



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



In the matter of:)
)
) ISCR Case No. 08-00966
)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro Se*

November 11, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the alcohol consumption security concerns raised by his alcohol related incidents and diagnosis of alcohol dependence. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 2, 2007 (resubmitted on March 31, 2008 (GEs 1 & 2)). On June 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concern under Guideline G (Alcohol Consumption).¹

¹ 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 answered the SOR on July 8, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 3, 2008. The Notice of Hearing was issued on September 12, 2008, convening a hearing on October 3, 2008. The hearing was convened as scheduled. The Government presented nine exhibits, marked GE 1-9, which were admitted without objection (Tr. 22). Applicant testified on his own behalf, and presented one exhibit, marked AE 1, which was admitted without objection. DOHA received the transcript (Tr.) on October 8, 2008.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e. He denied SOR ¶ 1.a, and provided explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, including his demeanor, I make the following additional findings of fact.

Applicant is a 24-year-old logistics and supply analyst working for a Government contractor (Tr. 5). He received his General Equivalency Degree (GED) in 2001. He married his wife in July 2003 and they were divorced in June 2005. They have a five-year-old son of this marriage.

From August 2003 to September 2006, he served in the U.S. Coast Guard on active duty. He was involved in several alcohol related incidents and placed in an alcohol rehabilitation treatment. He was discharged early from his service obligation because he failed his alcohol rehabilitation program. His service was characterized as honorable.

Applicant has been working for a defense contractor since May 2007. He received interim access to classified information at the secret level from January to April 2008 (Tr. 6, 29). There is no evidence to suggest, and the Government does not allege, that Applicant has ever compromised or caused others to compromise classified information. Nor does the record evidence show that Applicant has ever failed to follow the rules and regulations required to protect classified information.

Applicant works for a defense contractor providing training support to deployed service members (Tr. 29-30). Since he was hired, Applicant provided support to 28 training courses in major U. S. installations and abroad. He has travelled approximately 180 days in the last 16 months as part of his job.

Applicant's Chief Operating Officer (COO) submitted a strong endorsement on Applicant's character and performance (AE 1). For more than a year, he has observed Applicant's performance conducting worldwide logistics shipments for the training of deployed service members. In the COO's opinion, Applicant is reliable, trustworthy, and dependable. He has performed his job well regardless of whether he was called to work during the day or night. He considers Applicant to be a loyal, honest, and mature employee.

Applicant has a history of alcohol abuse, marked by his involvement in several alcohol related incidents. Around August 2005, Applicant sought the assistance of his Coast Guard chain of command because he was depressed, abusing alcohol, and believed he was in a path of self-destruction (Tr. 56). He was referred to an 80-hour alcohol education/counseling course. After successful completion of the course, Applicant continued to receive treatment for his depression.

In early 2006, Applicant was depressed and consumed alcohol, even though he was taking anti-depression medication. In April 2006, Applicant was depressed, drank to intoxication, and became involved in a physical altercation with his roommate. After passing out for a couple of hours, he self-reported the incident to his chain of command believing he had consumed alcohol and an unknown number of Tylenol pills. His chain of command referred him to a psychological evaluation because they believed he may have tried to commit suicide. In April 2006, a Navy counselor, and then a psychiatrist, diagnosed Applicant as suffering from depression and alcohol dependence (GEs 5 & 8). He was not considered suicidal. During the mental evaluation, Applicant admitted to driving while intoxicated (GE 5). Applicant received non-judicial punishment at a Captain's Mast for charges of drunk and disorderly and disorderly conduct. The charges were related to his physical altercation with his roommate. He was reduced from pay grade E-5 to E-4.

At his hearing, Applicant denied ever having suicidal ideations (Tr. 57). He self-reported his consumption of alcohol and Tylenol to his chain of command because he was concerned he may have taken too many Tylenol while drunk.

In August 2006, Applicant attended a barbecue at his girlfriend apartment and was involved in another physical altercation. He also self-reported this incident to his chain of command. In August 2006, he was processed for elimination from the service because he was considered an alcohol rehabilitation failure. His service was characterized as honorable, and he was barred from re-enlistment.

Applicant's father was an alcoholic.² Applicant started consuming alcohol around age 15. During his April 2006 psychological evaluation, he disclosed consuming beer from age 15 to 17. From age 18 to 21 he consumed approximately 12 beers twice a month. At age 22, he was consuming 12 beers three to four times a week.

