



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



In the matter of:)
)
) ISCR Case No. 08-09420
)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel

For Applicant: Jesseca Cadena, Personal Representative

September 21, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for alcohol consumption, drug involvement, and personal conduct. Accordingly, his security clearance request is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), which he signed on October 12, 2006. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On April 13, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).²

Applicant submitted an Answer to the SOR signed and notarized on May 4, 2009, in which he admitted to all allegations in the Statement of Reasons, except allegations 1.a. and 1.b. under Guideline G. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 28, 2009, and the case was assigned to me on the following day. DOHA issued a Notice of Hearing on June 5, 2009, and I convened the hearing as scheduled on June 24, 2009.

During the hearing, the Department Counsel offered 18 exhibits, which were marked and admitted as Government Exhibits (GE) 1 through 18.³ Applicant testified and presented the testimony of two witnesses. He offered four exhibits, Applicant Exhibits (AE) A through D, which were admitted. DOHA received the transcript (Tr.) on July 7, 2009.

Findings of Fact

Applicant's admissions to the SOR allegations, as well as those in response to the DOHA interrogatories, are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 27 years old, is unmarried and has no children. He received an Associate of Arts degree in graphic design in 2005, and is currently continuing his education in graphics. In his capacity as a multimedia specialist for a defense contractor, he volunteered to work in Iraq from September to December 2007. He has no held a security clearance in the past (GE 1; Tr. 41, 62-67).

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant testified that GE 3 is his adoption of the summary of his December 2006 Subject Interview contained in GE 2 (Tr. 90-91).

Applicant has a history of excessive alcohol use. When he began drinking, he did it to keep up with his friends. When he was drinking alcohol regularly, he would become intoxicated every few days after consuming four to five drinks. In 2004, he was terminated from a job for repeatedly missing work after drinking and failing to call in to explain his absence. Applicant has had no alcohol-related employment issues since that time. In May 2006, he was charged with Public Intoxication. He was placed in a "drunk tank," stayed overnight in the adult detention center and paid a fine. Shortly after, Applicant's parents and a friend talked to him about his alcohol consumption, and told him that they were concerned about his health and safety. Applicant continued drinking excessively, and experienced blackouts from two to three times in 2006, with the last time being October 2006 (GE 2, 4, 5; Tr. 51; 68-78).

Applicant does not currently abstain from alcohol, but has reduced his consumption in the past year. In 2007, he described his alcohol use as two or three drinks about two times per week. In November 2008, he described his usage as two drinks, two to three times per month, as well as one or two instances per year when he consumes five or more drinks. He also noted that he can consume one alcoholic beverage without feeling intoxicated. He clarified this description at the hearing, stating that, "Consuming two drinks at a time or at least in one sitting, I generally wait an hour to an hour and a half at which point I would not be intoxicated. So that statement seems to have been taken out of context." He also testified, "after one drink I can feel the effects of alcohol, but I wouldn't consider myself intoxicated" and that he becomes intoxicated after consuming four or five drinks. He was last intoxicated in fall 2007. He abstained from alcohol use during the three months he worked in Iraq between September 2007 and December 2007, and continued to abstain until March 2008. He was "happier and more upbeat" when he did not consume alcohol. Currently, he sees the friends with whom he drank alcohol about two to three times per year, and does not drink alcohol when he does see them. He now consumes two drinks, about once per month. He has reduced his alcohol consumption because "It was affecting my life in negative ways. It was making things difficult to accomplish, certain goals that I had set forth for myself." He has not sought alcohol counseling and does not believe that he has ever had an alcohol problem (GE 4, 5; Tr. 51-53, 62, 71-72, 104-105, 110).

Applicant also used illegal drugs for seven years. He started using marijuana in approximately 1999, when he was in high school. Until 2002, he used it when friends shared it with him, about twice per year. Between 2002 and 2003, while in college, he increased his use to daily consumption. About every other month during this period, he purchased marijuana from a dealer for his own use, and sometimes to sell to friends. He was stopped for speeding in August 2003 and was found to have marijuana in his car. He stated in his interrogatory response that during his "...heaviest usage of marijuana, I frequently drank at the same time." However, at the hearing, Applicant denied mixing the two often, and said it happened only a few times. Between 2002 and 2004, Applicant used

marijuana frequently during breaks at work to alleviate boredom. He tried to stop using the drug, and did decrease his use in 2003 to about two times per week. Between 2003 and 2004, Applicant's mother and sister discussed his drug use with him, and in 2004, they told him they were concerned about it and worried that he would "get into trouble." Nevertheless, between 2004 to early 2006, he continued to smoke marijuana approximately once or twice per month. During his security interview, he told the investigator that he believes he was dependent on marijuana because he craved it. At the hearing, he testified that he used marijuana heavily until summer 2005. He then tried to reduce his usage in an effort to quit entirely. Both in his interview and at the hearing, he said that his last use was in May 2006. In the summer of 2007, he was with a friend who used marijuana, but Applicant did not use it (GE 3, 4, 6; Tr. 53-54, 76, 82-87, 94, 107-109).

Applicant used other illegal drugs as well. Between July 2004 and early 2005, Applicant snorted powder cocaine four times. He did not purchase the drug, but received it from friends. Applicant did buy LSD on three occasions, and used it a total of five times between 2002 and 2005. Applicant also used opium three to six times per year between 2003 and 2004. He used Ecstasy as well, usually purchasing it at clubs. He listed his Ecstasy use in his November 2008 interrogatory response as once or twice per year from 2000 to 2003, but at the hearing described it as twice in 2000, followed by a two-year abstinence, and then occasionally between 2002 and 2005. Applicant also illegally used Ritalin seven to eleven times from 2004 to 2005, without a doctor's prescription. He knew that using marijuana and the other drugs was illegal, but the illegality did not bother him because, "I was young, felt I was bigger than the world and thought that I could live my life the way I felt." He has not participated in drug counseling, Narcotics Anonymous, or similar groups. He does not believe he ever had a drug problem because he was able to stop using illegal drugs and has not had a craving for them. Applicant does not associate with people who use drugs, and has no intent to use illegal drugs in the future (GE 3, 4, 6; Tr. 82-89, 102, 104).

Over the seven years from 2001 through 2008, Applicant was cited for six traffic violations.⁴ They include failure to yield, failure to obey signs, improper U turn, use of the restricted high-occupancy vehicle (HOV) lane, and three speeding citations. None of the violations involved alcohol or illegal drugs. Applicant testified that these infractions were primarily the result of his failure "to pull his foot off the gas." The citation for failure to obey a sign resulted from Applicant's driving at an unsafe speed for the weather conditions. The offense for failure to yield right of way caused an accident in which Applicant was determined to be at fault (GE 7-13; Tr. 98-99, 111-112).

⁴ Applicant disclosed at hearing that he received an additional traffic citation for speeding in January 2009. This citation is not alleged in the SOR (Tr. 98-99).

Applicant's personal representative testified that she has known Applicant for three years, including two years as his roommate. She did not know him when he used illegal drugs and excessive alcohol, and has not seen him indulge in those activities since she has known him. She believes that he has become more mature in his choice of lifestyle and friends. She holds a security clearance and would not associate with anyone who was engaged in questionable activities. She found him trustworthy to the point that she agreed to be his roommate. Applicant's manager testified that she has known him since 2006 when he started working at their company. He is an excellent employee and a hard worker who has worked through the night when required. She is unaware of the allegations related to illegal drugs and excessive alcohol use. Applicant offered a character reference from a retired U.S. Army major who cited Applicant's willingness to volunteer to work in Iraq, and his outstanding job performance. He also opined that Applicant's "youthful indiscretions" should not prevent him from obtaining a security clearance. Applicant's direct supervisor during the Iraq assignment also attested to Applicant's talent, excellent contributions to the mission, and willingness to work overtime to produce outstanding products. (AE C, D; Tr. 25-31, 40-48).

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole person" concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines G, H, and E at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in

⁵ Directive 6.3

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁸

Analysis

Guideline G, Alcohol Consumption

The security concern about alcohol consumption is that "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 ¶ 21).

Two disqualifying conditions under Guideline G are relevant to the facts: AG ¶ 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*) and AG ¶ 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*). Applicant's use of alcohol has resulted in intoxication every few days at its heaviest, job termination, concern and warnings from his family, and repeated blackouts. His 2004 failures to report to work or his absences, as well as the charge of public intoxication in 2006, indicate that his judgment was impaired because of his alcohol consumption. Both disqualifying conditions apply.

The guideline includes factors that can mitigate disqualifying conduct. AG ¶ 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*) does not apply. Applicant engaged in heavy alcohol use in the past to the point where he was becoming intoxicated every few days, and sometimes experienced blackouts. Although he has moderated his drinking, it is not in the distant past because he continues to drink. AG ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides*

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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) is also relevant. Applicant has moderated his drinking in the past year. It should be noted, however, that in November 2008, he stated that his consumption involved drinking an intoxicating level of alcohol (five or more drinks) one or two times per year. Moreover, Applicant showed a lack of maturity by continuing to drink alcohol to excess after his family told him that they were concerned about it. Although he does not drink with them, he still sees his friends several times per year with whom he drank alcohol. Finally, Applicant has not acknowledged his alcohol issues, as he does not believe that his level of alcohol consumption constituted a problem. This lack of acknowledgement and awareness, despite the evidence—his job termination, blackouts, his night in a “drunk tank,” his family’s concerns—raises doubts as to his current judgment, and questions as to whether this conduct will recur. AG ¶ 23(b) cannot be applied. I find against Applicant on Guideline G.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to 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.

Two disqualifying conditions are relevant under Guideline H: AG ¶ 25(a) (any drug abuse) and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia. During the period from 1999 to 2006, Applicant purchased, possessed, used and sold marijuana. Between 2000 and 2005, he also used other illegal drugs to a lesser extent. He purchased, possessed, and used LSD and ecstasy; and possessed and used cocaine, opium, and unprescribed Ritalin. Both disqualifying conditions apply.

Three of the four mitigating conditions under Guideline H relate to the facts. AG ¶ 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) cannot be applied. Although Applicant’s last use of marijuana was approximately three years ago, his use was quite frequent, at times daily, and extended over a period of seven years. Applicant had a long-standing habit of marijuana use and at times it was part of his daily life. In addition, Applicant not only used illegal drugs, but purchased them, and in the case of marijuana, he sold them as well. His willingness not only to use, but to purchase and sell illegal drugs casts doubt on his trustworthiness and undercuts application of this mitigating condition.

AG ¶ 26(b) is also relevant: 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; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation

AG ¶ 26(b)(4) does not apply as Applicant did not offer a signed statement of intent. However, AG ¶ 26(b)(3) applies because Applicant has abstained from using marijuana and other illegal drugs for approximately three years. AG ¶ 26(c) (abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended) does not apply because Applicant repeatedly used a prescription drug that was prescribed for his friend and not for him. Given the length of time Applicant used illegal drugs, the wide variety that he indulged in, his willingness to engage in the illegal conduct of not only using but buying and selling illegal drugs, I find that the mitigation under AG ¶ 26 (b)(3) is insufficient to overcome Applicant's disqualifying conduct. I find against Applicant on Guideline H.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

Under Guideline E, AG ¶ 16(d) is relevant:

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly

safeguard protected information. This includes but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and,
- (4) evidence of significant misuse of Government or other employer's time or resources.

SOR allegations 3.b. through 3.g. comprise a series of traffic infractions which, taken individually, would not rise to the level of security significance. However, Applicant has violated traffic regulations six times in seven years.⁹ These recurrent violations demonstrate a history of ignoring rules and regulations. Taken together, a pattern emerges that demonstrates Applicant's willingness to place his own desires ahead of the rule of law. AG ¶ 16(d)(3) applies.

Mitigating condition AG ¶ 17(c) is relevant (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). Several years have passed since Applicant's series of civil infractions began in 2001. However, Applicant has not ceased this pattern. The most recent violation that was alleged in the SOR was in November 2008, just ten months ago. Given the recency of this infraction, and that it happens in a frequently occurring situation of driving his automobile, I cannot confidently predict that it will not recur. In addition, these frequent violations demonstrate Applicant's inability or unwillingness to abide by rules and regulations and raise doubts about his good judgment. AG ¶ 17(c) cannot be applied. I find against Applicant on Guideline E.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have

⁹ Applicant's 2009 violation was not alleged. It will only be considered as part of the whole person analysis.

also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant engaged in alcohol abuse over several years that resulted in frequent intoxication, several black-outs, and an arrest for public intoxication. His behavior worried his family, who asked him in 2006 to moderate his alcohol use. He ignored their concerns, and did not change his behavior for two more years. Applicant also used numerous illegal drugs, starting in 1999. Applicant's involvement with marijuana was the most extensive. He used it for seven years, at times, daily. He not only used it, but purchased and sold it. He used four other illegal drugs, as well as a prescription drug that was not prescribed for him. His last use of an illegal drug occurred in 2006, when he was not an adolescent but approximately 24 years old. Each time he used these drugs, he demonstrated a disregard for rule and regulations, and a willingness to place his own desires above the rule of law.

Applicant has made commendable changes in his life. He ended his illegal drug use in 2006, and has moderated his alcohol use within the past year. However, to evaluate Applicant's behavior as a whole, his civil infractions must also be considered. The most recent infraction that was listed in the SOR occurred in 2008. He admitted at hearing that he also received another speeding violation in January 2009, about eight months ago. This violation occurred after he had received and completed several interrogatories and was aware that his eligibility for a security clearance was being assessed. His violation indicates either a lack of awareness or a disregard for the responsibilities entailed in holding a security clearance. Applicant's repeated infractions form a pattern that cannot be ignored. They stem from the same underlying impulse to disregard the law that Applicant displayed when he used illegal drugs. Access to classified information imposes an obligation to adhere to laws and regulations, and it cannot be granted to one who is unwilling to accept that obligation.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline G	AGAINST Applicant
Subparagraph 1.a. - 1.h.	AGAINST Applicant
Paragraph 2, Guideline H	AGAINST Applicant
Subparagraph 2.a. - 2.k.	AGAINST Applicant
Paragraph 3, Guideline E	AGAINST Applicant
Subparagraph 3.a - 3.g.	AGAINST Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge