



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-04610
)
) SSN:)
)
)
) Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro se*

February 12, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on December 7, 2005. On August 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under alcohol consumption (Guideline G). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer was received by DOHA on September 23, 2008. DOHA issued a notice of hearing on November 5, 2008, and the hearing was held on November 19, 2008. At the hearing, two government exhibits (GE 1 and 2) were admitted in evidence without objection to support the Government's case. Applicant testified and submitted seven exhibits (AE A through AE G). DOHA received a copy of the transcript (Tr.) of the proceedings on December 2, 2006. Based upon a review of

the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The SOR alleges five alcohol-related incidents, which were admitted by Applicant. He denied ¶ 1.f., sketching a general description of his drinking at times to excess from 1996 to 2007 because he did not drink to excess from 1996 to 2006. He agrees he drank to excess in 2006 to February 2007 (Tr. 39). After a thorough review of the pleadings and the record, I make the following findings of fact.

Applicant has been employed as a test engineer with a defense contractor since May 2007. Applicant is 31 years old, engaged with no children. He seeks a security clearance.

After his graduation from high school in May 1996, Applicant served in the active and inactive military until July 2002. Also, he began drinking in 1996 while in the military. His consumption occurred socially at bars on the weekends. During his service, he never drank on duty or before duty. Further, he never drank during the weekdays. His drinking increased in 2000 when he started college while he was still in the military. He was 25 years of age when he received an honorable discharge in July 2002.

Applicant's drinking during college (2000 to May 2004) was about four to five beers on weekends, or with friends at football games. After college, he believes he drove a car only three times after consuming alcohol. He never drank alcohol while home alone. His alcohol use made Applicant feel more social. He does not believe his alcohol consumption became a physical addiction as set forth in GE 2, but he felt more at ease with alcohol consumption. He stated:

I would become more comfortable. That would develop a linear relationship in my mind. If I had another drink it would be more comfortable, of course. So in that respect, yes. But not a physical addiction but a psychological misunderstanding. And that was the most crucial thing we went through in treatment, was becoming aware of that and recognizing it. I certainly never craved it (Tr. 46-47).

On December 28, 2002 (¶ 1.a.), Applicant was arrested and charged with disorderly conduct. Before the arrest, Applicant and a friend from his military unit decided they wanted to play golf on a prestigious course (Tr. 23). Before they were able to scale the fence surrounding the course, they were arrested. The court dropped the charges after Applicant successfully met the court condition not to violate the law for three months.

In the fall of 2002, Applicant moved from his grandparent's house to a house nearer to the campus of the college he was attending. On November 8, 2003, Applicant recalled drinking too much at a downtown celebration by college students after a college football game. He decided to walk home before the celebration ended, and was charged with public intoxication. Applicant pled guilty to public intoxication and was fined \$200.00.

Thirteen days before Applicant's 28th birthday, he was drinking (Tr. 26) in a car and was charged with the open container infraction (¶ 1.c.) on May 7, 2005. He pled guilty and was fined \$147.00.

On October 21, 2006, Applicant had consumed about six or seven beers at an office function. At about 1 A.M. in the morning, he was stopped for speeding while driving home. During the course of the stop, an operating while under the influence of alcohol (OWI, ¶ 1.d.) charge was imposed by the arresting officers when Applicant failed a breathalyzer test to determine the level of alcohol in Applicant's blood. He pled guilty to the OWI charge. The record is silent on the eventual status of the speeding charge. He received 10 hours of community service and required to attend a 12-hour alcohol education course. His court fines totaled about \$1,300.00, and he received six months of unsupervised probation.

While on probation and before he completed the education course for ¶ 1.d, Applicant committed public alcohol consumption/intoxication on February 10, 2007 (¶ 1.e.). Before he was arrested, he was drinking at the same bar as in October 2006. See, ¶ 1.d. He arrived at the bar about 6 P.M. or 7 P.M., and when he left the bar to walk home, he believes he was intoxicated after drinking six or seven beers and five shots of liquor (GE 2). Believing his judgment was affected, Applicant decided to walk home. On his way home, he was charged with public intoxication. He paid a court fine of \$135.80.

Regarding Applicant's probation for ¶ 1.e., the judge conducted a probation hearing, and agreed to continue his unsupervised probation on condition he complete a six-week outpatient treatment program. The meetings occurred once a week, each session lasting a half day. Applicant received his certificate of completion in May 2007.

Applicant has been entirely forthright about his alcohol-related incidents to family, friends, and his employers (GE 2). He indicates his last alcoholic drink was in February 2007. His decision to abstain was partially due to the possibility of losing his fiancé if he did not stop his alcohol abuse. See *also*, AE B.

Character Evidence

AE A contains Applicant's academic transcript from a technical college. The transcript reflects that Applicant received excellent grades in the fall of 2000. The second transcript in AE A contains Applicant's good grades from the school he graduated from in May 2004, achieving a graduating grade point average of 3.27 out of a 4-point grading system.

The treatment discharge profile (AE B) dated April 23, 2007, showed that the treatment counselor assessed the level of Applicant's risk for an alcohol relapse to be at a low level, and noted the lack of a strong support system in the local area would present continuing challenges to his recovery. The bases for her conclusion appear to be limited to her clinical observations of and discussions with Applicant during the group counseling course of treatment. Whether she employed other tools to underscore or support her assessment is not known.

AE C are performance reviews for 2005 and 2006. The review for 2005 includes a notation from Applicant's supervisor indicating that Applicant should be promoted because of his performance. The 2006 review reflects that Applicant met expectations of his job requirements.

AE D indicates Applicant received an award while in the military for his service as a radio repairer from July 1997 to June 2000.

Applicant's coworker/roommate from 2004 until he moved back to the local area in May 2007 indicated in one of the character statements in (AE E) that Applicant was always on time with his portion of the rent, and to his roommate's knowledge, never missed a work-related deadline.

Applicant's friend, who was his roommate in college, and has remained his friend for the past eight years, was aware Applicant drank on occasion. However, his friend remembered Applicant more for spending many weekend evenings studying rather than migrating downtown, and presumably consuming alcohol.

Applicant's fiancé is a Ph.D. candidate in the field of plant pathology. As she explains in her statement (AE E), she met Applicant about six years ago and is now engaged to marry him. Because her aunt and uncle experienced alcohol problems, she made it clear in early 2007 that Applicant would have to refrain from his alcohol abuse or risk losing her. She believes Applicant took the alcohol counseling seriously as demonstrated by lifestyle changes he made. In May 2007, he returned to the local area where his parents and his fiancé live. In January 2008, his fiancé purchased a house with Applicant in the area where the family lives.¹ As confirmed by the manager who testified at the hearing, the two frequently work in the garden or make home improvements together (Tr. 58). They participate in area activities where alcohol is not a necessary component.

AE F is a position statement (49 pages in length) by Applicant addressing various events and people in his life, and how those events and people relate to the SOR allegations. In addition, his position statement includes his explanation of how the treatment in March 2007 was beneficial to him, and how his return to the local area enhances his independent network of support.

¹ Applicant indicated in AE F that the house was purchased in March 2008.

Applicant's manager at his current employer, who is also the security manager for the company, testified that he was promoted to that position when Applicant began his employment in May 2007. Though the manager did not take part in Applicant's hiring, he did take part in Applicant's most recent performance rating. Applicant did not bring his evaluation to the hearing, but the manager recalled that Applicant received the highest performance appraisal and highest pay raise for employees in his laboratory (Tr. 55). The manager views Applicant as a self-starting employee who is reliable. Finally, the manager testified that based his observations of Applicant refusing to consume alcohol in social situations, Applicant's honesty with coworkers about not consuming alcohol, and the support Applicant is receiving from his fiancé to facilitate abstinence or control, e.g., gardening and other household improvement activities, there is nothing in Applicant's behavior to indicate he is addicted to alcohol (Tr. 57-58).

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock

responsibility between an applicant and the federal government. 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.

Analysis

21. *The Concern.* 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.

Five alcohol-related incidents between December 2002 and February 2007 raise unequivocal security concerns under Alcohol Consumption (AC) disqualifying condition (DC) 22.a. (*alcohol-related incidents away from work regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*). The two alcohol-related incidents in December 2002 and November 2003 would ordinarily be extenuated if Applicant had not continued alcohol-related behavior after college, culminating in his OWI conviction in October 2006, and his potential probation violation in February 2007 of public intoxication. However, drinking to binge levels preceding the OWI and public intoxication offenses demonstrates continuing poor judgment that can only be mitigated by constructive behavioral changes that include a network of support that enhances abstinence or control over alcohol.

Applicant testified repeatedly that he never drank during the week, and consumed only four or five beers on the weekend. Applicant's drinking pattern should be viewed as binge-type drinking rather than habitual because of the concentrated scope of his drinking. Before the OWI in October 2006, he engaged in binge drinking. In February 2007, while on probation for the October 2006 OWI, he consumed the same number of beers, but also several shots of whiskey before his public intoxication arrest. Applicant's drinking in 2006 and 2007 falls within the scope of AC DC 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*).

There are three mitigating conditions (MC) under the alcohol guideline that may potentially apply in whole, in part, or not at all to Applicant's case in mitigation. With Applicant's last consumption of alcohol occurring about 17 months ago, AC MC 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*) has only limited application to the circumstances of this case. Applicant's good judgment that emanates from his overall job performance and lifestyle changes are insufficient to overcome the passage of only 17 months since his last alcohol use.

Notwithstanding the recency of Applicant's last use of alcohol, Applicant has convinced me he comprehends his alcohol issues and intends to maintain his pattern of abstinence or responsible use. Applicant is accorded substantial consideration under AC MC 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 or responsible use*). Applicant, who has been dating his fiancé for six years, decided to heed her stern warning that she was going to leave him unless he stopped his alcohol abuse. In May 2007, he returned to the local area to work where his parents and his girlfriend live. In January 2008, he purchased a house with his fiancé, and plans to marry her in May 2009. Applicant's manager, who testified that Applicant received the highest pay raise and promotion of any employee in the unit, has observed no indication of alcohol use or abuse by Applicant since he began his employment in May 2007. In sum, while the mitigating evidence falls short under AC MC 23.a. due to the passage of only 17 months, Applicant's recognition of his alcohol issues and acknowledged action to reverse the sizeable risk for alcohol abuse, enables Applicant to overcome the negative evidence under the alcohol guideline.

Whole Person Concept (WPC)

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 was 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating factors in light of all the facts and circumstances surrounding this case. Applicant's five alcohol-related offenses between December 2002 and February 2007 creates unavoidable concern about Applicant because he continued to consume alcohol in binge amounts that resulted in alcohol-related incidents. When Applicant was stopped in May 2005, there was an open container of alcohol in the car. Before his arrests in 2006 and 2007, Applicant had been drinking at the same bar with friends for more than a few hours. Fortunately, Applicant exercised good judgment in February 2007 by walking instead of trying to drive home as he had in October 2006.

Having carefully weighed and balanced Applicant's successful treatment with the subsequent events in his life beginning in May 2007, I conclude the treatment had a profound effect on his lifestyle. The first thing he learned was that he needed a support mechanism unavailable at his duty location in the Midwestern part of the country. He

also received a clear-cut message from his fiancé to make behavioral changes in his lifestyle to save their future together. He returned to the area where his family and fiancé live, and where he grew up. With the guidance and support his family, his fiancé, and his manager, Applicant has made positive changes in his lifestyle that appear in AE F, and have been mentioned. Applicant's current network of support that now extends to all parts of his lifestyle now that he and his wife are living together, convinces me that the chances of a recurrence of alcohol abuse in Applicant's future are wanting. Applicant has met his ultimate burden of persuasion under the AC guideline.

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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge