



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



In the matter of:)	
)	
)	ISCR Case No. 07-16563
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: Pro Se

September 25, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 14, 2007. On April 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for alcohol consumption and personal conduct under Guidelines G and E. 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 April 16, 2008.

Applicant answered the SOR in writing on April 17, 2008. Applicant admitted the factual allegations under Guideline G concerning driving while intoxicated offenses and alcohol counseling. He denied that he continues to consume alcohol. He also denied falsification of his security clearance application by failing to list all of his driving while intoxicated offenses. He requested a hearing before an administrative judge and

Department Counsel was prepared to proceed on July 31, 2008. The case was assigned to me on August 4, 2008, and DOHA issued a notice of hearing on August 13, 2008. I convened the hearing as scheduled on September 9, 2008. The government offered two exhibits, marked Gov. Ex. 1-2, which were received without objection. Applicant submitted 2 exhibits, marked App. Ex. A-B, which were received without objection. Applicant testified on his behalf. DOHA received the transcript of the hearing (Tr.) on September 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 46 years old and has been a program manager or deputy program manager for a defense contractor for over three years. He is a college graduate with a master's degree in computer science. He is married with three children. He previously received clearance for a position of public trust. However, he has not previously applied for or been granted access to classified information (Tr. 32-36; Gov. Ex. I, e-QIP, dated February 13, 2007; See, App. Ex. A, Family picture, undated).

Applicant admitted he was arrested, charged, and convicted of driving under the influence of alcohol in January 1984, January 1985, November 1986, January 1987, October 1989, August 1990, January 1991, and March 1991 (SOR 1. a-h). Applicant admitted to continuing to drink alcohol between 1991 and 2002. Applicant admitted he was arrested, charged with, and convicted of driving while intoxicated in March 2002, and May 2002 (SOR 1. i-j). Applicant admitted that as a result of these offenses, he was directed to attend alcohol counseling (SOR 1.k). He completed alcohol counseling in July 2002 (Tr. 14-16, 38-40, Gov. Ex. 2, Interrogatories, dated Jun 8, 2008, at 190-194, 197-203, See, Response to SOR, dated April 17, 2008).

The eight driving while intoxicated offenses happened when Applicant was a college student in his 20s. He wishes that the authorities had punished him more severely so that he would have stopped drinking (Tr. 14-16). After 1991, Applicant did not stop drinking alcohol but curtailed his alcohol consumption extensively. He only drank occasionally with family or at family events, usually once a year at social events or on a holiday. He married in 1991, changed his lifestyle, and started to live differently. He attended church regularly. Alcohol consumption was no longer a part of his lifestyle but he had not yet made a commitment to stop drinking alcohol. In 1991, he would not have considered that he had an alcohol problem, but he now realizes he has an alcohol problem (Tr. 14-16, 39-40, 43-44, 70-71).

In March 2002 and again in May 2002 when he was 39 years old and on a business trip for his employer, Applicant was arrested for driving while intoxicated. He knew it was wrong to drink and drive. The only time he did drink and drive was on the two business trips. He was convicted, and sentenced each time for driving under the influence of alcohol. He should have decided before these incidents to not drink alcohol but he did continue to drink occasionally. He did not see the fault in drinking alcohol, so he drank on occasion with clients. His continued drinking clouded his judgment and put

him in a situation where he drank and drove. He knows now that he should not have been drinking alcohol at all. As an adult, he should not let drinking cloud his judgment and then get behind the wheel of a car. In 2002, he would have stated that he had a drinking problem. He stated that he was not regularly binge drinking but he did have two binge drinking episodes (Tr. 40-46, 70-71).

As a result of the May 2002 incident, Applicant was required to attend an alcohol and driving counseling program. Applicant attended and completed the program as required. Applicant continues to see his counselor but not on a routine scheduled permanent basis. He sees his counselor only when he thinks he wants to discuss issues with her. As a result of this counseling, Applicant realized that he needed to stop drinking alcohol. The counselor told him to stop drinking but he did not completely agree with her suggestion. He continued to drink moderately, but never drank to excess. At most, he consumed about one drink any time he drank alcohol (Tr. 70-75).

In June 2007, he was severely injured in an automobile accident when he was hit from the rear. Applicant decided that he no longer could drink alcohol because of his injuries and the realization what his family and life meant to him. Alcohol consumption no longer suited him. He had a nice family, was active in his church, and was receiving new and higher jobs and responsibility from his employer. The alcohol counseling, his church pastor, and church members were instrumental in helping him stop drinking. His last drink of alcohol was in June 2007. He does not drink alcohol now. He was not told by the doctors after his accident not to drink alcohol, but he realizes he can no longer drink alcohol. In response to interrogatories in January 2008, Applicant noted he currently drank about two drinks once every two or three months. He stated he was referring to what he may drink in the future and not to the alcohol he was then consuming. Applicant noted that he drank alcohol in 2002 not as a result of his travels but because he would drink on special occasions and had not yet decided not to drink alcohol. His current position with his employer requires him to travel. His wife will accompany him on some of the trips since he needs help managing his baggage because of his automobile accident injuries. He stated that he will not drink alcohol to excess in the future based on his changed lifestyle, his work with his family and church, and the people around him understanding that he does not drink (Tr. 17-24, 49-52, 61-69, 75-80; See, Gov. Ex. 2, Interrogatories, dated June 8, 2008 at 182-189).

In answering question 23(d) on the security clearance application concerning any arrest for drug or alcohol-related incidents, Applicant state he did not list his driving while intoxicated offense from 1984 until 1991 because he thought he only had to go back seven years. He had experience completing the SF 85P which has a time limit of seven years. He did not carefully read the questionnaire and limited his response to the last seven years. He did list his 2002 driving while intoxicated arrests and convictions and his 2002 alcohol-related counseling. He did not remember all of his convictions in the 1980s but he would have remembered some of them. Applicant stated that the driving while intoxicated offenses in the 1980s coupled with the 2002 offenses may indicate to security officials that he had an alcohol problem. However, he believes the older offenses would not be an issue in granting him an interim security clearance

because the offenses were so old and would not change the outcome of his being granted an interim clearance or a final clearance. His failure to list the offenses would not have been a factor in his interim clearance (Tr. 53-60).

His pastor noted that Applicant has been a key member of the church for over 15 years and instrumental in their fund raising efforts. Applicant served in various leadership positions and meets with local officials in support of the church's programs. He is a Sunday school teacher and takes part in other spiritual aspects of the church programs. He has shown consistency, reliability, leadership, ethical conduct, and loyalty (App. Ex. B, Letter, dated May 23, 2008).

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.

Analysis

Guideline G, 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 ¶ 21)

Applicant's driving while intoxicated arrests and convictions from 1984 until 1991 and in 2002 raise Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 22(a) (alcohol-related incidents away from work, such as driving 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 AC DC ¶ 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). The driving while intoxicated incidents are alcohol-related incidents away from work. Eight driving while intoxicated offenses in seven years (1984-1991) and two driving while intoxicated arrests and convictions within two months in 2002 are indications of binge or habitual consumption of alcohol.

SOR (allegation 1.I.) states that Applicant continued to consume alcohol after his arrests and counseling for alcohol. Applicant admitted to consuming alcohol after his arrest and counseling but that he stopped drinking alcohol in June 2007. There is no indication of consumption of alcohol after June 2007, so the allegation is correct only until June 2007.

Since Applicant admitted the SOR allegations and the government produced substantial evidence by way of exhibits to raise the disqualifying conditions in AG ¶ 22(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns (Directive ¶E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government (See, ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

Applicant has raised by his testimony Alcohol Consumption Mitigating Conditions (AC MC) 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); AC MC AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an

alcohol abuser); and AC MC AG ¶ 23(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 treatment program).

There were eight incidents of driving while intoxicated from 1984 until 1991. There was a period of eleven years before the next series of driving while intoxicated incidents. During those eleven years, Applicant continued to drink alcohol but at a reduced level. In 2002, there were two incidents of driving while intoxicated in less than two months. Thereafter, Applicant continued to consume alcohol although again at a reduced level until June 2007 when he completely stopped consuming alcohol. While there has not been an alcohol-related incident since 2002, Applicant drank alcohol from 1984 until 2007, a period of 23 years. He stopped consuming alcohol only a year ago. There has not been sufficient time of no alcohol consumption compared to the years that he did consume alcohol. The alcohol-related incidents are frequent since there were ten driving while intoxicated offenses. The early incidents happened when Applicant was young and in his 20s and the later incidents happened when Applicant was on business trips. None of these incidents happened under unusual circumstances. They took place under normal and standard living circumstances for a person attending school or working.

Applicant does acknowledge that he should not drink alcohol. He also attended and completed alcohol-related counseling, and has seen his counselor but not in a recurring standard scheduled program. Applicant's information concerning actions taken to overcome his problem or to establish a clear pattern of modified consumption is limited to Applicant's own statements that he no longer consumes alcohol. This is not sufficient to show that he has taken clear and effective steps to overcome his alcohol-related problems. There was eleven years between alcohol-related incidents and Applicant continued to drink during that time. It has been six years since his last incident but only one year since he stopped drinking alcohol. Applicant has not presented sufficient information show that alcohol-related incidents will not recur. He has not mitigated security concerns for alcohol consumption.

Guideline E, Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information.

The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's failure to list his eight driving while intoxicated offenses from 1984 until 1991 on his security clearance application raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibility).

Appellant denied intentional falsification. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant did not list the 1984 to 1991 driving while intoxicated offenses because he believed he only had to list offense that took place in the last seven years. He completed applications for public trust positions in the past and the questions on those applications concerning police record are limited by the seven year time frame. However, there are six questions on the e-QIP security clearance application concerning an applicant's police record. The first four, to include alcohol-related charges and conviction, are not limited by times. Only the last two, concerning military convictions and any other convictions or criminal matters not mentioned in the previous questions, are limited by time. The question concerning alcohol incidents clearly state an applicant should list any arrests or convictions that are alcohol-related. A reasonable and educated person like Applicant with a Master's degree would know that the alcohol-related question is not limited by time. A person with eight driving while intoxicated offenses in his past more reasonably would not want that information revealed when applying for access to classified information. I find that Applicant deliberately did not list his 1984-1991 alcohol-related charges and convictions on his security clearance application.

I considered all of the Personal Conduct Mitigating Conditions under AG ¶ 17 and determine none apply. Applicant never made a good faith effort to correct erroneous or inaccurate information. While Applicant eventually admitted the alcohol-related offenses, it was in response to question from security investigators and not on his own initiative (See, Gov. Ex. 2, Interrogatories, dated June 8, 2008).

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I have considered all of the evidence and the "whole person" in evaluating Applicant's security worthiness. I have considered Applicant's service to his community and his church. I considered that he is regarded as honest and trustworthy and an excellent employee. However, Applicant had ten alcohol-related incidents and received counseling for alcohol consumption. He only stopped using alcohol, by his own admission, last year. He deliberately did not provide full information about his alcohol-related arrests on his security clearance application and did not reveal his early alcohol-related arrests or convictions until questioned by security investigators. Applicant has not presented sufficient information to show that his consumption of alcohol is not of security concern. Overall, the record evidence leaves me with questions and doubts that Applicant will not consume alcohol to excess in the future. I have doubts about his eligibility and suitability for a security clearance because he did not provide complete and full information on his security clearance application. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his alcohol consumption and personal conduct. I conclude he is not eligible for access to classified information.

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
Subparagraphs 1.a.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	Against Applicant
Subparagraphs 1.j.:	Against Applicant
Subparagraphs 1.k.:	Against Applicant
Subparagraphs 1.l.:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a.:

Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant a security clearance for Applicant. Clearance is denied.

Thomas M. Crean
Administrative Judge