



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-08155 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: Brian E. Kaveney, Esq.

January 12, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant frequently consumed alcohol to excess during the three years he served in the Air Force. He also used marijuana on a single occasion while he was in the Air Force, which resulted in disciplinary action being taken against him and his receipt of a General Discharge. He has not used marijuana since 2003, and he now consumes alcohol responsibly and in moderation. Applicant has mitigated the security concern that was created by his alcohol consumption and use of marijuana. Clearance is granted.

On June 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guideline G (alcohol consumption) and Guideline H (drug involvement). Applicant's response to the SOR was received by DOHA on July 24, 2009. Applicant admitted all allegations and requested a hearing.

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on September 9, 2009. A notice of hearing was issued on October 8, 2009, scheduling the hearing for October 27, 2009. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3 and admitted into the record without objection. Applicant testified, called three witnesses to testify on his behalf, and he submitted a binder containing nine tabs that was marked as Applicant Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on November 12, 2009.

Findings of Fact

After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 28-year-old single man who has been employed by a defense contractor since March 2005. He was initially employed by the defense contractor as a field engineer. However, his stellar work performance led to his promotion to senior systems integration engineer, a position normally requiring the occupant to have a bachelor's degree, which Applicant does not possess.

Applicant graduated from high school in May 1999. He worked as a clerk in a retail store from May 1999, until he enlisted in the U.S. Air Force in January 2001. Applicant served on active duty in the Air Force until he was discharged with a General Discharge Under Honorable Conditions in August 2004. The basis for his discharge was misconduct due to drug abuse. Applicant held a couple of short term jobs following his discharge until he obtained his current employment.

Applicant has deployed to combat areas with his current employer on three occasions: May 2005 to May 2006; May 2007 to August 2007; and May 2008 to August 2008. His work responsibilities while deployed have frequently required him to travel by helicopter and truck convoy to remote locations. As a result, Applicant has on multiple times been exposed to small arms, mortar, and rocket fire. His specific duties sometimes require him to place himself in positions that are exposed and particularly vulnerable to small arms fire.

Applicant's supervisors testified and submitted affidavits on his behalf. They consider him to be an excellent worker and dedicated employee who is a valuable asset to his employer. He has earned their trust based on his reliability and integrity. They are all aware of his history of using marijuana and abusing alcohol, and they are satisfied that he has matured significantly and that there is no likelihood that such misconduct will recur. They have also socialized with Applicant on occasion and consider his current use of alcohol to be responsible.

Applicant held a security clearance when he was in the Air Force and during his overseas deployments with his current employer. While serving in combat areas, he had daily access to highly classified information. There is no evidence to suggest that he ever mishandled or risked the compromise of classified information, and no prior adverse action has been taken to revoke or downgrade his clearance.

Applicant first consumed alcohol when he was 16 years old and golfing with a friend. He became intoxicated and he did not consume alcohol again until after he enlisted in the Air Force. After he completed Air Force basic training, Applicant found himself in a living environment where beer was readily available and frequently consumed by airmen. Applicant was 20 years old when he began drinking beer in the Air Force. His consumption increased to the point where he was drinking as many as 18 cans of beer a day. Several times a month Applicant would drink beer before reporting for duty and he feels that he was often alcohol-impaired when he reported for duty.

Applicant moved out of a barracks and into a house that he shared with two other airmen in about 2003. Applicant's roommates used marijuana on a more or less regular basis. During a party at the residence Applicant used marijuana while he was intoxicated. Applicant possessed a security clearance at the time he used the marijuana. He credibly testified this was the only time in his life that he used marijuana. Sometime after the party, someone reported to Air Force officials that marijuana was used at the party. Applicant was questioned by investigators and admitted that he had used marijuana. He was disciplined under Article 15 of the Uniform Code of Military Justice (UCMJ) by being reduced in rank and forfeiting pay. He was also processed for an administrative discharge and he was awarded a General Discharge Under Honorable Conditions. The basis for the discharge was misconduct due to drug abuse.

Applicant became concerned about his excessive use of alcohol and he voluntarily enrolled in an Air Force alcohol and drug abuse program in February 2004. He attended daily counseling sessions during the first two weeks of the program and once a month sessions for the remainder of the program. Applicant successfully completed the program in August 2004. Applicant also attended Alcoholics Anonymous meetings during that time period. He remained alcohol abstinent while in the program but resumed using alcohol after he completed the program.

