



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-18078
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

February 27, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (QNSP) on April 3, 2007. On July 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G that provided the basis for its decision to deny him a security clearance. 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 as of September 1, 2006.

Applicant answered the SOR in writing on September 10, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2008, to consider whether it is clearly consistent with the national interest to grant or

continue a security clearance for him. On November 25, 2008, I scheduled a hearing for December 19, 2008.

The hearing was held as scheduled. Four government exhibits (Ex. 1-4) and two Applicant exhibits (Ex. A-B) were admitted without any objections. Applicant testified, as reflected in a transcript (Tr.) received on December 31, 2008. At Applicant's request, the record was held open until January 16, 2009. No additional documents were received. Based on review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline G, alcohol consumption, that Applicant consumed alcohol, at times to excess and to intoxication, from approximately 1986 to at least March 2007 (SOR ¶ 1.a); that he received nonjudicial punishment in 1996 for driving under the influence (DUI) (SOR ¶ 1.b); that his license was suspended for failure to take a breathalyzer following an arrest for DUI between 1996 and 2006 (SOR ¶ 1.c); that he was fined for an open container offense in about 2001 (SOR ¶ 1.d); that he pleaded guilty to November 2006 charges of DUI and operating under suspension-alcohol and was sentenced to six months in jail, suspended, and 18 months probation (SOR ¶ 1.e); that he received treatment for alcohol abuse through an employee assistance program (EAP) at a local center from November 2006 to about April 2007 (SOR ¶ 1.f); that he received treatment for alcohol dependence at a behavioral health facility from February 2007 to about July 2007 (SOR ¶ 1.g); and that he was in treatment for alcohol abuse at a community and family services center as of March 26, 2008 (SOR ¶ 1.h). Applicant admitted the allegations. His admissions are incorporated as factual findings. After considering the record evidence, I make the following additional findings.

Applicant is a 37-year-old senior quality control analyst, who has been employed by a defense contractor since September 2001, following nine years of active duty service in the U.S. military (Exs. 1, 2, Tr. 24). He seeks to retain the secret-level security clearance he has held since he was in the Navy (Ex. 1, 2).

Applicant began to drink alcohol (beer) in about 1986 when he was 14 or 15. He drank at parties with friends (Ex. 3). After he entered the U.S. military in April 1992 (Exs. 1, 2), his drinking caused him no problems until June 1996 when he was awarded nonjudicial punishment for DUI. He had consumed an unrecalled amount of beer at a local bar and driven back to the base. Applicant was sitting in his vehicle listening to the radio when base police approached about the radio's volume. Applicant was charged with DUI after failing a breathalyzer. At Captain's Mast, he was awarded a reduction in rate, 45 days extra duty, 45 days restriction, and forfeiture of one month's pay (half pay each month for two months). The sentence was suspended for six months and then dismissed (Ex. 3, Tr. 28). Applicant went to a week-long alcohol education class voluntarily (Tr. 33-34).

Applicant married in August 1998. He and his spouse (now ex-wife) had a daughter in December 1998 (Tr. 26). He was fined \$25 for an open container violation in July 2001 while tailgating at a baseball game (Exs. 1, 2, 3, Tr. 31). That same month, he received an honorable discharge from the military (Exs. 1, 2, Tr. 26).

In September 2001, he began working for his current employer as a quality control analyst in support of his former military command. Needing to retain his secret clearance for his duties on the military installation, Applicant executed a security clearance application on March 12, 2002. He disclosed his June 1996 nonjudicial punishment ("suspended bust") and the July 2001 open container violation (Ex. 2).

In 2003, Applicant began drinking often to intoxication as his marital relationship deteriorated. After he and his spouse divorced in mid-August 2004 (Ex. 1), he continued to consume alcohol at times to excess. As of the fall of 2006, if not before, Applicant was drinking up to a fifth bottle of liquor on a daily basis while socializing after work at a bar with friends (Ex. 3, Tr. 50).

Applicant was arrested three times on drunk driving offenses after 2001. On the first occasion, Applicant had been drinking at home. He let a friend borrow his car but it ran out of gas not far from Applicant's home. So that the car would not be towed, this person walked Applicant back to the vehicle to wait while he went to get gas. Applicant was sitting in the car on private property with the keys in the ignition when the police approached and arrested him for drunk driving. The charge was dropped (Ex. 3, p. 29). While that charge was still pending, Applicant was pulled over for drunk driving. He refused the breathalyzer and his license was suspended. He took a required drunk driving class after this incident (Ex. 3, Tr. 30-31).

On a Friday night in early November 2006, Applicant consumed half of a fifth bottle of schnapps plus four beers in his home. The following morning, he was pulled over for speeding while en route to a local store. Citing knee injuries, Applicant declined to perform field sobriety tests, and he was arrested on suspicion of DUI. He failed a breathalyzer at the station and was charged with two misdemeanors, illegal operation of a motor vehicle while under the influence of alcohol/drugs and illegal operation of a motor vehicle under suspension-alcohol. He was also cited for two infractions, exceeding posted speed limit and failure to return license/registration. Detained in jail for three days, he experienced alcohol withdrawal symptoms (visual hallucinations). Applicant pleaded not guilty to all the charges, but in February 2007, he was convicted of the drunk driving and operation under suspension charges. He was ordered to pay \$1,000 (\$500 for each offense, which Applicant maintains was a contribution and not a

fine, see Ex. 3), and he was placed on 18 months probation.¹ The motor vehicle infractions were nulled. (Ex. 4).

Following his November 2006 arrest for drunk driving, Applicant realized he had a problem with alcohol. He stopped socializing with those coworkers with whom he drank at the bar (Tr. 51), and took the opportunity to move to second shift so that he could avoid them (Tr. 52). At the referral of an EAP program, Applicant received counseling for alcohol abuse with a therapist from November 2006 to April 2007 (Exs. 2, 3, Tr. 35-36). The frequency of his sessions with the clinician increased from once weekly to twice weekly and eventually three times weekly (Ex. 3). Applicant was advised by this therapist that he should not drink alcohol (Tr. 42).

At the referral of the therapist, he underwent a psychiatric evaluation by an osteopathic (D.O.) physician with a behavioral health practice on February 3, 2007. Applicant admitted during the evaluation that he had consumed alcohol the previous day; that he was drinking every third day, in quantity of 750 ml of alcohol per occasion to deal with anxiety; and that he was experiencing alcohol-related blackouts and had cravings for alcohol. He was given a principal diagnosis of alcohol dependence and started on Campral for his alcohol use, Sertraline for anxiety and depressive symptoms, and Trazodone for problems sleeping. He was advised to abstain from alcohol (Tr. 42), to continue his sessions with his therapist, and to return for medication management in three weeks time. Applicant cancelled appointments with the D.O. scheduled for March 2, 2007, and March 9, 2007. During a session with the D.O. on March 14, 2007, Applicant reported that he felt better, but also that he was still drinking alcohol. His condition was assessed as stable and his medications were continued for 30 days with one refill. Applicant was advised to continue his therapy sessions. During a follow-up session with the D.O. on May 9, 2007, Applicant reported he had abstained from alcohol for the past week and a half, and that he was compliant with his medications. The D.O. assessed Applicant's condition as stable and improving. On May 22, 2007, Applicant complained to the D.O. by telephone of a negative health reaction from the Trazodone. He was advised to seek medical help immediately, which he failed to do. On July 20, 2007, Applicant failed to show for an appointment scheduled with the D.O. (Ex. 3). Applicant attended a few Alcoholics Anonymous (AA) meetings between January and April 2007 (Tr. 43).

For a periodic reinvestigation of his security clearance, Applicant executed a QNSP on April 3, 2007. He listed his 1996 nonjudicial punishment for DUI, the 2001 open container violation, and the November drunk driving offense for which he was on

¹DOHA alleged, and Applicant admitted, that he was also sentenced to six months in jail, suspended. The only court record available for review reflects a sentence for each offense of a \$500 fine and 18 months (Ex. 4). The court record does not indicate whether the 18 months was to be spent in jail or on probation. Nor does it indicate that the 18 month sentences were to be spent concurrently.

probation. In response to inquiry into his medical record, Applicant indicated he had been seeing a therapist since November 2006, and the D.O. for medication only since February 2007 (Ex. 1).

On August 23, 2007, Applicant was interviewed by a government investigator, in part about his alcohol use, related offenses, and his treatment. Applicant explained that he began to drink heavily in 2003 during his separation from his spouse and that he often drank to intoxication. Although unable to recall the amounts consumed, Applicant estimated that it took about a half bottle of schnapps and four to five beers for him to become intoxicated. He indicated that he had been arrested twice for DUI, in June 1996 while in the military, and in November 2006, and that he drank until November 2006, daily at least four beers and two shots of liquor. He denied any consumption of alcohol since November 2006 and he expressed an intent to continue abstinence in the future (Ex. 3).

DOHA subsequently asked Applicant to confirm the accuracy of the investigator's report of the August 2007 interview and to explain why his license had been suspended at the time of his arrest in November 2006. In his response dated March 26, 2008, Applicant related that he did not recall telling the investigator that he had not consumed alcohol since November 2006. He provided previously undisclosed information about a therapy consult in early 2007 wherein he had been told that he should "drink little and not overdo it because [he] could die or go into [an] alcoholic shock."² Applicant admitted that after being prescribed medications, he had "slipped up a few times," so he was back in treatment with a new therapist. He added that he was subject to drug testing as a condition of his probation so it was another reason for him to abstain (Ex. 3).

Applicant saw this new therapist only once or twice (Tr. 41). He continued to consume alcohol, including a couple of times when he was on probation knowing that he risked jail by drinking (Tr. 44). Applicant's probation ended in September 2008 but he has not regained his license (Tr. 45). Applicant drank liquor, in quantities varying from less than a pint to more than a pint, 10 or 12 times during the last six months of 2008. Over the weekend of December 3-14, 2008, he consumed a pint of liquor that was brought to him by a friend. He was going through a rough time with his daughter (Tr. 37-41, 49). He tried contacting supportive friends for help but did not reach them (Tr. 53), so he called an old friend and asked him to bring the liquor (Tr. 56). Applicant has not taken his Campral medication since summer 2008 (Tr. 37, 44). He no longer considers himself an alcoholic because he has his alcohol consumption under control (Tr. 42). Applicant does not plan to drink, but family problems (ex-wife quitting her job and losing her house and car, issues with his daughter) have led him to consume alcohol (Tr. 45-46). He has developed new hobbies to help him deal with the stress (Tr. 47-48).

²Applicant testified that two counselors told him that he could drink a little ("I needed to drink because I could go into arrest because of the amount of alcohol I was drinking back in the time when I was drinking heavily. And there was something to do with it had to all do with my heart." Tr. 50).

Applicant has the full confidence of the military officers who have oversight over his work at the military base. As a quality assurance supervisor, Applicant is responsible for the integrity of a safety program. (Exs. A, B) His work was recognized by an inspection board as among the best in the fleet (Ex. A).

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 that 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 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 untrustworthiness.” Applicant was punished by Captain’s Mast for DUI in June 1996. In July 2001, he was fined for an open container violation. While in his present employment and holding a secret clearance, Applicant was arrested three times for drunk driving. In the first incident, he was charged with DUI after he was found sitting behind the wheel of his vehicle with the keys in the ignition. There is no evidence that he had driven on that occasion, and the DUI charge was dismissed. However, he does not deny that he had been drinking. He was also not convicted of DUI in the second incident, but he acknowledges that he was drinking and driving (Tr. 30), and his license was suspended for refusing to submit to a breathalyzer. He was driving on that suspended license when he was caught drunk driving in November 2006. Applicant was convicted of both operating a motor vehicle under the influence and of operating a motor vehicle under suspension. 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,” clearly applies.

For some time before his November 2006 arrest, Applicant had been drinking up to a fifth of liquor on a daily basis. This habitual consumption to excess, which raises concerns under 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 alcohol dependent,” led to a serious alcohol problem. In February 2007, the D.O. diagnosed him as alcohol dependent. AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” also applies.

Applicant deserves credit for recognizing in November 2006 that he had an alcohol problem, and for seeking help through an EAP program and counseling. Yet, despite ongoing sessions with a therapist, he continued to consume alcohol as of mid-March 2007, even after being placed on Campral medication by the D.O. As of an office visit with the D.O. on May 9, 2007, Applicant had managed to abstain from alcohol for more than one week. But he relapsed again into sporadic drinking due to

family stressors. During the last six months of 2008, he consumed alcohol on 10 to 12 occasions, up to a pint of liquor at times. This drinking was contrary to the medical advice from the D.O. and to the clinical advice from the therapist whom he had seen from November 2006 to April 2007. Two other counselors, whom he had seen only briefly, apparently advised him that he could drink a little to avoid the health consequences of total withdrawal. Applicant's consumption of up to a pint of liquor is clearly contrary to even that advice. Since Applicant has not completed an alcohol rehabilitation program, AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program," does not apply. However, his recent drinking was a violation of his probation. Applicant admitted he risked jail time had he been caught, so AG ¶22(g), "failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence," is pertinent.

Concerning the potential conditions in mitigation under AG ¶ 23, his relapse history precludes consideration of 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." The weekend before his hearing, Applicant drank about a pint of liquor that a friend brought over at his request.

Applicant's voluntary counseling from November 2006 to April 2007, aided by medication from February 2007 to summer 2008, is action taken to overcome his problem (see 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).") He elected to work second shift so that he "wouldn't have an excuse to go out and drink in the afternoons after work" (Tr. 51), and he developed hobbies to alleviate some of the stress and anxiety that led him to abuse alcohol in the past. But AG ¶ 23(b) cannot be fully applied. He has not abstained from alcohol for any significant period. He shows insufficient insight into his alcohol problem, as evidenced by his admission that he does not now consider himself to be an alcoholic since he is not drinking at previous levels.

The recurrence and recency of his relapses and the absence of any present treatment or involvement in AA or similar organization preclude consideration of AG 23(c), "the individual is a current employee who is participating in counseling or a treatment program, has no history of previous treatment and relapse, and is making satisfactory progress," and 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." Applicant stopped attending his

counseling sessions with the therapist in April 2007. He returned to counseling with a new therapist in March 2008, but attended only one or two sessions. While he has a prescription for Campral, he has not taken the drug since summer 2008. Although he now has friends who attend AA, he has not shown how their involvement in AA helps him. There is no recent prognosis from a clinician that could dispel the security concerns raised by his ongoing abusive relationship with alcohol.

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 conduct and all the circumstances in light of 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant bears a substantial burden of mitigation, especially where he does not fully satisfy any of the Guideline G mitigating conditions. He has not allowed his abusive use of alcohol to interfere with his work performance. Accountable for the integrity of a very stringent quality control program, Applicant holds a highly trusted position and he has not disappointed those military officers who rely on him. But security is a 24-hour-per-day responsibility, and Applicant continues to struggle with his alcohol problem. Since at least 2003, he has turned to drinking to cope with family stress caused by the dissolution of his marriage and more recently by his ex-wife quitting her job and losing her home. Problems with his daughter led him to call new friends for help, but also to ask an old friend for liquor in December 2008. He is no longer on probation for his November 2006 drunk driving offense, but that does not fully mitigate the serious alcohol consumption concerns.

Formal Findings

Formal findings 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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented in this case, 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.

ELIZABETH M. MATCHINSKI
Administrative Judge