



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



In the matter of:)	
)	
)	ISCR Case No. 08-08530
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

September 13, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Alcohol Consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, Alcohol Consumption. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant answered the SOR in an undated response that was received by DOHA on May 3, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 11, 2010. A complete copy of the file of relevant material (FORM) was provided to

Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received a copy of the FORM on June 17, 2010. As of August 6, 2010, he had not responded. The case was assigned to me on August 16, 2010.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He has a bachelor's degree. His Questionnaire for National Security Positions (SF 86), submitted in October 2007, listed that he had never been married and had no children.¹

Applicant started drinking alcohol when he was about 17 or 18. From that time until May 2007, he reported that he would drink about once or twice a week. He would drink as much beer as he could afford or was offered to him, between 3 to 14 beers.²

Applicant worked in a convenience store in 2002. He was cited in 2002 with sale of alcohol to a minor. He was working his last day at the convenience store. He did not check an individual's identification and sold the person beer. He pled guilty and paid a fine. The convenience store also terminated his employment.³

Applicant was arrested in about February 2004 and charged with underage consumption of alcohol. He obtained a deferred prosecution in which he completed community service and attended an alcohol awareness class.⁴

Applicant was drinking beer and smoking marijuana on an evening in July 2004. He then drove a car. A police officer saw him driving erratically and swerving from side to side. Applicant was stopped in the early morning hours for driving out of his marked lane. There were empty beer bottles in the car. The officer noted a strong alcohol odor, and Applicant flunked a field sobriety test. He refused breath and urine tests. A bag of marijuana and a pipe was found in his pocket. Applicant repeatedly used profanity and called the officer names. Applicant was arrested and charged with operating a vehicle under the influence of alcohol or drugs (OVI), first offense; improper use of marked lanes; no seatbelt; driver consuming alcohol underage; possession of drug paraphernalia; and possession of marijuana. He pled guilty to OVI, and the other charges were dismissed. He was sentenced to 120 days in jail with 117 days suspended, three days to be spent in a residential alcohol treatment program in lieu of jail, \$350 fines and costs, and probation for two years. Terms of his probation included completion of an alcohol and drug evaluation, total abstinence from alcohol and non-prescription drugs for one year, and Applicant was ordered to write a letter of apology to the arresting officer. Applicant has admitted that he "blacked out" and does not

¹ Items 5, 6.

² Items 4, 6.

³ Items 4-7, 9.

⁴ Items 4-7.

remember what took place from the time he was home drinking beer until he was stopped by the police. He completed the three-day alcohol treatment program. He was advised to seek further treatment, but he declined.⁵

Applicant stated that he smoked marijuana on three occasions, including the day of his OVI arrest. He has not smoked marijuana since that 2004 arrest.⁶

Applicant was stopped again in January 2007 after a police officer saw his car swerving. He smelled of alcohol and flunked the field sobriety test. He consented to a breath test and his blood alcohol concentration (BAC) was reported at .172%. He was arrested and charged with OVI, second offense; OVI with BAC of .172%; and improper use of marked lanes. He pled guilty in June 2007 to OVI, second offense, and the other charges were dismissed. He was sentenced to 180 days in jail with 170 days suspended and 10 days to be spent in jail, \$400 fines and costs, driver's license suspended for one year, and probation for two years. Terms of his probation included completion of an alcohol and drug assessment, and total abstinence from alcohol and illegal substances.⁷

Applicant completed an alcohol program in February 2007. The program was described as "a two session intervention aimed at high risk alcohol consumption." This program satisfied the court-ordered requirement for an alcohol and drug assessment. Applicant also attended bi-weekly sessions with a counsellor until May 2007.⁸

Applicant listed his criminal record and marijuana use when he submitted his SF 86 in October 2007. He was interviewed by an investigator from the Office of Personnel Management (OPM) in April 2008. He fully discussed his criminal record, his marijuana use, and his alcohol consumption. He stated he was remorseful about his actions. He stated that he would never again drive after drinking. He stated at that time, he drank about once or twice a month, with a maximum of six beers at any sitting.⁹

Applicant's interview with the OPM investigator was summarized in a report of investigation (ROI). Except for several small modifications, Applicant verified the accuracy of the ROI when he responded to DOHA interrogatories in December 15, 2008. He did not provide any additional information about his alcohol consumption. There is nothing in the record about Applicant's alcohol consumption after 2008.¹⁰

⁵ Items 4-6, 8.

⁶ Items 5, 6.

⁷ Items 4-7.

⁸ Items 4, 6.

⁹ Items 5, 6.

¹⁰ Item 6.

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 to be used 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, administrative judges apply the guidelines 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 "[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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable 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; 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.

Applicant has several alcohol-related arrests and convictions. He admitted to excessive drinking including a blackout. AG ¶¶ 22(a) and (c) are applicable.

SOR ¶ 1.b alleges Applicant's charge of sale of alcohol to a minor in 2002. While alcohol was involved in the charge, it did not involve Applicant consuming alcohol. SOR ¶ 1.b is concluded for Applicant.

SOR ¶ 1.f alleges that Applicant attended alcohol counseling in February 2007 due to his alcohol-related arrest that was alleged in another allegation. Alcohol counseling is a matter of mitigation. It does not raise a disqualifying condition. SOR ¶ 1.f is concluded for Applicant.

SOR ¶¶ 1.a and 1.g both allege that Applicant consumed alcohol until at least April 2008, except SOR ¶ 1.g added that Applicant's alcohol consumption was "notwithstanding [his] alcohol-related offenses and/or alcohol counseling, as set forth [in other allegations]." These two allegations state the same underlying conduct. SOR ¶ 1.g simply adds facts and circumstances surrounding the information that is already alleged in SOR ¶ 1.a. When two allegations under the same guideline allege the same conduct, at least one must be concluded for the applicant. SOR ¶ 1.g is concluded for Applicant.

Three Alcohol Consumption Mitigating Conditions under AG ¶ 23 are potentially applicable:

(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); 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.

Applicant's last alcohol-related arrest was in 2007. He has completed several court-ordered alcohol programs. He continues to drink alcohol, but indicated that he no longer drinks and drives and he only drinks in moderation. There is no favorable prognosis by a duly qualified medical professional or a licensed clinical social worker. There is nothing in the record about Applicant's current alcohol consumption. Based upon Applicant's history of alcohol-related incidents and absence of current information about his alcohol consumption, there is insufficient evidence for a finding that Applicant has his alcohol use under control. His alcohol use, resulting in multiple arrests, continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are completely applicable.

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):

(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. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 27 years old. He has multiple alcohol-related arrests and convictions. He stated in 2008 that he continued to drink in moderation and he no longer drove after drinking. There is no information in the record about his alcohol consumption after 2008. Applicant deserves some credit for being truthful on his SF 86 and in his background interview. He appears to be remorseful, but at this time, concerns remain about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Alcohol Consumption security concerns.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For 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.

Edward W. Loughran
Administrative Judge