Applicant describes his current use of alcohol as that of a social drinker. He consumes as much as four beers on weekends and wine on occasion. Applicant remained abstinent from alcohol, as required, when he was deployed overseas from May 2005 to May 2006. As part of the current security clearance process, Applicant obtained a substance abuse evaluation in December 2008. The evaluation, performed by a licensed clinical social worker (LCSW) at a recognized substance abuse provider, concluded that Applicant's previous problem with alcohol was in full remission and that he did not need treatment.

Applicant submitted the testimony and report of a clinical psychologist at the hearing. The psychologist administered a battery of psychological tests, reviewed a number of reports, interviewed collateral witnesses, and conducted a clinical interview of Applicant. He concluded that Applicant "appears to be free of any significant psychological disorder, including any abuse of or dependence on alcohol and any use at all of non-legal drugs." (AE 1, Tab H, p. 8) The psychologist's diagnosis for Applicant was Alcohol Abuse in Sustained Full Remission. (AE 1, Tab H, p. 8) He opined that Applicant's alcohol and drug abuse occurred under circumstances that are unlikely to recur, and he provided a favorable prognosis for Applicant as to both alcohol and drug abuse.

Applicant submitted a notarized statement in which he avers: 1) he has only used marijuana once in his life; 2) he no longer associates with individuals who use marijuana; 3) he does not intend to use marijuana in the future or associate with persons who use marijuana; 4) he understands that if he uses marijuana in the future his security clearance will automatically be revoked; and 5) he will submit to random drug testing.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) and Guideline H (drug involvement) with their disqualifying and mitigating conditions are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline G, 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. (Adjudicative Guideline [AG] ¶ 21)

Applicant consumed alcohol to excess from 2001 until 2004, while he served in the Air Force. He frequently reported impaired for duty after consuming alcohol. He possessed a security clearance during this time period. He eventually became concerned about his abuse of alcohol and he referred himself to an alcohol abuse program. A clinical psychologist provided a diagnosis for Applicant of Alcohol Abuse in Sustained Full Remission. The following Disqualifying Conditions (DC) apply: DC 22(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*; 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*; and DC 22(d): *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*.

Applicant’s abuse of alcohol occurred over the course of a few years when he was away from home for the first time and serving with the Air Force in an environment where alcohol appears to have regularly been abused by the airmen with whom Applicant worked and resided. He recognized he had a problem with his abuse of alcohol and he referred himself for treatment. He successfully completed the alcohol abuse program and he attended AA meetings. He currently uses alcohol in a mature and responsible manner that is consistent with a man of his age.

Applicant remained abstinent from alcohol while he was in the treatment program in 2004, and again for the year he was deployed overseas in a combat area. He submitted an evaluation from a LCSW who is a staff member at a recognized substance abuse provider that indicated Applicant’s alcohol abuse issues were in full remission. At the hearing, Applicant provided the testimony and the report of a clinical psychologist who, following a thorough examination and evaluation, concluded Applicant’s alcohol abuse problem was in full and sustained remission and was unlikely to recur.

Considering Applicant’s age at the time he abused alcohol, his employment history after he was discharged from the Air Force, the testimony of Applicant’s current

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

supervisors, the evaluations of the LCSW and the psychologist, and Applicant's overall testimony, appearance, and demeanor, I find the following Mitigating Conditions (MC) apply: 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 . . . issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . 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 on 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.*

Guideline H, Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24

Applicant used marijuana on one occasion while he was in the Air Force and in possession of a security clearance. DC 25(a): *any drug abuse*; DC 25(g): *any illegal drug use after being granted a security clearance* apply.

Applicant only used marijuana one time and then only after he had become intoxicated. It has been over six years since Applicant abused a controlled substance. He no longer associates with the people who were present at the party where he used marijuana or with anyone else who abuses controlled substances. Applicant successfully completed an alcohol and drug abuse program after his one time use of marijuana and he submitted an evaluation performed by a clinical psychologist who opines that Applicant is unlikely to abuse alcohol or controlled substances in the future. Finally, Applicant has agreed to submit to random drug testing with the automatic revocation of his security clearance if he abuses a controlled substance in the future.

The following mitigating conditions apply: MC 26(a): *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; MC 26(b): *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*; and MC 26(d): *satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.*

The objective of the security-clearance process is the fair-minded assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of his acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concern caused by his alcohol consumption and drug involvement. He has overcome the case against him and satisfied his burden of persuasion. Guideline G and Guideline H are decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

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:

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| Paragraph 1, Guideline G: | For Applicant |
| Subparagraphs 1.a-c: | For Applicant |
| Paragraph 2, Guideline H: | For Applicant |
| Subparagraphs 1.a-c: | For Applicant |

Conclusion

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 a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

