



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



In the matter of:)
)
) ISCR Case No. 08-02542
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel
For Applicant: *Pro Se*

September 17, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the Alcohol Consumption security concerns raised by his three alcohol-related arrests. Eligibility for access to classified information is denied.

On May 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G, Alcohol Consumption. 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 in writing in an undated response, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on July 30, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security

concerns. Applicant received the FORM on August 6, 2008. He responded with a letter dated August 20, 2008. Department Counsel did not object to his response. I have marked Applicant's response as Exhibit (Ex.) A, and it is admitted. I received the case assignment on September 10, 2008.

Findings of Fact

Applicant is a 25-year-old employee of a defense contractor. He is a college graduate with a Bachelor of Science degree. He was a student ambassador, the highest non-academic honor awarded at his university. He received the university's leadership award on three occasions. He is single with no children.¹

Applicant was arrested in March 2002, when he was 19 years old, and charged with minor in possession of an alcoholic beverage. He pled guilty and was sentenced to pay fines and costs of about \$250, and to attend a class on alcohol use. He satisfied all the requirements of his sentence.²

Applicant was arrested in July 2006, for driving under the influence (DUI). He drank about six beers and three shots of alcohol before he drove the car. He was stopped at a DUI checkpoint. The police officer noticed a strong odor of alcohol. He had red glassy eyes, slurred speech, and appeared drunk. He did not perform well on the field sobriety test. He refused the breathalyzer test. Applicant pled guilty to reckless driving. He was sentenced to pay fines and costs of about \$300, and his license was revoked for three months.³

Applicant again drove after drinking beer on an evening in February 2007. He admitted to drinking about seven beers. He was stopped at about 1:30 in the morning for not stopping at a stop sign. He was arrested and charged with DUI. His prosecution was deferred for one year until August 20, 2008, at which time with good behavior, the charge would be dismissed. He was required to pay court costs, attend a victim impact panel, and his license was suspended for three months. There was no evidence to suggest that Applicant did not comply with the terms of his deferred prosecution.⁴

Applicant began drinking alcohol in about 1999, when he was 16 years old. He believes he is intoxicated after about four to five drinks. He estimated in January 2008, that he drank to intoxication about six times a year. He recently reported that he no longer drinks to the point of intoxication. He does not believe he has a drinking problem and has not received any alcohol counseling or treatment. He credits the rehabilitative

¹ Items 1, 4.

² Items 1, 4, 5.

³ Items 1, 4-6.

⁴ Items 1, 4, 5, 7.

influence of his church and faith in assisting him in abstaining from his problem behavior.⁵

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 to be used 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, Administrative Judges apply the guidelines 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 the 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.

Section 7 of Executive Order 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty

⁵ Items 4, 5; Ex. A.

of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline 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 trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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

(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.

Applicant’s alcohol-related incidents are sufficient to raise AG ¶ 22(a). There is insufficient evidence to conclude that his drinking habits constituted “habitual or binge” drinking. AG ¶ 22(c) is not applicable.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-(d) are potentially applicable:

(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.

Applicant was arrested in 2002, for minor in possession of an alcoholic beverage. He had a DUI in July 2006, that was reduced upon a plea to a reckless driving charge. He had another DUI in February 2007. He has not received alcohol counseling or treatment, but credits the rehabilitative influence of his church and faith. He indicated that he no longer drinks to intoxication. That is positive information. However, Applicant does not have a sufficient track record without an alcohol-related incident to reap the full benefit of any of the mitigating conditions.

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 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 received numerous honors in college. He has three alcohol-related arrests, including a DUI arrest in July 2006, and another one seven months later in February 2007. Applicant has not gone long enough without an alcohol-related incident for a determination that he has eliminated alcohol as a problem.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Alcohol Consumption security concerns.

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 H:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge