



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



In the matter of:)
)
) ISCR Case No. 08-07705
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

February 17, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On December 27, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guidelines for alcohol consumption and 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.

On July 6, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On September 8, 2009, Department Counsel prepared a File of Relevant Material (FORM), containing twelve Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on September 28, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On January 8, 2010, DOHA assigned the case to me.

Findings of Fact

In his Answer, Applicant admitted all factual allegations contained in the SOR. Those admissions are incorporated in the findings below.

Applicant is 49 years old. He has four adult children from a former marriage. In June 1978, he began working as a mechanic for a defense contractor. He was granted a security clearance in December 1996. (Item 5; 10.)

Applicant has a long history of alcohol abuse and treatment. He began consuming alcohol at the age of 13, with regular use beginning at age 17. (Item 9 at 132.) In 1978, he was charged with Driving Under the Influence. On August 6, 2006, he sought inpatient treatment for alcohol abuse in order to maintain his employment. (Item 5 at 50.) He stated that he was consuming 8 to 10 drinks of whiskey or beer a day. (*Id.*) According to a physician, he was discharged with a diagnosis of Alcohol Dependent on August 11, 2006.

Six months later, on January 7, 2008, Applicant was readmitted to the inpatient treatment program and diagnosed as Alcohol Dependent, Nicotine Dependent, and Alcohol Withdrawal Syndrome by the medical director. He was consuming “three to four drinks and six to eight beers” on a daily basis. (*Id.* at 132.) His blood alcohol concentration (BAC) was 0.279 on admission. He admitted that he smoked marijuana once or twice a year, and last used it in June 2007. He also noted that he had a previous history of using cocaine, with his last use of cocaine in 2002. (*Id.*) He was discharged on January 19, 2008. In an April 2008 interview, he noted that after he successfully completed treatment and returned to work, his employer gave him a reprimand and warned him that similar conduct should not happen again. He stated that he continues to drink an occasional beer, but also stated that he did not intend to drink alcohol in the future. (Item 7 at 4.)

Applicant readmitted himself to an inpatient alcohol treatment program on June 30, 2008, claiming he relapsed four to six weeks ago. His BAC was 0.287. During his admission intake, he could not “remember consuming more than one beer and ‘3-4’ drinks.” (*Id.* at 222.) He stopped taking the medicine prescribed for him during the January 2008 admission a week after he left the program. (*Id.*) He was discharged on July 27, 2008. He received a diagnosis of Alcohol Dependence and General Anxiety Disorder by a physician. (*Id.* at 250.)

On August 29, 2008, Applicant voluntarily entered the treatment facility for the fourth time with a BAC of 0.189. He stated that he “Just started to get bad again & I didn’t want it to get as bad as it was.” (Sic). A physician diagnosed him with Alcohol Dependence, Nicotine Dependence, and Alcohol Withdrawal Syndrome. (Item 9 at 339.) He was discharged on September 1, 2008. In November 2008, he completed a set of interrogatories. He indicated that he last consumed alcohol in August 2008 and did not intend to consume it in the future. (Item 6 at 2.) He did not submit any evidence regarding further participation in outpatient assistance programs or documentation of consistent sobriety since then.

The SOR alleged that Applicant deliberately falsified his answers to three questions in the e-QIP by failing to disclose certain information: (1) Section 23: *Your Police Record* on the e-QIP: he did not disclose his 1978 alcohol offense; (2) Section 24(a): *Your Use of Illegal Drugs and Drug Activity*: he did not disclose that he used marijuana up to 2007; and (3) Section 24(b): he did not disclose that he used cocaine and marijuana while holding a security clearance. In his Answer, he admitted all falsification allegations.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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 “Any 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.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 clearance decision.” 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.”

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 an 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

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 six conditions that could raise a security concern, five of which may be disqualifying in this case:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

In 1978, Applicant received a DUI. In August 2006, he entered an inpatient treatment program for alcohol abuse because his job was in jeopardy. Subsequently, he voluntarily entered treatment in January 2008, June 2008, and August 2008. At the time of each admission, he had a high BAC and received a diagnosis of Alcohol Dependent from a physician in the treatment program. The evidence potentially raised all five of the above disqualifications.

After the government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns AG ¶ 23 provides four conditions that could mitigate security concerns raised under this guideline:

(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.

None of the above mitigating conditions apply. Applicant has a 30-year history of abusing alcohol, spanning from at least 1978 to August 2008. Given the frequency and long history of alcohol abuse, his behavior casts doubt on his current trustworthiness and good judgment. AG ¶ 23(a) does not apply. Although Applicant recognizes his alcoholism, he has not established a pattern of sustained rehabilitation and sobriety, which is necessary to apply AG ¶ 23(b). Applicant has a history of treatment and relapses, eliminating the application of AG ¶ 23(c). He did not provide any evidence to

demonstrate a sufficient pattern of abstinence or a favorable prognosis from a duly qualified professional. AG ¶ 23(d) does not apply.

Guideline E, Personal Conduct

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

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 government alleged in ¶ 2 of the SOR that Applicant's deliberate failure to disclose his 1978 DUI, drug abuse history, and use of illegal substances while holding a security clearance in his e-QIP may raise disqualifications under AG ¶ 15.

AG ¶ 16 sets out seven conditions that could raise security concerns and be disqualifying. Two of them may be applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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 or unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant admitted the three falsification allegations contained in the SOR. That admission raised a potential disqualification under AG ¶ 16(a). He also acknowledged that he used illegal drugs while holding a security clearance, which is evidence of his unwillingness to comply with rules and regulations pertaining to the safeguarding of protected information and raises a potential disqualification under AG ¶ 16(c).

AG ¶ 17 includes six conditions that could mitigate security concerns arising under this guideline:

(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.

Applicant did not provide sufficient evidence to trigger the application of any mitigating condition listed under AG ¶ 17. He did not make an attempt to disclose the information prior to being interviewed about it, as required under AG ¶ 17(a). His history of alcohol and illegal drug use is serious and not minor. It is relatively recent and long-standing. His trustworthiness and judgment are in question. Hence, AG ¶ 17(c) does not apply. Although he acknowledged the problem, he has not documented a pattern of rehabilitation sufficient to alleviate the possibility of a recurrence. AG ¶ 17(d) does not apply. There is insufficient evidence to support the application of AG ¶ 17(b) and AG ¶ 17(e). Based on the evidence, AG ¶ 17(f) and AG ¶ 17(g) are irrelevant.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a through 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge