



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-17875
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

August 29, 2008

Decision

CURRY, Marc E., Administrative Judge:

On April 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the security concerns under Guideline G. 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.

DOHA received Applicant's answer, requesting a hearing before an administrative judge, on May 30, 2008. I received the case assignment on June 25, 2008. DOHA issued a notice of hearing on June 30, 2008, and I convened the hearing as scheduled on July 30, 2008. During the hearing, I received three government exhibits and ten Applicant exhibits. C. Based upon a review of the record evidence, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 56-year-old married man with two adult children. He served in the U.S. Navy from 1973 until his honorable discharge in 1979. He has a bachelor of science degree in business administration, and he currently works as a senior-level management consultant whose clients include several government agencies (Tr. 74).

Applicant is highly respected on the job. According to his supervisor, "he has performed well, developed good business relationships with [their] clients, and resolved tough issues to preserve good business relations" (Exhibit E).

Applicant has a drinking problem. He began drinking alcohol as a teenager. By the time he left the Navy, he was drinking up to four beers per day (Tr. 56). In 1984, he was arrested and charged with driving under the influence of alcohol (DUI). He was sentenced to several hours in jail, and required to attend an alcohol-education program.

Through the alcohol-education program, Applicant began attending Alcoholic's Anonymous (AA) meetings (Tr. 56). He remained sober from 1984, after the DUI arrest, through approximately 1995. Believing that he could manage drinking in moderation, Applicant resumed alcohol consumption. He defined moderation as, "a beer here and there to test . . . whether [he] was an alcoholic or not" (Tr. 58). His alcohol resumption corresponded with his decision to quit going to AA meetings (Tr. 51).

By approximately 2004, he was drinking four beers every other day (*Id.*). One evening in August 2006, two months after Applicant completed his security clearance application (Exhibit 1), he had some beers and went to the barbershop. While returning home in his car, he rounded a curve, oversteered, ran off the road, and sideswiped a tree (Tr. 52). Later the police arrived, administered a roadside sobriety test, arrested him, and charged him with failure to control vehicle speed on a highway to avoid collision, DUI, DUI per se, attempting to drive while impaired by alcohol, and negligent driving (Tr. 53). His blood/alcohol content was .08 (*Id.*). In April 2007, he was found guilty, convicted, sentenced to one year in jail (all but two days suspended), and two years of probation, and fined \$500 (Answer). Also, he was required to install an ignition interlock device on his automobile (Exhibit I).

As part of the court order, Applicant had to successfully complete alcohol education and treatment (Exhibit G). He had already been receiving these services before the conviction, beginning in October 2006 (Exhibit 3 at 9). While in the program, he self-diagnosed himself as alcohol-dependent (*Id.*). He finished the outpatient group therapy on July 24, 2007, staying in the program "long after he was required" to attend (Exhibit H at 1).

Applicant was also required to attend AA twice per week as a part of his probation (Exhibit G). He is active in the program attending up to six meetings per week, and serving as a liaison with other regional AA groups (Exhibit G). He is involved in the management of his AA group serving, at different times, as treasurer and secretary (Tr.

81-83). His duties have included, among other things helping to arrange speakers, consolidate resources, and organize the annual AA softball game (Tr. 85). In addition, he maintains a compendium of books and other literature on alcoholism that he has made available to all of the AA groups in his region. He often attends AA meetings outside of the area where he lives to broaden his insight (Tr. 39). He has not drunk any alcohol since the 2006 DUI arrest, and has recently begun sponsoring other AA participants (Exhibit H at 2).

Applicant attributes his relapse after a lengthy period of abstinence to a failure to thoroughly embrace the AA principles, and to his mistaken belief that he could drink alcohol in moderation. Also, he used alcohol to avoid confronting his lack of emotional intimacy with his children. According to his wife, he is now much more involved with his children than he was earlier (Tr. 42).

According to Applicant's therapist, the program director of the clinic where he received treatment:

. . . it is very common for alcoholics to have a relapse after a long period of recovery. That relapse is very therapeutically viewed by counselors . . . as 'one last attempt in trying to be a social drinker.' The statistics show that after one relapse, an alcoholic can accept one hundred percent that they will never be a social drinker (nonalcoholic), and remain abstinent for the rest of their lives. [Applicant] has gone through that process (Exhibit H at 1).

Moreover, he characterized Applicant as "one of the most careful, thorough, and meticulous people that [he] had ever met (*Id.*), and concluded that his previous relapse did not cast "even the slightest doubt" (*Id.*) Regarding his reliability trustworthiness, and judgment. Applicant's probation officer characterized him as a cooperative, highly motivated individual "who has changed his life, and is very committed to a sober life" (Exhibit G).

On July 23, 2008, the court removed the ignition interlock requirement from the requirements of his probation (Exhibit I). His probation expires in October 2009.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. An administrative judge's overarching

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.” An 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.”

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 an 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

Under this guideline, “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 history of alcohol consumption and alcohol-related arrests triggers the application of 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 dependent.”

Applicant was not diagnosed with alcohol abuse or dependence by a medical professional. AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” does not apply. The clinic director where Applicant treated, however,

concluded with Applicant's self-diagnosis of alcohol dependence. 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," applies.

Applicant's 2006 DUI arrest occurred two months after the initiation of the security clearance process. Also, it constituted a recurrence of past behavior. Consequently, it cannot be characterized as remote in time, and 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.

Nevertheless, Applicant has abstained from alcohol since the arrest, and has demonstrated a commitment to sobriety, exceeding the requirements of the 2006 court order, and engaging actively in AA both as a participant and a leader. I was troubled by the recurrent nature of his conduct, particularly after a lengthy period of abstinence through the mid 1980s and early 1990s. Applicant's counselor, however, addressed this issue, and concluded that his relapse should not call into question his reliability and good judgment. His probation officer made similar observations. Upon evaluating these recommendations and the witness' testimony, I conclude that 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)," 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 alcohol treatment program," apply.

Applicant has mitigated the alcohol consumption security concern.

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.

Upon evaluating the whole person factors, I conclude that the recent and recurrent nature of Applicant's conduct is outweighed by the presence of rehabilitation and other permanent behavioral changes. His Application for a security clearance is granted.

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 APPLICANT

Subparagraphs 1.a - 1.d: For Applicant

Conclusion

In light of all of the circumstances it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge