



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04507
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Pro Se

February 26, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted a Security Clearance Application (SF 86), on May 2, 2007. On July 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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 acknowledged receipt of the SOR on July 28, 2008 and answered it on the same day. He requested a hearing before an Administrative Judge. I received the case assignment on December 5, 2008. DOHA issued a notice of hearing on January 13, 2009, and I convened the hearing as scheduled on February 4, 2009. The government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf. He submitted Applicant's Exhibit (AE) A at the

hearing, which was admitted without objection. I left the record open for Applicant to submit additional documentation. He timely submitted a packet which was marked AE B, and admitted into the record without exception. DOHA received the transcript of the hearing (Tr.) on February 12, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated July 28, 2008, Applicant admitted the factual allegations in ¶¶ 1.a- 1.b of the SOR, with explanations. He denied the allegation in ¶ 1.c. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 37-years-old. He graduated from high school in 1991. He has two Associate Degrees and he is attending college at the present time. He is married with two children. Applicant served on active duty in the United States Army (USA) from 1996 until 1998 (GE 1). He has been with his current employer for almost three years (Tr. 16). He has held a security clearance since 1996.

In July 2003, Applicant was arrested and charged with Driving Under the Influence (DUI) and DUI with a BAC of .08 or more. He had attended a practice re-enactment. He and his friends went to a club after the practice. He consumed approximately four beers (Tr. 28). He was found guilty and sentenced to one day in jail for each charge, given a fine of \$475, and 12 months unsupervised probation for each charge. He was required to complete a 16 hour DUI Level II (lowest level) treatment course. He lost his driving privilege for 30 days with an additional 60 days of restricted driving.

At the time, Applicant was single. He would drink on the weekends (two to four beers) at a party or other social occasion. He sometimes went to a bar or clubs. His job required him to get up very early and thus he did not drink during the week (Tr. 27). Applicant has not had any other alcohol incidents since the 2003 DUI.

Applicant completed his 16 hour alcohol counseling program in October 2003. He was in a group counseling setting of approximately 12 people (AE A). He also attended Alcoholics Anonymous (AA) for a period of time. He denies that he was given a poor prognosis. He also denies that he reported drinking 24 beers in one sitting. He did not even see an evaluation report that was presented to the Court after the counseling program. He never received a diagnosis from the counselor. Applicant received no discharge papers. The only paper he received was the Certificate of Completion. Applicant was credible in his testimony that he was not told to abstain from alcohol during his attendance in the Level II program.

Applicant completed his May 2008 interrogatories. He reported that he currently drinks alcohol (wine and beer). He drinks beer on the weekends and he will drink a glass or two of wine two days during the week. He reports that he was intoxicated four

or five times within the last year (GE 2). He never drinks alcohol prior to work or at work. He has never had any incidents with drinking alcohol at work.

Applicant reports he has no craving for alcohol. He made a personal decision to stop drinking before he received the revocation notice. He and his wife stay home with their young child. His wife drinks on occasion.

When Applicant decided to stop drinking (July 2008), he went to a counselor. He also checked in with his AA sponsor. He is now attending sessions and meetings for support (Tr. 44). He and his sponsor discuss many aspect of life not just alcohol-related issues. He finds that he gets good advice on life in general (Tr. 44).

At the hearing, Applicant emphasized that his circumstances have changed since 2003. He is now married and has children. He is serious about his career. He purchased a house and wants to provide for his family. He acknowledges that he made a mistake and it was poor judgment on his part.

Applicant's supervisor, team leader and senior analyst all praise him for his outstanding organization and his ability to successfully multi-task under pressure. He is highly respected by his co-workers. He is being recommended for a higher position of responsibility (AE A).

Applicant's senior systems analyst describes him as "the fabric that holds his work team together." He trains new employees and demonstrates loyalty to the group. He is punctual and ensures that tasks are completed on time. He poses no threat or risk in his work. He is highly recommended (AE A).

Applicant continues to complete specialized training courses to achieve certifications in the area of information technology. He maintains a high level of technical knowledge. He displays a good work ethic. His attitude is positive. He has shown the highest level of integrity, intelligence, dedication and strength of character in carrying out his duties at work (AE A).

Applicant's friends and neighbors describe him as a stable family man and a good father. He is a thoughtful person. He takes pride in his children and is active in their lives. He is well liked in the neighborhood.

Applicant has an excellent work history. His appraisals indicate that he "far exceeds" or "exceeds most" in all skill areas. He works with minimal supervision. Applicant's assignments demonstrate his quality, effectiveness, and thoroughness. He is a mature, quiet individual who maintains the highest professional/ethical standards. He supports his team and fosters an environment of trust and respect (AE B).

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©, 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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying, “(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.”

In this case, Applicant has one arrest for a DUI in July 2003. He continued to drink after 2003 and at some times to intoxication. Thus, AG ¶¶ 22 (a) and 22(c) apply.

AG ¶ 23 provides conditions that could mitigate security concerns:

(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 had one DUI in 2003. This is his only alcohol-related incident. Applicant completed the 16 hour alcohol education program. He was not diagnosed as an alcohol dependent or as an abuser. He never received an evaluation and was credible in that he was not told to abstain from alcohol. Nevertheless, he attends AA and has a sponsor. He stopped drinking in or about July 2008. He is now married with children and his lifestyle has changed. Applicant has an exemplary work record. He is lauded for his fine work. Applicant does not want alcohol to ruin his life. He values his work and his family. He does not frequent bars. He acknowledged that alcohol created a problem in his life and he does not want that to occur again. His drinking, before he stopped, almost a year ago, was moderate. Applicant has mitigated the alcohol consumption concerns under AG ¶¶ 23(a), (b), and (c).

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 in light of all the facts and circumstances surrounding this case. Applicant served in the USA and held a secret clearance. He has no incidents or issues with protecting information. Applicant had one DUI incident five years ago. He completed his court ordered probation and the 16 hour counseling program. He continued to drink in moderation until July 2008. He is now married and providing for his family. He attends AA and receives support from his AA sponsor. He has an exemplary work record from his current employer and is highly recommended by his supervisor and team leader.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility, judgment, and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under 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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge