



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



In the matter of:)	
)	
)	ISCR Case No. 08-05073
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Pro Se

February 11, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 13, 2007. On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, 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.

On October 30, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 6, 2008. The case was assigned to me on November 17, 2008. On December 3, 2008, a Notice of Hearing was issued scheduling the hearing for December 19, 2008. The hearing was held, as scheduled. During the hearing, it was discovered Applicant did not receive the Notice of Hearing 15 days prior to the Notice of Hearing as required by the Directive. Applicant waived the 15-day notice requirement.

(Tr at 12) The Government offered six exhibits which were admitted as Government Exhibits (Gov) 1-6 without objection. The Applicant offered three exhibits which were admitted as Applicant Exhibits (AE) A - C. Applicant testified and called one witness. The transcript was received on December 29, 2008. The record was held open until January 15, 2009, to allow Applicant to submit additional documents. He timely submitted a seven-page document which was admitted as AE D. The record closed on January 15, 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, Applicant admits to all of the allegations.

Applicant is a 50-year-old employee with a Department of Defense contractor seeking a security clearance. He has worked for his current employer since June 2006. He has held a security clearance for over 25 years with no security violations. From August 22, 1980, to May 31, 1988, he served on active duty in the United States Army. He separated at the grade of Captain and received an honorable discharge. He worked for numerous defense contractors since separating from active duty. The highest level of education he has achieved is a Masters of Science in Systems Management. He is single and has no children. (Tr at 4-7, 32-33, 68; Gov 1; AE B)

Applicant started drinking alcohol when he was a college student in 1977. He drank on average two to three times a month. He drank approximately two to three beers on each occasion. After his graduation from college, Applicant entered the military. His alcohol use was relatively light when he was on active duty. He drank on average two to three beers in one sitting, or two to three mixed drinks in one sitting three to five times a year. (Gov 2 at 1)

Applicant increased his alcohol use after his father died in 1992. He consumed three drinks in one sitting, three to five times a month. Applicant began to drink heavily after his mother died in March 1999. He started drinking a six pack of beer a week. His alcohol use elevated to 24 beers a week. He drank alone on weekends and in the evenings after work. In March 2000, Applicant progressed to 1.5 liters of rum and 24 beers a week. He drank alcohol seven days and week and drank to intoxication four days a week. (Tr at 46 - 47; Gov 2 at 1)

In November 2001, Applicant attempted to quit drinking alcohol. He did not consume alcohol for three days. He started to hallucinate and heard voices. On November 29, 2001, Applicant went to a local hospital emergency room. He was treated for acute alcohol withdrawal. He told the emergency room personnel that he had been drinking a case of beer a night for the past two years. He suffered hallucinations and delirium tremens when he was going through alcohol withdrawal. He was prescribed a drug to help him with the withdrawal symptoms. He was also advised of various treatment options related to his alcoholism. His family physician diagnosed him with

alcohol withdrawal syndrome and alcohol dependency. (Tr at 47-48, 51-53; Gov 2 at 2; Gov 4; Gov 5)

From January 7, 2002, to April 8, 2002, Applicant attended outpatient alcohol counseling at a local clinic. His counselor, a licensed clinical social worker, diagnosed him as alcohol dependent. His discharge prognosis was good provided he followed the recommendations of his continued care therapist. (Gov 2 at 2-3; Gov 6) In addition to his outpatient counseling, Applicant attended one Alcoholics Anonymous (AA) meeting per week. He attended weekly AA meetings until July 2002. He stopped attending AA because he felt he "was back in control of my life and could handle alcohol use on my own." He never had a sponsor in AA. He admitted during the hearing that he was advised by his alcohol counselors that he should not drink alcohol at all. (Tr at 48-54; Gov 2 at 3)

In 2005, Applicant started to drink alcohol again. He described his alcohol usage as light to moderate. He drank one to three glasses of wine with dinner about once a month. In the hot weather, he would drink one to three beers on average two to four times a week. In cooler weather, he drank two beers, two to three times a week. He did not drink hard liquor and did not let his alcohol use affect his life. (Tr at 54, 57; Gov 2 at 3; Gov 3 at 12)

In answers to interrogatories, dated August 21, 2008, Applicant indicated that the last time he drank alcohol was about 8-12 months ago. He drank a 12-pack of beer. He stated he no longer drinks alcohol because he is older and concerned about his health. (Gov 3 at 3-4) He was placed on blood pressure medication. He was advised not to drink alcohol while taking this medication. Applicant's last use of alcohol was in approximately April 2008. (Tr at 55-60)

In conjunction with his security clearance background investigation, Applicant was assessed by a licensed clinical social worker (hereinafter referred to as counselor) about the status of his alcohol use on September 16, 2008. During the assessment, Applicant stated that his last use of alcohol was six months ago. Based on the information provided by Applicant, the counselor concluded that he did not meet the criteria for substance abuse treatment. The counselor's diagnosis was that Applicant was alcohol dependent with physiological dependence sustained full remission. Applicant was advised that he could benefit from active participation in an Alcoholics Anonymous support group in order to assist him in maintaining his sobriety. (Gov 3 at 8-17) He does not currently attend AA. He is trying to find a group that he feels comfortable with. (Tr at 58)

The Facility Security Officer at the company where Applicant worked when he underwent treatment for alcoholism testified during the hearing. She worked with Applicant for approximately five years. During the time Applicant worked for the company he never exercised questionable judgment. She never considered him unreliable or untrustworthy. Applicant was dedicated to his position and had a good reputation with his manager, subordinates, and peers. Applicant was never involved in

any security violations during the period she worked with him. (Tr at 25-32) In a signed letter submitted after the hearing, she stated that Applicant does present a security risk to the US government. She is aware of his problems with alcohol but believes he has conquered that problem. She has never seen him intoxicated. She recommends him for a security clearance. (AE D at 5)

A senior engineer who recently worked closely with Applicant on a project, describes him as “professional,” “proactive, mission-oriented, and knowledgeable.” (AE D at 3) Applicant’s former department manager has known Applicant for 12 years. He has worked with him for eight years. He states Applicant has always shown a high degree of integrity and responsibility. Applicant is always timely and responsible to his customer’s needs. The department manager states Applicant’s good judgment and mature outlook ensured a logical and practical approach to his endeavors and he would be an asset to any organization. (AE D at 4)

A senior logistics analyst has worked with Applicant for the past two years. They have successfully worked together on many challenging and complicated issues and projects. Applicant has a natural acumen for team building. He highly recommends Applicant because he has the personal and technical wherewithal to plan, organize, direct, control, and complete all actions required to master any project. (AE D at 6-7)

During his active duty service, Applicant was awarded the Army Commendation Medal with One Oak Leaf Cluster, the Overseas Service Ribbon and the Army Service Ribbon. (AE B) He was received numerous certificates of appreciation and commendations during his years working as a defense contractor. (AE C)

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.

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 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 disqualifying conditions that could raise security concerns.

Alcohol Consumption Disqualifying Condition (AC DC) ¶22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. When he was drinking heavily, Applicant drank approximately a case of beer each evening. He also drank approximately 1.5 liters of hard liquor (rum) each week. His alcohol use was excessive and impaired his judgment.

AC DC ¶22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence) applies. Applicant's family physician diagnosed Applicant as alcohol dependent when he sought treatment in November 2001.

AC DC ¶22(e) (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) applies. After Applicant was treated for acute alcohol withdrawal, he attended outpatient treatment at a center involved in alcohol counseling. The counselor, a license clinical social worker, diagnosed him as alcohol dependent.

AC DC ¶22(f) (relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program) applies. Applicant completed outpatient alcohol treatment on April 8, 2002. He remained sober for approximately two years but started drinking alcohol again because he thought he could handle it. Although, Applicant describes his alcohol use as light to moderate, it raises a security concern because Applicant decided to begin drinking alcohol after completion of his treatment program and after being advised to abstain from alcohol.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

Alcohol Consumption Mitigating Condition (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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies. While serious concerns are raised pertaining to Applicant's decision to start drinking alcohol again, he stopped drinking alcohol in April 2008. He fully disclosed his alcohol use during his September 2008 alcohol assessment and still received a favorable prognosis despite this disclosure. His co-workers think highly of him. He has no alcohol-related issues at work or outside of work. There are no recent issues pertaining to his reliability, trustworthiness, and good judgment.

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 (if alcohol dependent) or responsible use (if an alcohol abuser) applies. Applicant acknowledges that he is an alcoholic. He took steps to deal with his alcoholism in 2001. He was sober for several years after completing treatment. Although, he started to drink alcohol in 2005 because he thought he could handle it, he stopped drinking alcohol in April 2008 due to health issues. He is prescribed medication that cannot be mixed with alcohol. He does not intend to drink alcohol in the future.

FC MC ¶23(d) (the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with 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) partially applies. Although Applicant began to drink alcohol again several years after he completed treatment for alcohol dependence and against the advice of his counselors, he stopped drinking in April 2008. He fully disclosed that he had resumed drinking alcohol during his alcohol assessment in September 2008. Despite his disclosure, the counselor gave Applicant a diagnosis of alcohol dependence, in sustained full remission. I consider this to be a favorable prognosis. However, Applicant does not attend AA meetings. The counselor who did the assessment recommended that he continue to attend AA meetings in order to assist him with maintaining his sobriety. Even though Applicant appeared to be serious about remaining abstinent at the hearing, FC MC ¶ 23(d) is given less weight because Applicant does not attend AA meetings.

Security concerns were raised under alcohol consumption, Applicant met his burden to mitigate the concerns raised because he has not drunk alcohol in over eight months, he received a favorable prognosis in a September 2008 alcohol assessment, and there is no evidence of any alcohol-related incidents involving Applicant. Guideline G is found for 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) 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. I considered Applicant's past struggles with alcohol. I considered that he voluntarily sought treatment in November 2001. I considered that he has had no alcohol-related arrests or incidents at work. He stopped drinking alcohol in April 2008. He has been sober for over 8 months. He is on prescription medication that is not compatible with alcohol use. He does not intend to drink alcohol in the future. His September 2008 alcohol assessment was favorable. The favorable comments of Applicant's superiors and co-workers weigh heavily in his favor. While it is recommended that Applicant resume attendance at AA meetings, there is

substantial evidence to conclude that his alcohol problem is currently under control. He is aware that future alcohol use could jeopardize his ability to maintain a security clearance. While Applicant's decision to resume alcohol use after completion of outpatient treatment raised security issues under alcohol consumption, he has mitigated the concerns based on his honesty about his alcoholism, his favorable alcohol assessment in September 2008, his past eight months of sobriety, and the favorable recommendations of his current and former coworkers. Guideline G, Alcohol Consumption, is found for Applicant.

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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

ERIN C. HOGAN
Administrative Judge