



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09906
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

August 28, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his alcohol consumption. Clearance is denied.

On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under the alcohol consumption guideline. 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.

Applicant answered the SOR on April 23, 2009, admitting all allegations. The case was assigned to me on June 17, 2009. On June 23, 2009, a notice of hearing was issued scheduling the case for July 8, 2009.

At the hearing, I received six government exhibits and Applicant's testimony. The transcript was received on July 16, 2009.

Findings of Fact

Applicant is a 53-year-old single man with a teenage daughter. Two prior marriages ended in divorce. He finished high school and completed one year of college. For the past 30 years, he has worked for a defense contractor that services nuclear aircraft carriers (Tr. 11). During this time, Applicant has steadily earned promotions. Currently, he is a general foreman (Tr. 18). He has held a security clearance for 30 years (Tr. 26).

Applicant began drinking alcohol at age 21. Initially, he drank three beers per week (Exhibit 3 at 2). By age 25, his alcohol consumption had increased to 12 beers per week. By age 35, he was drinking 18 to 24 beers per week (Tr. 31).

In 1987, while leaving a restaurant, Applicant was stopped at a police sobriety checkpoint and administered a breathalyzer (Exhibit 5 at 1). He failed, and was arrested and charged with driving while under the influence of alcohol (DUI) (*Id.*). Later, he pleaded guilty, and was ordered to pay a fine and complete an alcohol safety action program (*Id.*). The course included a defensive driver's tutorial, Alcoholics Anonymous (AA) meetings, and group discussions. Applicant completed the course, as ordered.

In June 2006, the police stopped Applicant and administered a breathalyzer. Applicant failed, registering a blood/alcohol content of .11. He was then arrested and charged with DUI (*Id.* at 3; Tr. 35). He pleaded guilty, paid a fine, and was ordered to take a ten-week course that the state conducted. It included AA meetings twice weekly for the first five weeks, and once weekly for the last five weeks (*Id.*). Applicant completed the course, as ordered.

One evening in June 2008, after a day of playing golf, Applicant went to a restaurant with his friends and drank four 16-ounce glasses of beer with dinner (Tr. 40). After dinner, while driving home, he veered across the center line of the street, and was stopped by a police officer (*Id.*). Applicant was charged with DUI, found guilty, and sentenced to 180 days in jail with 175 days suspended. His license was suspended for 60 days, and he was ordered to attend six months of outpatient treatment and AA meetings (Tr. 41-42).

Applicant served his jail time on consecutive weekends (Tr. 41). As for the outpatient treatment, the plan originally included group counseling and AA attendance once per week. The counseling center increased these meetings to two times per week after his intake assessment revealed a level of alcohol in his system that indicated more recent consumption than he had reported (Exhibit 6 at 2).

By March 2009, Applicant had successfully completed the treatment program, attending all but one counseling session and passing all of the random alcohol tests (Tr.

42). His case manager ruled out alcohol dependence and diagnosed him with alcohol abuse (Exhibit 6 at 3).

The court restored Applicant's license after 60 days, as anticipated. As of the date of the hearing, his license remained restricted (Tr. 47). Specifically, he can only drive to and from work, medical appointments, or to exercise visitation rights with his daughter. The restriction was set to expire on August 4, 2009.

Currently, Applicant continues to drink, but only consumes four beers per week on weekends (Tr. 45). He no longer drinks to the point of intoxication (Tr. 46). He contends that his alcohol consumption had begun gradually decreasing by 1999. He has no intention of drinking and driving again (Tr. 53).

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. 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."

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, "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). Applicant's history of

excessive alcohol and DUIs triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” and 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.”

The government established that the case manager was an employee of a substance abuse services facility. Absent record evidence of the meaning of the acronyms “MAC, NCC” following her signature on the letter summarizing Applicant’s treatment history, I cannot infer, however, that the case manager is either a licensed clinician or a qualified medical professional. Consequently, I did not apply either AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” or AG ¶ 22(e), “evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

Applicant successfully completed an outpatient treatment program. He has reduced his alcohol consumption to four beers per week, a responsible amount. He no longer drinks alcohol before driving, and, more importantly, appears to have internalized an understanding of the inherent danger of drinking and driving. As of the hearing date, Applicant’s driver’s license was still restricted. Consequently, it is too soon to conclude that 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,” applies. However, Applicant’s reduced alcohol consumption and the insight he has gained from his participation in alcohol counseling are sufficient to establish AG ¶ 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).”

The program that Applicant recently completed is the first formal, comprehensive alcohol treatment that he has received. Past alcohol interventions were less intensive and focused on education rather than treatment. Consequently, AG ¶ 23(c), “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment or relapse, and is making satisfactory progress,” is inapplicable because it is not relevant to the facts of this case.

Based upon the case manager’s letter, Applicant was doing a good job of complying with the treatment program. However, when the letter was prepared, Applicant had six more weeks of treatment to complete before discharge. Although he testified credibly that he completed the course satisfactorily, he produced no discharge summary from the treatment center. Consequently, I cannot conclude that AG ¶ 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,” applies.

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 the 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.

Applicant testified credibly, and had an impressive demeanor. He deserves credit for holding a security clearance for 30 years. He appears to have gained a deeper appreciation of the tenuous threshold between occasionally drinking too much beer with friends at social outings, and having an alcohol problem. Recognizing the risk associated with occasional overconsumption, he has chosen never to drink to the point of intoxication.

The state court’s issuance of a restriction upon Applicant’s driving privileges is a significant factor. Implicit in the imposition of such a restriction is the concern that Applicant would pose a public safety risk if allowed to operate his automobile freely. This restriction was scheduled to be released after the ISCR hearing. Also, given the repetitive nature of the DUIs, not enough time has elapsed to conclude that he will sustain his modified drinking pattern. Consequently, it is too soon to conclude that Applicant’s alcohol consumption no longer poses a security concern.

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 - 1.f:	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.

MARC E. CURRY
Administrative Judge