



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04296
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

November 12, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On January 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E for Applicant. 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 submitted an undated reply to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on May 5, 2009. DOHA issued a notice of hearing on May 15, 2009, and I convened the hearing as scheduled on July 22, 2009, in Honolulu, Hawaii. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits A through F, which were also received without objection. DOHA received the transcript of the hearing (Tr) on August 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted the SOR allegations 1.b, through 1.h., under Guideline G, and 2.a. through 2.c., under Guideline E with explanations. He denied 1.a., and neither admitted nor denied 1.i., under Guideline G. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 42 years old. He is married, and he has two children. He served for 20 years in the United States Navy, and he received an Honorable Discharge. He is employed as a system administrator by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption. The following are the allegations that are cited in the SOR:

1.a. Applicant is alleged to have "consumed alcohol, at times to excess and to the point of intoxication, from approximately 1978 to about October 2007."

Applicant testified that he started consuming alcohol at age 12. His consumption increased over time when he was under stress. In 2003 he was involved in motorcycle accident which greatly increased his stress and caused increased binge drinking (Tr at 37-39). After he received treatment in April 2005, he abstained from consuming alcohol completely until December 2006. Since he began drinking alcohol again, his consumption has varied; but he estimated that in 2007 and 2008, he consumed alcohol on average once a month, in the quantity of three rum and cokes each time.

Applicant conceded that he has been diagnosed as alcohol dependent on two occasions, and each time he was advised to abstain from any use of alcohol. He also has been advised at the Alcoholics Anonymous meetings that he has attended, that he should abstain from drinking alcohol. However, he testified that somebody in his circumstances would eventually have a relapse and return to binge drinking if he abstained completely, so he continues to consume alcohol (Tr at 36-37,49). He indicated that he does have some "safety implementations" including never going out by himself, always making sure that he has a method to get to his home, and not consuming more than three drinks in one night or more than one drink in an hour (Tr at 50).

1.b. On August 31, 1996, Applicant was arrested and charged with (1) Driving While Intoxicated (DWI). His license was suspended for one year. This was as a result of a single vehicle accident in which Applicant was involved, and which resulted in him being hospitalized.

1.c. In 1998, Applicant was diagnosed as Alcohol Dependent when he received counseling after a self-referral at an alcohol abuse center in Japan (Tr at 78).

1.d. In February or March 2000, Applicant received substance abuse related outpatient treatment including group counseling sessions and required attendance at Alcoholics Anonymous meetings. This occurred after Applicant became intoxicated during one night and did not appear for duty the next day. At these sessions, Applicant was advised to abstain completely from alcohol consumption, and Applicant testified that he followed the abstention instructions until 2005 (Tr at 80-82).

1.e. On February 17, 2005, Applicant was involved in an alcohol related incident. Applicant explained that he had consumed alcohol from approximately 6 p.m. until 5 a.m. the next day, during which he had consumed at least 12 alcoholic drinks. He thereafter appeared at his place of employment intoxicated (Tr at 44-45).

1.f. On March 10, 2005, Applicant was involved in an additional alcohol related incident. Applicant testified that less than one month after the incident occurred, described in 1.e., above, he was involved with a second almost identical incident (Tr at 46).

1.g. On March 10, 2005, While still in the Navy, Applicant was diagnosed as Alcohol Dependent by a medical doctor (Exhibit 4).

1.h. On May 2, 2005, to May 30, 2005, Applicant received inpatient treatment at a Naval Medical Center substance abuse rehabilitation program where he was also diagnosed as Alcohol Dependent. The recommendations he received there included receiving weekly counseling, attending meetings of Alcoholics Anonymous, and abstaining completely from alcohol consumption.

1.i. On November 20, 2008, Applicant underwent an alcoholic evaluation by a substance abuse counselor for a condition diagnosed as Alcohol Dependence in full remission. On Exhibit 2, interrogatories propounded to Applicant, there is a statement from a certified substance abuse counselor which states that Applicant "has been abstinent since April 2005 without any problems." During his testimony, Applicant claimed that this counselor had asked him if he had any problems and Applicant replied "no, I have not had any problems." Applicant claimed that the counselor assumed Applicant meant that he was not consuming any alcohol, although Applicant contended that he did not actually tell him that he was not consuming alcohol, but he did not correct the counselor's misunderstanding (Tr at 54).

I do not find it credible that Applicant was not specifically asked by the substance abuse counselor if he was still consuming alcohol, but even if Applicant's explanation is true, Applicant knew he was leaving the counselor with an incorrect understanding of his alcohol consumption history, and he knowingly did not correct it.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished untruthful information to the Government and exhibited questionable judgement.

2.a. In or about February 2004, while in the Navy, Applicant was charged with Unauthorized Absence and Failure to Obey an Order/Regulation. He was reduced in rank to an E5. Applicant testified that this event occurred because he left his duty station to help a friend without authorization (Tr at 51).

2.b. Applicant furnished interrogatory responses to the Government on August 1, 2008 (Exhibit 3), in which he indicated that he last consumed alcohol in April 2005. In fact, as reviewed above, Applicant began consuming alcohol again in 2006, and has continued to consume alcohol continuously, at times on a one time a month basis, from 2006 until the present. There is no reasonable explanation for Applicant's failure to identify that he is still consuming alcohol.

2.c. Applicant completed a signed, sworn Security Clearance Application (SCA) on March 20, 2007 (Exhibit 1). He answered a series of questions under Section 23, regarding his police record. Question d asks "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered "No." The Government alleges that Applicant's deliberately failed to list his August 31, 2006 DWI arrest, as set forth in 1.b., above. In his testimony, Applicant claimed that he did not realize that he had been arrested since he was simply given a ticket at the hospital, and then Applicant went to traffic court, where he had his license suspended. I find that Applicant knew or should have known that he was charged with an alcohol related offense, since he had to appear in court for his alcohol related accident, and this resulted in his driver's license being revoked for one year.

Mitigation

In an attempt to offer mitigating evidence, Applicant submitted a number of documents including his DD Form 214, which confirmed his long and successful career in the Navy and his Honorable Discharge separation (Exhibit A), nine Certificates of Appreciation and Merit (Exhibit B), eight extremely laudatory letters of recommendation (Exhibit C), and Applicant's 2008 Annual Appraisal which was consistently positive (Exhibit D).

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 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 Government has established that Applicant's alcohol consumption has resulted in a series of alcohol related problems, including: one DWI conviction occurring in 1996, appearing at his employment site on at least two occasions while intoxicated in 2005, receiving alcohol related treatment in 2000 and 2005, being diagnosed as alcohol dependant by at least two different experts, continuing to consume alcohol until the present despite being advised by different experts that he should abstain completely,

and finally, supplying untruthful information about his alcohol consumption to a substance abuse counselor and to the Government.

Disqualifying Conditions (DC) 22. (a), (b), (c), and (e) apply to this case, because Applicant was involved in alcohol-related incidents away from work and at work, binge alcohol consumption to the point of impaired judgement, and diagnosis by a duly qualified medical professional of alcohol dependence.

As stated above, Applicant admitted to currently drinking, despite all the advice to the contrary. I do not find that any Mitigating Condition (MC) applies. Paragraph 1 is found against Applicant.

Guideline E - Personal Conduct

With respect to Guideline E, the Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In this case, I conclude that Applicant knowingly and wilfully furnished untruthful information to the Government regarding his alcohol usage in interrogatory responses to the Government on August 1, 2008 (Exhibit 3), and in a sworn SCA on March 20, 2007 (Exhibit 1). He also was untruthful to a substance abuse counselor that was evaluating him for the Government.

In reviewing the DC under Guideline E, I conclude that DC 16. (a) and (b) apply. I do not find that any MC applies to this case. Applicant has not mitigated this allegation. I resolve Guideline E against Applicant.

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 considered the potentially disqualifying and mitigating conditions under Guidelines G and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, as to why the Disqualifying Conditions apply and the Mitigating Conditions do not, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the 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:	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
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge