



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04732
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

December 19, 2008

Decision

HOWE, Philip S., Administrative Judge:

On March 27, 2007, Applicant submitted his Security Clearance Application (SF 86). On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct). 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 June 24, 2008. He answered the SOR in writing on June 30, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 10, 2008, and I received the case assignment on August 4, 2008. DOHA issued a Notice of Hearing on October 8, 2008, and I convened the hearing as scheduled on October 29, 2008. The

Government offered Exhibits 1 and 2, which were received without objection. Applicant testified. He had no exhibits to offer into the record. DOHA received the transcript of the hearing (Tr.) on November 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by deleting in Paragraph 2.a “1.d,” and adding in its place “1.e,” to allege alcohol was a contributing factor in the five incidents listed in Paragraph 1. Applicant had no objection to the motion. I granted the motion. (Tr. 94, 95)

Findings of Fact

In his Answer to the SOR, dated June 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.d of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.c and 1.e of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 25 years old, married with two children, and works for a defense contractor. He has a high school degree, and wants to take college business courses. Applicant has been promoted since he started working at the company. With a security clearance, Applicant’s promotion and other work opportunities increase at his company. He does not have a security clearance now. He started work with his employer in January 2003. He married the mother of his two children in March 2008. (Tr. 18, 26-38; Exhibit 1)

Applicant had his first drink of alcohol at the age of 15. It made him sick. He stopped drinking until the age of 17. He partied with high school friends, and became intoxicated on weekends. He does not associate with those high school friends any more, instead spending time with his wife. He no longer drinks to the point of intoxication, but only to get a “buzz.” His drinking is occasional, usually in a social setting. His last intoxication was at his wedding in March 2008. Applicant also admitted he has a temper. When he drinks, his temper rises faster than normal, and he gets very upset. Additionally, Applicant becomes more talkative when he drinks. All of the incidents listed in Paragraph 1 of the SOR involved alcohol consumption. Applicant has not attended any alcohol awareness classes since 2002 when he attended the class as part of his court sentence in that incident. The class was two or three times per week for two weeks. He has not attended any Alcoholics Anonymous sessions. (Tr. 25, 41-44, 51, 68-76, 82)

Applicant was arrested May 11, 2002, while at a party with friends. He was ready to depart, and went to his friend’s truck to sit and wait for him to leave. He had

consumed eight or nine beers in a four or five hour period. Applicant fell asleep in the passenger seat. Meanwhile, a fight broke out and the police were called. The police found Applicant asleep, opened the truck door, and he fell out onto the ground. He sprang up in an aggressive manner. His attitude got him thrown to the ground by the police, and forcibly restrained while transported to the local jail. He was bruised in the altercation with police, and had medical tests several days later when he felt ill. Applicant was charged with driving while intoxicated (DUI), obstructing justice and destroying evidence, aggravated assault on a police officer, and illegal consumption of alcohol by a minor. He was found guilty of reckless driving, and sentenced to one year court supervision, attendance at a DUI school for alcohol awareness, 15 hours of public service, and fined \$1,917. He paid the fine and served the time. Applicant lessened his alcohol consumption for a while after taking the DUI class. (Tr. 19-21, 44-51; Exhibit 2)

Applicant and his girlfriend, now his wife, were involved in an incident on August 16, 2003. Applicant had three or four beers at a party they attended that night. His girlfriend and one of her friends got into an altercation with other women at the party. His girlfriend and her friend got eggs and threw them at the car belonging to the girls with whom they had a dispute. The charge was Knowingly Damaging Property valued at less than \$300. He accepted the blame, even though his girlfriend committed the wrongful acts. He paid \$230 restitution. (Tr. 22, 23, 52, 53; Exhibits 1 and 2)

Applicant was arrested in another state for being drunk and disorderly on July 20, 2004. Applicant claims he and a friend had been in a bar talking and drinking when police stopped them as they walked back to their hotel. The police were investigating reports of destruction of property. Applicant had a bad attitude toward police since the May 11, 2002, arrest, and he had a quick temper. The situation deteriorated and the police took Applicant into the station for questioning, handcuffing and booking him, and charged him with being drunk and disorderly. He was fined \$855 and costs, of which \$350 was suspended. Applicant drank several beers and shots of alcohol prior to the arrest. He admits he was intoxicated that night. (Tr. 53-62; Exhibits 1 and 2)

On March 13, 2005, Applicant was arrested in a town near his hometown on charges of failure to reduce speed, leaving the scene of an accident, and improper turn signal usage. He was found guilty of failure to reduce speed, and sentenced to 90 days of supervision and fined \$344. This incident was a hit and run by Applicant. He characterized the damage to the rear end of another car as minimal and under \$1,000. Applicant made a turn, hit a wet spot on the road, spun out, and nicked the bumper of another car. Applicant left the scene of the accident. Alcohol was not involved in this incident. (Tr. 70-72, 80; Exhibits 1 and 2)

On July 29, 2005, the police arrested Applicant in the same town on disorderly conduct charges. Applicant does not recall this incident, but provided evidence of the offense in the interrogatories he answered on May 20, 2008. The fine paid was \$119, and supervision was ordered. Alcohol was involved in this incident. (Tr. 62-70; Exhibits 1 and 2)

Applicant's next incident with law enforcement officials occurred on July 6, 2006, when he punched a hole in his garage wall. He was upset after an incident in a bar earlier in the evening. He consumed four or five beers that evening, he estimates. His girlfriend, now his wife, called police when she heard the noise, and did not realize it was made by Applicant. His girlfriend did not appear in court, and the charge was dropped. Applicant has not had any involvement with the police since 2006. Applicant realizes he was not being wise in his conduct between 2002 and 2006, and his new family has made him think about what he does so he can be a role model for his daughters. Applicant has never attended any alcohol awareness programs after the 2002 sessions. He has never attended Alcoholics Anonymous (AA). He does not consider his alcohol use to be a problem. (Tr. 23, 63, 72, 73, 82, 84, 86; Exhibits 1, 2)

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, and 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 J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying:

(a) a single serious crime or multiple lesser offenses; and,

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has five involvements with police authorities between 2002 and 2006. All involved alcohol use by Applicant, leading to his temper flaring, disorderly conduct charges and other charges, fines and various dispositions of these charges. He has a sixth charge involving a hit and run incident in which his careless driving led to damage on another person's car. Both disqualifications apply.

AG ¶ 32 provides five conditions that could mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and,

(e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

Of these five potentially mitigating conditions, only AG ¶ 32 (d) might apply. Applicant has a good work record, according to him. Two years have passed in which he has not been arrested. He married his girlfriend, who is the mother of his two daughters, forcing him to reassess his past behavior as he tries to be a role model for his children. He wants to enroll in college night courses to obtain a business degree, but has not done so yet. When compared to the frequency of his criminal conduct in the past, I conclude these potentially mitigating conditions have limited application.

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 seven conditions that could raise a security concern and may be disqualifying. Of these seven conditions, two have applicability to Applicant:

(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.

AG ¶ 22 (a) and (c) are relevant. Applicant's five arrests away from work between 2002 and 2006 involve disturbing the peace, property damage, and arrests by police authorities. Alcohol was an important factor in each incident. If Applicant did not

consume alcohol at those times, the incidents might not have occurred. His habitual consumption of alcohol impaired his judgment on these occasions.

AG ¶ 23 provides four 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.

Of these mitigating conditions, only AG ¶ 23 (b) might be applicable in a limited manner. Applicant continues to consume alcohol, though on fewer occasions and only to get a “buzz.” Applicant admitted alcohol played a role in each of the incidents and is trying to establish a pattern of responsible use. However, he has not provided evidence of objective and professional actions to overcome whatever alcohol problem he has. Nor has he demonstrated enough time passage to show he is responsibly consuming alcohol. His admissions that he still imbibes alcohol to the ill-defined “buzz” level are not persuasive that his drinking is under control.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. Of these seven conditions, two have applicability to Applicant:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and,

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant has criminal conduct problems from 2002 to the 2006, and alcohol consumption problems continuing to the present. Not only did the alcohol cause five involvements with police authorities, but it aggravates his temper to give it a hair-trigger start element, and makes him more loquacious. Persons who have access to classified information must be reliable, trustworthy, and able to protect classified information. Those persons must also have self-discipline and integrity if they are to be trusted with classified information. Applicant has not demonstrated the maturity and responsibility needed for that access. His alcohol consumption led to demonstrable problems with law enforcement officials, but of equal concern is his temper and loquacity while imbibing alcohol. These characteristics of Applicant after imbibing alcohol could adversely affect his personal, professional and community standing.

AG ¶ 17 provides seven conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Considering all these mitigating conditions, there is not one that applies to Applicant. The offenses were not minor nor has sufficient time passed since they occurred that such conduct is unlikely to recur, as required under AG ¶17 (c). There are no counseling records evident, nor positive steps to alleviate the stressors, circumstances, or factors which caused his past behavior, nor is there sufficient evidence to show such conduct will not recur to warrant the application of AG ¶ 17 (d). His marriage and reduced alcohol consumption, though difficult to quantify in comparison to his prior use between 2002 and 2006, are not positive steps objectively identified to show he reduced his vulnerability to exploitation, manipulation, or duress, as required under AG ¶17 (e).

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 was 20 years old when the first arrest occurred, and 24 when the last one occurred. He committed six serious offenses in four years, all involving alcohol lubricating his temper and tongue. The only permanent behavioral changes are the birth of his second child and his marriage this year to the mother of his two children. Despite those facts, Applicant continues to drink alcohol, although on fewer occasions. Without documentation of professional rehabilitation, addressing the underlying reasons for his consumption of alcohol and the subsequent consequences, there is a substantial likelihood of recurrence of the same alcohol-induced situations. His temper and loquacious nature are detriments to Applicant's reliability, trustworthiness, and ability to protect classified information.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his criminal conduct, alcohol consumption, and personal conduct.

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 J:	AGAINST APPLICANT
Subparagraph 1.a to 1.e:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:

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.

PHILIP S. HOWE
Administrative Judge