



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



In the matter of:)	
)	
)	ISCR Case No. 08-10040
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated alcohol consumption security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 7, 2012, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 2, 2012, and requested a hearing before an administrative judge. The case was assigned to me on June 22, 2012. DOHA issued a notice of hearing on July 10, 2012, scheduling the hearing for August 7, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 9 were

admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open until September 17, 2012, and then extended to October 1, 2012, for Applicant to submit additional information. He submitted a two-page document that was marked AE E and admitted without objection. Correspondence about the additional exhibit is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on August 15, 2012.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 1999. He seeks to retain his security clearance, which he has held since about 2000. He has a bachelor's degree. He is married with two children, ages 16 and 3.¹

Applicant started drinking when he was a teenager. He has multiple alcohol-related arrests and convictions. He was arrested for disorderly conduct in January 1996 and March 1997. He was drinking before each incident. He was arrested in October 1996 and charged with driving under the influence (DUI). He pleaded guilty to the reduced charge of reckless driving. His driver's license was suspended for six months, and he was fined \$200.²

Applicant was arrested in November 2002 and charged with DUI, reckless driving, aggressive driving, driving across the median, speeding, unsafe turn or no turn signal, and following too closely. He pleaded guilty to reckless driving, and the other charges were dismissed. He was sentenced to three days in jail and fined about \$1,000.³

Applicant submitted his Questionnaire for National Security Positions (SF 86) in April 2008. He listed his 2002 DUI arrest, but he wrote that it occurred in "03/2001 (Estimated)." He also wrote that he did "not recall the date."⁴ SOR ¶ 1.e alleges a March 2001 DUI arrest. The allegation was apparently based on the SF 86, which listed the wrong year for Applicant's DUI. I find that Applicant was arrested for DUI in November 2002, as addressed above, but he was not arrested for DUI in 2001.

Applicant was arrested in July 2005 and charged with DUI extreme with blood alcohol concentration (BAC) of .15% or more, first offense; DUI with BAC of .08% or more, first offense; DUI, first offense; and failure to stop for red light. He pleaded guilty to DUI extreme with BAC of .15% or more, first offense, and the other charges were dismissed. He was sentenced to 180 days in jail, with 170 days suspended upon

¹ Tr. at 38-39; Applicant's response to SOR; GE 1.

² Tr. at 37; Applicant's response to SOR; GE 2, 3, 7.

³ Tr. at 37; Applicant's response to SOR; GE 1, 2, 4.

⁴ Applicant's response to SOR; GE 1.

successful completion of alcohol evaluation and counseling; supervised probation for two years; and fines and fees of about \$2,900. Conditions of his probation included attendance at a victim impact panel, suspended driver's license for one year, and an ignition interlock was placed on his car for one year.⁵

The day after his last arrest, Applicant voluntarily checked himself into an inpatient alcohol treatment program at a hospital. He was in the hospital for about five days. While in the program, he was diagnosed by a doctor with alcohol dependence, general anxiety disorder, and depression disorder not otherwise specified.⁶

Applicant continued at an outpatient substance abuse treatment program from August 2005 through November 2005. Medical records from the program were not introduced. If there was a diagnosis, it is not apparent from the evidence.⁷

Applicant was assessed by a licensed professional counselor (LPC) in December 2006, January 2007, and November 2011. In December 2006, he was administered the Substance Abuse Subtle Screening Inventory (SASSI). The scale scores of the SASSI met the "criteria for classifying [Applicant] as having a high probability of being substance dependent." The LPC noted that "[i]n addition to test results, supplemental clinical information is required to meet the accepted standards for a DSM-IV diagnosis of a Substance Abuse Disorder."⁸

Applicant was assessed by another LPC at DOHA's request in January 2009. The LPC did not specifically address alcohol dependence or alcohol abuse. She recommended Applicant for a security clearance, noting:

It is my professional opinion that the 2005 incident was a culmination of stress. That it was in the past, he has learned from it and will never be repeated. He has a strong sense of responsibility to self, family and his profession. He knows the signs of stress and he now has healthy skills to use to relieve the stress so that the 2005 incident will never be repeated.⁹

The first LPC assessed Applicant again in November 2011. She reported that "[b]oth the standard instruments and [her] interview with [Applicant] indicated a history of alcohol abuse, which he reported most often took the form of intermittent binge drinking." He also reported that he "has been drinking only moderately, i.e., not to the point of intoxication."¹⁰ The LPC further noted:

⁵ Tr. at 23, 37; Applicant's response to SOR; GE 1, 2, 4, 7.

⁶ Tr. at 23-24; Applicant's response to SOR; GE 1, 9.

⁷ Tr. at 24, 39; Applicant's response to SOR; GE 1, 4, 7.

⁸ Applicant's response to SOR; GE 8.

⁹ GE 6.

¹⁰ Tr. at 36; Applicant's response to SOR; GE 8.

On all occasions that I met with him, [Applicant] showed no signs of acute intoxication or withdrawal and presented as a very cooperative, pleasant gentleman. I was struck by the high level of insight he demonstrated and the willingness to admit, rather than deny, the negative effect of his alcohol abuse. He was also able to report many positive aspects of sobriety or limiting his drinking, which is generally a very good prognostic indicator. As indicated above, however, I have a very limited history with him and – as with all cases of substance abuse – there is always a risk of relapse, and whether it will or will not occur is impossible to predict. At this time, however, I would say that my prognosis is fairly good and his past alcohol abuse and current moderate use of alcohol are not interfering with his employment.¹¹

Applicant still drinks alcohol, but he stated that he only drinks responsibly. He believes he has learned from his past mistakes and they will not be repeated. He was evaluated at an outpatient substance abuse recovery center on September 19, 2012. The qualifications of the individual who made the evaluation are unclear, but the person reporting the evaluation is identified as the “Admin Director,” and the treatment plan is signed by a person identified as a “Clinician.” The report noted that the evaluation was “[b]ased on state standard SASSI and MAST (Michigan Alcoholism Screening Test)¹² testing as well as assessment interview.” A diagnosis was not provided, but it was determined that no substance abuse treatment was required. The short-term goal was to not drink and drive. The long-term goal was to develop a plan to deal with ongoing stress and to continue to attend “Church Group.”¹³

Applicant submitted a number of letters and documents, and a witness attested to Applicant’s excellent job performance, trustworthiness, dedication, work ethic, and integrity.¹⁴

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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

¹¹ GE 8.

¹² See, e.g., <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1960508/>.

¹³ Tr. at 25-31, 36-40; Applicant’s response to SOR; GE 4, 7; AE E.

¹⁴ Tr. at 15-22; AE C, D.

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.”

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;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant has a number of alcohol-related arrests, including three arrests for DUIs. He admits that he drank alcohol to excess and to the point of intoxication. While in an inpatient alcohol treatment program at a hospital in 2005, he was diagnosed by a doctor with alcohol dependence. In December 2006, the scale scores of the SASSI met the "criteria for classifying [Applicant] as having a high probability of being substance dependent." In 2011, an LPC reported that Applicant had a history of alcohol abuse. AG ¶¶ 22(a), 22(c), 22(d), and 22(e) are applicable. There is no evidence that Applicant returned to uncontrolled drinking after completion of the alcohol treatment program. AG ¶ 22(f) is not applicable.

Applicant was arrested three times for DUI, but he was not arrested the fourth time alleged in SOR ¶ 1.e. That allegation is concluded for Applicant.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 July 2005. He completed inpatient and outpatient alcohol treatment. He still drinks alcohol, but he stated that he only drinks responsibly. There is contradictory evidence as to whether Applicant is alcohol dependent or an alcohol abuser. I give the recent evaluations the most weight. He received favorable endorsements from two LPCs and an "Admin Director" of an outpatient substance abuse recovery center in January 2009, November 2011, and September 2012. I find that Applicant has established a pattern of responsible alcohol use and that uncontrolled drinking is unlikely to recur. His current alcohol consumption does not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a), 23(b), and 23(d) are 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.

I considered Applicant's favorable character evidence and work record. Applicant had a problematic history with alcohol, including three DUI arrests, but he has not had an alcoholic-related arrest in more than seven years. He currently drinks responsibly and in moderation. He received favorable endorsements from two LPCs and an "Admin Director" of an outpatient substance abuse recovery center. I am convinced Applicant

has control over his alcohol use and that there is little likelihood of recurrence of alcohol problems.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has 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:	For Applicant
Subparagraphs 1.a-1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge