



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17893
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

September 19, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on June 15, 2007. On April 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing 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.

Applicant acknowledged receipt of the SOR on May 9, 2008; answered it on May 19, 2008; denied all the allegations in the SOR; and requested a hearing before an administrative judge. DOHA received the request by facsimile transmission on May 19, 2008. Department Counsel was ready to proceed on June 12, 2008, and the case was assigned to me on June 13, 2008. DOHA issued a notice of hearing on July 29, 2008, scheduling the hearing for August 27, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. The record closed upon adjournment of the hearing. DOHA received the transcript (Tr.) on September 11, 2008.

Findings of Fact

Applicant is a 45-year-old engineer for a defense contractor. He has worked for his current employer since March 2006. He received a clearance in February 1986 and held it for about two years (Tr. 55). He submitted his e-QIP because his current job requires a clearance (Tr. 56).

Applicant's performance appraisals from June 2006 to December 2007 uniformly rated him as "successful," the middle category in a five-category scale ranging from exceptional to unsatisfactory (AX G, H, I, and J).

One of Applicant's colleagues, who worked with him for two years on a daily basis, described him as an excellent engineer. They socialized frequently, but the witness was unaware that Applicant had problems with alcohol. He testified Applicant was "always a professional" and never came to work under the influence of alcohol (Tr. 23-27; AX B). Another of Applicant's colleagues described him as an experienced, skilled, dedicated engineer (AX A). A long-time friend of 25 years regards him as honest, loyal, hardworking, and trustworthy (AX D).

Applicant began consuming alcohol in 1978 (GX 2 at 1). He underwent detoxification for alcohol abuse around 1994 (GX 3 at 1). He completed a 10-day in-patient rehabilitation program in 1997, was diagnosed as alcohol dependent, and abstained from alcohol for five years (Tr. 73-74).

Applicant resumed his alcohol consumption in 2002, thinking he could drink again without problems, but his consumption gradually increased to about 12-15 beers per day. He was admitted to a hospital in September 2004, diagnosed as alcohol dependent, given detoxification treatment, and was released the next day (GX 3 at 1-4).

In October 2004, Applicant was taken to the hospital emergency room because he started shaking violently and vomiting as the result of heavy drinking the previous night. He was discharged after about five hours (GX 3 at 17-29).

In November 2004, Applicant resigned from a job with another defense contractor after being accused of consuming alcohol at work. He took a breathalyzer test, registering .02, and claimed the alcohol was still in his system from the previous night's drinking (GX 6 at 1-2).

In March 2006, police went to Applicant's residence to investigate a report that an emotionally disturbed person was on the premises. When the police arrived, Applicant told them he was an alcoholic and needed treatment. The police transported him to a local hospital for evaluation. He was diagnosed as an alcoholic, received detoxification treatment in the emergency room, and was released after several hours (GX 3 at 7-16).

From July 2006 to October 2007, Applicant consulted with a licensed clinical social worker and a psychiatrist about once a month. They diagnosed him as suffering from anxiety, insomnia, and alcoholism. They advised him to reduce or stop his alcohol consumption, and recommended attendance at Alcoholics Anonymous (AA) meetings. He stopped consuming alcohol for about three months beginning in September 2006. In October 2007, he was administered a breathalyzer test by his employer, based on reasonable suspicion, and the test apparently was negative (AX F). He resumed his consumption of alcohol in December 2007 (GX 1 at 28; GX 2 at 4 and 8-19; GX 6 at 1).

In December 2007, Applicant went to an AA meeting with a hangover, and his AA friends took him to an alcohol dependency treatment center (Tr. 64). He was diagnosed with alcohol dependence with physiological dependence and obsessive compulsive disorder. He was discharged after one day because he declined to sign a release allowing his employer or medical doctor to know he was in detoxification treatment (GX 5). He testified he left the treatment center against medical advice, because he went to the center for detoxification only and did not think he needed a rehabilitation program (Tr. 69). He admitted he did not want his employer to know about his alcohol problem (Tr. 70).