Applicant explained his depression and alcohol consumption problems were caused by his young age and lack of maturity (Tr. 30-31). He enlisted and moved away from his home and family for the first time. A couple of months after arriving at his training station he started to experience depression and sought medical treatment. He married in 2003, at age 20, because his wife had a baby five months earlier. In 2005, their marriage was not working and they separated. Applicant did not know how to cope with "the emptiness of his life," being separated from his wife, and away from his son.

² The source for facts on this paragraph is GE 5, unless otherwise stated.

He became depressed and drank excessively to cope with his loneliness. He realized he was not able to control his depression and drinking and sought counseling. He was prescribed anti-depression medication. After his discharge from the Coast Guard, Applicant lived with his mother from June 2006 to May 2007. He did not consume alcohol during that period.

Applicant has learned to adjust with the separation from his son. He now looks forward to spending time with his son during his visitation periods. He has a good relationship with his ex-wife and her new boyfriend. They live in a different state. He has a new girlfriend and is considering proposing marriage to her.

In September 2007, Applicant provided a statement to a Government investigator in which he disclosed his alcohol consumption patterns (Tr. 41, GE 4). Applicant started consuming alcohol again in May 2007. He consumed alcohol with his co-workers, usually three beers at happy hours, two to three times a week (GE 4). While at home, he consumed three beers while watching football games, approximately eight times during the football season. During the interview, he became aware of security concerns raised by his past alcohol related behavior and his alcohol consumption. After the interview, he stopped consuming alcohol. He intends to abstain from alcohol until he receives his security clearance (Tr. 43, 62-63). He stopped consuming alcohol to demonstrate that alcohol is not important to him (Tr. 65). Applicant believes that his ability to receive a security clearance is tied to his professional development and to his ability to earn more money. He does not intend to abuse alcohol ever again (Tr. 78).

After his discharge from the Coast Guard, Applicant did not continue to attend therapy for his depression because he was not longer entitled to health care benefits from the Coast Guard and he did not have a permanent job. Other than the counseling he received while in the Coast Guard, he has not participated in any further depression or alcohol counseling/therapy (Tr. 44). He testified he had not suffered from depression since December 2006 (Tr. 59).

Applicant testified he understands the seriousness of his past behavior and takes full responsibility for his actions. He has made a conscious decision to abstain from alcohol because of his concern to keep his job and his ability to have access to classified information. Applicant believes he no longer suffers from depression because he has matured and learned to handle stress without recurring to alcohol (Tr. 51). He has not taken any anti-depression medications since he was discharged from the Coast Guard. He noted he has not been involved in any alcohol related problems on or off his job. He has learned to control the stress in his life caused by his frequent job related travel, hectic schedule, and many job responsibilities. He informed his supervisors about his past problems with depression and alcohol. He considers himself to be sober, a great worker and a happy person.

Having observed closely Applicant's demeanor, I find his testimony credible. At his hearing, Applicant promptly answered all the questions asked. He was frank, candid, and forthcoming in his answers and explained his answers without hesitation. He readily

admitted his bad behavior and apologized for his questionable behavior. Applicant expressed sincere remorse for his actions.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.³

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be considered 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 controlling 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."⁴ 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

³ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ *Egan, supra*, at 528, 531.

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

Under Guideline G (Alcohol Consumption), the government’s concern is that 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.

The government established its case under Guideline G by showing that from August 2005 to September 2006, while serving in the Coast Guard, Applicant was involved in questionable behavior related to his alcohol consumption. He was involved in two alcohol related incidents, drove while intoxicated, and was discharged early from the Coast Guard because he was considered an alcohol rehabilitation failure.

Applicant’s excessive alcohol consumption resulted in his exercising questionable judgment. He was diagnosed as alcohol dependent and suffering from depression. Guideline G disqualifying condition AG ¶ 22(a): “alcohol-related incidents away from work, such as driving while under the influence, fighting, and disturbing the peace,” AG ¶ 22(c): “habitual or binge consumption of alcohol to the point of impaired judgment,” and AG ¶ 22(e): “evaluation of alcohol abuse or alcohol dependence by a license clinical social worker who is staff member of a recognized alcohol treatment program,” apply.

There are four Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

(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;

(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);

(c): 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; and

(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.

Considering the totality of the circumstances in this case, I find Guideline G mitigating condition AG ¶ 23(a) does not fully apply. Although Applicant started consuming alcohol illegally at age 15, there is no evidence of alcohol related problems until 2005, when he was 22 years old. His depression and alcohol related problems appear to be circumscribed to the period of August 2005 to September 2006, while he was serving in the Coast Guard.

Applicant credibly explained that his questionable behavior happened under unusual circumstances. This was his first time away from home. He was young and immature, and did not have the ability to handle the stressors created by his failed marriage and the separation from his son. He did not have many friends in the Coast Guard, and relied on his alcohol consumption to cope with his depression.

There is no evidence of any further problems associated with his depression or any alcohol related problems at work or away from work after September 2006. Applicant has been working for his current employer since May 2007. He received a strong endorsement from his supervisor who commended Applicant's reliability, trustworthiness, and maturity. Applicant has learned to handle his work related stress and seems to be doing well. He has a good relationship with his ex-wife, her boyfriend, and his son. He looks forward to visiting with his son and making the most of his son-and father time. Applicant has a girlfriend and is considering proposing marriage.

However, he was diagnosed as alcohol dependent and did not make a firm commitment not to consume alcohol in the future. As such, I have lingering doubts about his current reliability and the possibility of recurrence.

AG ¶ 23(b) partially applies. Applicant has acknowledged his depression and alcohol dependence, presented some evidence of actions taken to overcome his problem, and testified he has been abstinent since September 2007. He is remorseful for his behavior, has initiated some changes in his lifestyle, and promises to continue making changes to ensure his ability to have access to classified information is not impaired.

Considering the totality of the circumstances in his case, I find that AG ¶ 23(b) does not fully apply because, not sufficient time has passed for Applicant to establish a track record of abstinence. He was diagnosed as alcohol dependent in April 2006. He participated in some alcohol rehabilitative treatment/counseling while in the Coast Guard. However, he was discharged before he completed his counseling/treatment. Since then, Applicant has participated in no additional treatment or counseling for either his depression or alcohol dependence. He presented no evidence, other than his testimony, to support his claim that he was abstinent after his discharged from the Coast Guard during the period he was living with his mother.

Notwithstanding the recommendations he receive from the Navy counselors to abstain from alcohol, Applicant started consuming alcohol again in May 2007. He testified he stopped consuming alcohol in September 2007, when he was made aware of the alcohol consumption security concerns, and that he has been abstinent since then. He presented no evidence, other than his testimony, to support his claim.

Applicant is fully aware of the security concerns raised by his questionable alcohol related behavior. However, Applicant's testimony implies he plans to be abstinent, but only until he receives his security clearance (See Tr. 43, 63). I am not sure he understands that because of his alcohol dependency diagnosis, his ability to have access to classified information will depend on his abstinence.

Application of AG ¶ 23(c) and AG ¶ 23(d) is not supported by the evidence. As mentioned above, Applicant is not participating in counseling, treatment program, or aftercare. Nor is there evidence of a favorable prognosis by a qualified health care provider.

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.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines in light of all the facts and circumstances surrounding this case. He served honorably in the Coast Guard for approximately three years. He was discharged early from his service obligation because he was an alcohol rehabilitation failure. He has worked for a defense contractor since May 2007, and had an interim access to classified information at the secret level for approximately three months. Except for the SOR allegations, there is no other evidence of Applicant's questionable behavior or, more importantly that he has ever compromised or caused others to compromise classified information.

Applicant self-disclosed to his Coast Guard chain of command he was abusing alcohol and two alcohol related incidents that were used to discharge him as a rehabilitation failure because he was seeking help. Because of this track record, I believe Applicant would disclose to his employer any future alcohol related problems. He has stable employment and a strong work ethic. Considering his demeanor and testimony, I believe Applicant has learned from his mistakes.

Applicant receives favorable credit for his motivation and desire to help deploying service members to complete their training. He is also motivated by the professional development opportunities he would have with a security clearance. After listening to Applicant's testimony and observing his demeanor, I find he has matured during the last two years and is making some progress in his rehabilitation.

On balance, Applicant's consumption of alcohol after his diagnosis of alcohol dependence, his short period of abstinence, his lack of ongoing counseling, treatment, or aftercare, and a favorable prognosis leave doubts about Applicant's rehabilitation and the likelihood that his questionable behavior will recur.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his alcohol consumption.

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 - 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 the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge