



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-07826

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: Randy Walker, Esquire

February 22, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On April 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on May 26, 2009, and requested a hearing. The case was assigned to me on July 7, 2009, and was scheduled for hearing on September 15, 2009. A hearing was held on the scheduled date. At the hearing, the government's case consisted of three exhibits; Applicant relied on four witnesses (including himself)

and 11 exhibits. The transcript (Tr.) was received on September 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of his receipt of chips from Alcoholics Anonymous (AA) commemorating his adherence to sobriety and a follow-up letter from his substance abuse counselor. For good cause shown, Applicant was granted 14 days to supplement the record. Within the time permitted, Applicant supplemented the record with documented chips from his AA chapter and an updated letter from his substance abuse counselor. His post-hearing exhibits were admitted as exhibits L and M.

Summary of Pleadings

Under Guideline G, Applicant is alleged to have (a) received alcohol abuse counseling from an identified alcohol abuse counselor between July and August 2005; (b) received inpatient treatment for depression and alcohol dependence from an inpatient hospital between July 2 and 3, 2003; (c) been arrested in August 1991 for driving under the influence (DUI), and (d) consumed alcohol as recent as August 2008.

In his response to the SOR, Applicant denied all of the allegations covered by Guideline G. He added no explanations or affirmative defenses to his answer.

Findings of Fact

Applicant is 46-year old specialty engineer manager for a defense contractor who seeks a security clearance. Because Applicant denied every allegation in the SOR, all relevant and material findings are subject to proof requirements.

Applicant married his first and only spouse in August 1995. He separated from his spouse in 1996 and divorced her in September 1997 (see ex. 1). Applicant has no children from this marriage (see ex. 1). He has two siblings (a brother and sister).

Applicant has a bachelor of science degree in chemistry and is a chemist by vocation. He began working for his current employer in November 2005 (see ex. 2; Tr. 67).

At the age of 21, while still in college, Applicant was introduced to alcohol. He started with beer but changed to whiskey after a short time (ex. 2). By July 2003, Applicant was regularly consuming 11 ounces of whiskey a day (ex. 2). Aware of alcoholism in his family (both parents), he struggled to control his drinking. Concerned enough about how his drinking could potentially affect his job, he self-referred himself to an inpatient hospital (IH) in July 2003 (see ex. 2).

Between 1987 and 2003, he was an excessive consumer of alcohol (ex. 2). He was arrested and charged with a DUI offense in August 1991. At the scene, he was administered a field sobriety test and registered a .08 percent blood alcohol level (BAC). Typically, he initiated his drinking episodes with beer, but switched to whiskey and then to gin consumption after a short time (ex. 2). During this period, he consumed alcohol three to four times a week. Over the course of a typical week, he consumed two bottles (Tr. 81-82). He often drank to mitigate the effects of his depression problem (see ex. 2).

Concerned about his drinking (mostly by himself) and the potential effects it could have upon his job (such as missing work), Applicant self-referred himself in July 2003 to IH's inpatient unit in a severely intoxicated state (see ex. 2; Tr. 77, 80-81, 90). His July 2003 admission records described him as a 40-year old process manager of a major aerospace firm who was admitted to the hospital's inpatient unit for alcohol detoxification (ex. 2). Hospital records document that once admitted, he "quickly started showing signs of acute withdrawal" (see ex. 2). His admission records indicate he was diagnosed with (1) ethanol withdrawal, major depression, and alcohol dependency, all on the Axis scale of the Diagnostic Statistical Manual (the *DSM*) (Ivth ed. 2004). His admission intake summary, in turn, described him as profoundly depressed (ex. 2). His IH medical team started him on Zoloft to address his depression symptoms, along with other anti-depressants. He was administered Depakote to prevent acute withdrawal symptoms.

After 72 hours of treatment, Applicant displayed marked improvements in functioning and resolution of his depression symptoms (see ex. 2). He was discharged four days after his admission with an unchanged diagnosis.

After completing the inpatient program, Applicant adhered to a regiment of self-imposed abstinence for about 11 months before he returned to alcohol consumption (Tr. 73, 82-83). During this time, he attended AA meetings three to four times a week without the support of a sponsor (Tr. 72-73). Gin continued to be his drink of choice on weekdays and on weekends (Tr. 84). And by 2005, he had progressed to consuming two fifths of gin a week, and maintained this level of alcohol consumption for about seven months (Tr. 84, 108-09).

By July 2005, Applicant realized he needed help and asked his employee's assistance program for professional references (Tr. 70). He checked himself into AC's outpatient counseling program. The program consisted of twice-weekly counseling sessions and encouraged abstinence (Tr. 70). He is certain she diagnosed him as alcoholic (Tr. 71). Despite her diagnosis, Applicant continued to drink occasionally (*viz.*, one large glass of gin a week) during his four months of enrollment in her program, a practice he continued for several years after he completed her program in October 2005 (Tr.84 -86, 95). During this time, he never attended AA sessions (Tr. 95),

Applicant resumed his attending AA meetings in September 2008, and has not consumed alcohol since August 2008 (Tr. 76-77, 100). He has a sponsor and regularly attends AA meetings two to three times a week (Tr. 74). He regularly works the 12 steps of the "Big Book" and exchanges stories of his alcohol experiences with other members

of his AA chapter (Tr. 74). Applicant documents his receipt of two AA chips that commemorate his sustained abstinence since September 2008 (see ex. M; Tr. 76-77, 100).

Beginning in October 2008, Applicant initiated consultations with a different licensed substance abuse counselor (see exs. J and L; Tr. 88-90). He met with this counselor (Dr. PD) for a second time in July 2009 (ex. J). In both sessions with Applicant, Dr. PD (a licensed clinical psychologist) took some background history from Applicant (ex. J) and noted his prior bouts of depression, his family alcohol history, and his active involvement in AA. Dr. PD assigned Applicant a diagnosis of alcohol dependence in early remission and recommended he continue with his AA program (ex. J). In a follow-up session two months later, Dr. PD noted Applicant's progress since his initial session and upgraded his diagnosis to alcohol dependence, in early full remission (see ex. L.). Dr. PD's upgraded diagnosis indicates a much more positive diagnosis for Applicant. Applicant, for himself, assures he will continue to attend AA meetings two to three times a week, maintain his sobriety, and adhere to the prescribed recommendations of his AA sponsor and treatment counselors (Tr. 76).

Endorsements

Applicant is highly regarded by his colleagues and coworkers (see exs. A through F). They characterize him as loyal, responsible, and trustworthy (exs. A through F). None of his references ever saw him abuse alcohol in their presence (Tr. 27, 45, 49; 56-57, and 62). None of these colleagues expressed any awareness of his completing alcohol detoxification and counseling programs before the initiation of this hearing process (Tr. 31-32, 45, 62-64, and 84). His direct supervisor credits him with a strong work ethic (Tr. 59). Applicant documents solid outstanding performance evaluations for the past three years (see ex. K) and is generally considered a high value contributor to his engineering team.

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs,

which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Alcohol Consumption

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. See AG ¶ 21.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather,

consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The administrative judge’s decision to grant or deny a clearance is not a final decision unless the parties choose not to appeal. See Directive ¶¶ E3.1.28 to E3.3.39. DOHA’s Appeal Board may reverse the administrative judge’s “decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing ¶ E1.32.3). Appeal boards and federal courts review the administrative judge’s factual determinations to ensure they are supported by substantial evidence in the record, and regularly defer to the administrative judge’s credibility determinations and inferences from the evidence. See, e.g., *See v. Washington Metro Area Transit Auth.*, 36 F.3d 375, 382 (4th Cir. 1994). See also ISCR Case No. 09-03773 at 7-8 n. 5-7 (App. Bd. Jan. 29, 2010) (explaining appellate remedies when hearing-level judges err).

Analysis

Applicant is a highly-regarded employee of a defense contractor with a history of drinking abuses and diagnosed alcohol dependence. Applicant’s exhibited alcohol abuse raises security concerns covered by Guideline G of the Adjudicative Guidelines.

Applicant’s extended history of alcohol abuse over a 15-year period, as well as his multiple treatment referrals for detoxification (2003) and management of his alcohol dependence issues (2005), raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, three disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption (AG ¶ 21) may be applied: 22(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,” ¶ 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,” and ¶ 22(d), diagnosis by a duly-qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.”

To Applicant’s credit, he detected warning signs of his drinking abuses and sought professional treatment. He returned to light to moderate drinking, though, after being given a dependence diagnosis at in July 2003. He resumed his alcohol consumption as

well following several months of alcohol counseling between July and October 2005, and continued his occasional consumption of alcohol until August 2008 before quitting altogether.

When faced with recurrent alcohol-related arrests over a considerable period of time, and the absence of any sustained abstinence, the Appeal Board has expressed reluctance to make safe, predictive judgments about an applicant's ability to avoid abusive incidents in the future without strong probative evidence of sustained recovery, aided by positive professional reinforcements. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007). However, these cases stand in marked contrast to Applicant's situation.

The facts and circumstances in Applicant's case are quite different from the patterns in the cited ISCR cases above. Applicant has not been involved in any alcohol-related incident since 1991, and has consistently sought professional assistance when he had concerns about returning to abusive drinking. He has demonstrated considerable responsibility in dealing with his alcohol problem.

True, family history, a prior DUI incident, and multiple treatment admissions have hampered Applicant's ability to establish a long-term recovery regimen. His only DUI is quite aged, however, and he has had no alcohol-related incidents of any kind since his lone 1991 DUI offense. Even more important are the series of voluntary corrective steps he has taken to address his drinking when it became apparent to him that alcohol was posing a problem for him. Applicant has continued to seek professional help to identify and mitigate his drinking excesses, and continues to receive counseling today. He has established a strong 12-step AA program, and with the aid of the network support it provides, he has been able to sustain his self-imposed abstinence for over a year. He has an earned one-year chip from his AA chapter to commemorate his efforts. His efforts have prompted his current substance abuse counselor to upgrade his diagnosis to dependence in full remission: a important indicator of the corrective steps he has taken to control his alcohol consumption.

Certainly, Applicant's willingness to voluntarily submit professional evaluations of his treatment episodes and indicated progress over the past six years are important considerations in determining what weight to assign to Applicant's rehabilitation claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579 at 5 (App. Bd. Apr. 14, 2004). His recovery efforts to date have been significant and offer a good deal of promise for his long-range recovery from alcohol abuse and dependence. With the support of his sponsor and his AA network, he has been able to sustain his self-imposed abstinence for over a year, and has earned AA chips to commemorate his year of abstinence. He has not experienced any kind of alcohol-related incident away from work since his last DUI in August 1991, and he presents little risk now in light of the passage of time of any recurrent incident in the foreseeable future.

Despite Applicant's assurances of his sincere abstinence commitment, and a solid year-plus of sustained abstinence, his time in sobriety is still relatively short, when assessed against a backdrop of recurrent drinking abuses over a 25-year period. With a family history of alcohol dependence, a recurrent pattern of diagnosed alcohol dependence diagnoses within the past six years, and a medical condition (diagnosed depression) that could be exacerbated by any concurrent use of alcohol in during any recurrent depression episode, there is enough to warrant the application of disqualifying conditions, subject to any carefully considered mitigating conditions that takes into account his current abstinence regimen.

On balance, under these circumstances, there is ample evidence of record to accord Applicant the full benefit of several mitigating conditions: 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," 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); and MC ¶ 23(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."

Whole-person evaluations of Applicant's recovery efforts and strong endorsements from his supervisors and colleagues establish that Applicant is a responsible contractor employee who has been able to inspire trust and reliance in his work and overall contributions to his team and community. With the aid of his AA support system, and respectable period of self-imposed sobriety, Applicant has been able to persuade his treating substance abuse counselor to upgrade his principal diagnosis of Applicant from alcohol dependence, in early remission, to alcohol dependence, in sustained full remission. This represents an important milestone for Applicant and demonstrates that his current counselor is persuaded that Applicant is fully committed to his recovery. Applicant's efforts fully document his commitment to abstinence.

Taking into account both Applicant's history of alcohol abuse, his strong work record, the applicable guidelines, and a whole person assessment of his most recent alcohol abstinence efforts and upgraded diagnosis, conclusions warrant that he has the resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol. Applicant's mitigation efforts are enough at this time to warrant safe predictions that he is no longer at risk to judgment impairment associated with alcohol abuse. Favorable conclusions warrant with respect to the allegations covered by the alcohol consumption guideline of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in ¶ 2(a) of the AGs.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION):	FOR APPLICANT
Sub-paras. 1.a through 1.d:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's access to classified information. Clearance is granted.

Roger C. Wesley
Administrative Judge