In January 2008, Applicant responded to DOHA interrogatories, stating he consumed alcohol to the point of intoxication (blood-alcohol content greater than .04) four evenings per week, and that he had been attending AA meetings twice a week since 2006 (GX 2 at 1-2).

In April 2008, Applicant did not come to work for several days and had not notified his supervisor of his intended absence. His supervisor called the county sheriff's office. A sheriff was dispatched to his home and found him sitting in a chair with beer cans and prescription drugs containers scattered around him. Applicant was taken to the hospital for treatment (GX 7). Applicant testified this incident is when he "hit bottom," when his situation became so out of control that continued consumption of alcohol was not an option (Tr. 59-60). He talked to a person in the employee assistance program at his workplace, who recommended that he stop drinking completely (Tr. 62).

On June 13, 2008, Applicant's AA sponsor took him to a chemical dependency treatment center that was recommended by their employee assistance program (Tr. 49-50). Applicant successfully completed the treatment program and was discharged on July 3, 2008, with recommendations that he attend AA meetings daily for 90 days, obtain an AA home group and sponsor within 30 days, and utilize the treatment center's contacts and support staff (AX E).

Applicant testified that he had been consuming alcohol for about 20 years and abusing alcohol regularly for about 10 years. He engaged in binge drinking, sometimes consuming 12 to 24 bottles of beer a day. He suffered an alcoholic seizure in July 2006, and experienced periods of blackouts (Tr. 66-67).

Applicant last consumed alcohol in April 2008, the day the sheriff found him at home. He now attends AA meetings daily. Applicant's AA sponsor for the past six months works for the same employer and interacts with Applicant daily. He believes Applicant is doing "quite well" in AA. He takes it seriously and participates in AA committees providing community service (Tr. 36-46; AX C).

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

The SOR alleges Applicant was consuming alcohol four times a week as of the date of the SOR (SOR ¶ 1.a); he resigned from a previous job in November 2004 after registering .02 BAC on an employer-administered breathalyser (SOR ¶ 1.b); he received alcohol detoxification in September 2004 (SOR ¶ 1.c); he was treated for alcohol-related symptoms in October 2004 (SOR ¶ 1.d); he was taken to a hospital for evaluation after calling the police to his residence, announcing he was an alcoholic, and asking for treatment in March 2006 (SOR ¶ 1.e); he consulted with a licensed clinical social worker from June to October 2006 about alcohol withdrawal (SOR ¶ 1.f); he was evaluated and diagnosed with alcohol dependence and obsessive compulsive disorder in December 2007 (SOR ¶ 1.g); he was attending AA meetings twice a week as of January 22, 2008 (SOR ¶ 1.h); and he missed work in April 2008 and was found at home by a county sheriff, surrounded by beer cans and prescription drug containers (SOR ¶ 1.i).

The concern under this guideline is set out in AG ¶ 21 as follows: “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.” Conditions that could raise a security concern and may be disqualifying include: “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.” AG ¶ 22(a). Applicant’s call for police assistance in March 2006, and his discovery by a county sheriff at home in an intoxicated condition in April 2008 after failing to come to work for several days are “incidents of concern” within the meaning of AG ¶ 22(a).

A disqualifying condition also may arise from “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.” AG ¶ 22(b). There is no evidence Applicant was intoxicated or impaired when his employer administered the breathalyzer in November 2004, and no evidence of drinking on the job; however, the enumerated “incidents” in this disqualifying condition are illustrative and not exclusive. I conclude that Applicant’s condition at work, with a blood alcohol level of .02 as a result of the previous night’s consumption, is an “alcohol-related incident at work” within the meaning of AG ¶ 22(b).

