). The FORM was mailed to Applicant on May 21, 2008. Applicant received the FORM on June 20, 2008. He had thirty days from the receipt of the FORM to submit additional matters. He did not submit additional matters. On August 15, 2008, the case was forwarded to the hearing office and assigned to me.

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, Applicant admits to all of the allegations.

Applicant is a 57-year-old employee with a Department of Defense contractor seeking to update his security clearance. He is an electronic assembler specialist and has worked for his current employer since October 2002. He holds a secret security clearance. He is divorced and has two adult children, a son, age 30, and a daughter, age 28. (Item 5.)

Applicant has a history of alcohol-related incidents. He was arrested on three occasions for Driving While Intoxicated (DWI) in 1969, March 2003, and September 2006. (Item 5, question 23(d); Item 10, question 24.) He began to drink alcohol at age 15. In 1974, he was intoxicated and walking home. He lived near some train tracks and fell asleep next to the tracks. He was run over by a train and lost both of his legs. After the accident, he stopped drinking for awhile but became addicted to pain medication. (Item 8 at 4.)

On March 2, 2003, Applicant was out with his friends drinking and later drove home while intoxicated. He does not recall driving home but he pulled his car up to the side of the road next to the driveway entrance of his home and fell asleep in his car. The lights were on and the car was running. Early in the morning, he was awakened by police officers. He was arrested and charged with DWI. He pled to a reduced charge of "reckless driving." He lost his driver's license for 90 days, paid a \$300 fine, and received three years probation. (Item 8 at 3.)

In September 2006, Applicant was at a bar with his friends and drank to intoxication. He drove in the direction of his home and fell asleep at the wheel. He did not remember driving home. The police discovered him in his car asleep. His car was in the middle of the road and the engine was running. His breathalyzer registered .15, which is over the legal limit. He was arrested and charged with DWI. He pled guilty to DWI First Offense and was issued a \$900 fine, a one year license revocation, 3-5 years probation, and was ordered to attend alcohol classes. He attended three eight hour classes, and it was recommended he seek further alcohol treatment. He started to attend Alcoholics Anonymous meetings in June 2007. (Item 8 at 3-4; Item 9.) It is not clear whether Applicant continues to attend Alcoholics Anonymous meetings.

Applicant refers to himself as a "functional alcoholic." He admits to being a heavy drinker since his divorce in 1991. His drinking was a cause of the divorce. He reduced his drinking after his 2006 DWI. He recognizes that he has a problem with alcohol. It takes him 10-12 beers to become drunk. He sometimes misses work due to his alcohol use. (Item 8 at 4.)

In his answer to interrogatories, dated December 18, 2007, Applicant stated that he occasionally drinks beer or wine on a special occasion. He estimated his alcohol use was monthly. He no longer drinks to intoxication. The last time he was intoxicated was his September 2006 arrest. He indicated that the last time he drank alcohol was when he drank "some wine and few beers with [his] family." (Item 7 at 1.) He did not provide information on his current drinking habits when he answered the SOR.

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.

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 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 guideline notes several disqualifying conditions that could raise security concerns. I find the following Alcohol Consumption Disqualifying Conditions (AC DC) apply:

AC DC ¶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) applies. Since 1969, Applicant has had three alcohol-related arrests. His last two arrests were in 2003 and 2006. These arrests raise cause for concern due to Applicant falling asleep in his car while the car was still running. He also was not aware how he drove home on each occasion.

AC DC ¶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 person is diagnosed as an alcohol abuser or alcohol dependent) does not apply. There is no information in the record applicable to this disqualifying condition. Applicant admits to occasionally calling in sick due to his alcohol consumption but this cannot be considered an alcohol-related incident at work.

AC DC ¶22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant has a history of drinking alcohol to point of impaired judgment. He admits that he is a heavy drinker. His excessive consumption of alcohol resulted in the loss of his legs in an unfortunate accident in 1974 and three serious alcohol-related incidents (i.e. DWIs).

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

Alcohol Consumption Mitigating Condition (AC MC) ¶ 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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) is not applicable. Although Applicant claims that he has reduced his drinking since his 2006 DWI, he still continues to drink.

AC MC ¶ 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. Applicant describes himself as a functional alcoholic. After his 2006 DWI, he started to attend alcoholics anonymous meetings. However, he continues to occasionally drink alcohol. It is Applicant's burden to provide evidence of actions that he has taken to overcome his alcohol problem. There is minimal evidence in the record pertaining to his efforts to overcome his alcohol problem. Considering that he still occasionally drinks alcohol, a pattern of abstinence has not been established. Applicant has not met his burden to apply this mitigating condition.

AC MC ¶23(c) (the individual is a current employee who is participating in a counseling or a treatment program, has no history of previous treatment and relapse, and is making satisfactory progress) is not applicable. Aside from court-ordered classes and Alcoholics Anonymous meetings, Applicant has never participated in an alcohol treatment program. FC MC ¶23(d) (the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with 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) does not apply for the same reason.

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 common sense 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 did not provide information pertaining to his work performance or other whole person factors. I considered Applicant's history of alcohol consumption and his three DWIs. While Applicant attended Alcoholics Anonymous meetings after his 2006 DWI, he still drinks alcohol occasionally. Applicant has the burden to mitigate the concerns under Guideline G, Alcohol Consumption. He has not met that burden. Guideline G, Alcohol Consumption, is found 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 G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

ERIN C. HOGAN
Administrative Judge