A disqualifying condition also may be raised by “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.” AG ¶ 22(c). “Binge drinking” is “the consumption of five or more drinks in a row on at least one occasion.” U.S. Dept. of Health & Human Services, Substance Abuse and Mental Health Services Administration, *The National Household Survey on Drug Abuse: Binge Drinking Among Underage Persons*, Apr. 11, 2002, available at <http://www.oas.samhsa.gov>. Applicant’s history, including consumption of as much as 12 to 24 bottles of beer in a day, raises this disqualifying condition.

A disqualifying condition also may be raised either by “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence” or by “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.” AG ¶ 22(d) and (e). The record does not reflect the diagnosis accompanying Applicant’s detoxification in 1994, but he was diagnosed as alcohol dependent in 1997. He was twice diagnosed as having “alcoholism” in 2006. “Alcoholism” is “chronic alcohol abuse, dependence, or addiction.” *Stedman’s Medical Dictionary* at 44 (26th ed. 1995). The term “alcoholism” does not appear in DSM IV. In previous versions of the DSM, it was synonymous with alcohol dependence. Applicant’s diagnoses of alcohol dependence in 1997 and September 2004, “alcoholism” in 2006; and alcohol dependence in December 2007 raise both of these disqualifying conditions.

Finally, a disqualifying condition may be raised by “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.” AG ¶ 22(f). Applicant completed a 10-day alcohol rehabilitation program in 1997, maintained sobriety for five years, and then relapsed. The evidence indicates all of Applicant’s treatments between 1997 and December 2007 were for detoxification and did not include an alcohol rehabilitation program. He entered a rehabilitation program in December 2007 but left after one day. He completed an in-patient rehabilitation program

in July 2008 and had not relapsed as of the date of the hearing. Based on Applicant's relapse in 2002 after completing an alcohol rehabilitation program in 1997, I conclude AG ¶ 22(f) is raised by the evidence.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 22(a) through (f), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. 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).

Security concerns under this guideline may be mitigated if "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." AG ¶ 23(a). The first prong of this mitigating condition focuses on the recentness of the conduct. There are no "bright line" rules for determining when conduct is "recent." The determination must be based on a careful evaluation of the totality of the evidence. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.*

Applicant's last drinking binge was in April 2008, and he abstained from that date until the hearing in August 2008. Considered in the context of his long history of alcohol abuse, including a five-year period of abstinence ending in 2002 and a three-month period ending in December 2007, his four-month period of abstinence is not a significant period of time. Thus, I conclude his alcohol abuse is recent. It also was frequent and did not happen under unusual circumstances. Given his history and short period of abstinence, I cannot determine the likelihood of recurrence. His record of alcohol abuse casts doubt on his current reliability and trustworthiness. I conclude AG ¶ 23(a) is not established.

Security concerns also may be mitigated if "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)." AG ¶ 23(b). Applicant has acknowledged his alcohol dependence and completed an alcohol treatment program, but he has not yet established a "pattern" of abstinence within the meaning of this mitigating condition.

Security concerns under this guideline also may be mitigated if "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." AG ¶ 23(c). Applicant completed the in-patient phase of his treatment in July 2008, but at the time of the hearing he had not completed the aftercare requirement of attending AA

meetings daily for 90 days. He was complying with all program requirements as of the date of the hearing. I conclude AG ¶ 23(c) is established.

Finally, security concerns under this guideline may be mitigated if “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.” AG ¶ 23(d). As noted above, Applicant had not completed his required aftercare at the time of the hearing, and there is no evidence of a prognosis. I conclude AG ¶ 23(d) is not established.

Whole Person Concept

Under the whole person concept, an 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. 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature, well-educated, intelligent adult. He appears to have realized in April 2008 that he “hit bottom,” and he has taken aggressive action to address his alcohol abuse. He was candid and sincere at the hearing. He is headed in the right direction, but not enough time has elapsed to determine whether he will maintain sobriety and gain control of his alcohol dependence.

After weighing the disqualifying and mitigating conditions under Guideline G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on alcohol consumption. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i: **Against Applicant**

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge