



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



In the matter of:)	
)	
)	ISCR Case No. 08-11034
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

May 12, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a lifelong history of alcohol abuse which includes five serious alcohol-related incidents of misconduct. His last incident occurred in 2007. He relapsed in March 2008, while undergoing court-ordered treatment. Although he has been abstinent since March 2008, not enough time has passed to warrant a finding that his alcohol-related behavior is not likely to recur. Eligibility for access to classified information is denied.

Statement of the Case

On March 4, 2008, Applicant submitted a security clearance application. On August 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

The SOR alleges security concerns under Guideline G (Alcohol Consumption). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant responded to the SOR on September 16, 2009. He elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated October 23, 2009, was provided to him by letter dated October 26, 2009. Applicant responded to the FORM on November 18, 2009, and submitted material in refutation, extenuation, and mitigation. The case was assigned to me on December 14, 2009.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, and 1.d through 1.i, with some clarifications. He denied the allegations in SOR ¶¶ 1.b and 1.c. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's answers to the SOR and the FORM, I make the following additional findings of fact.

Applicant is a 49-year-old senior software engineer employed by a defense contractor. He attended college on-and-off from 1985 until 1991, when he received a Bachelor of Science degree in computer science and a minor in mathematics. He graduated from college with honors, made the Dean's list five times, and is a member of an honor roll society. He married his first wife in October 1986, and divorced her in April 2004. He married his current wife in February 2008. He has one adult-age child and two adult-age stepchildren.

In his January 2008, clearance application, Applicant disclosed that he had received treatment for bipolar disorder since 1995, he was involved in numerous alcohol related incidents, and he was currently receiving alcohol-related treatment (Item 5 Sections 23, 25, and 26). The subsequent background investigation addressed his alcohol consumption and alcohol-related misconduct.

Applicant started consuming alcohol (whiskey, beer, and tequila) as a teenager. He described himself as an episodic binge drinker, but he also admitted to consuming a six pack of beer with a pint and up to a fifth of alcohol daily (Item 8). He consumed alcohol to the point of intoxication, losing his memory, and experiencing blackouts. His alcohol consumption led him to engage in criminal misconduct. At age 17, he was drinking with friends and they stole carpet from a home construction site he was working at. He later turned himself in. He was convicted of the larceny, served nine months in jail, and made restitution.

In October 1981, Applicant rode his motorcycle while intoxicated and was involved in a serious accident. He was hospitalized for a long period of time and

required extensive medical care. He was convicted of driving under the influence (DUI) and required to attend Alcoholic Anonymous (AA) meetings. He stopped drinking alcohol from 1984 until 1991, because his alcohol abuse was jeopardizing his life (Response to the FORM). Applicant underwent psychiatric treatment for bipolar disorder and alcohol consumption from January 1995 until October 2004. He also received treatment for alcohol dependence from January 2005 until October 2006.

In July 2006, Applicant consumed alcohol until he was impaired and drove his vehicle off the road. He left his vehicle and started walking. He was arrested for public intoxication. He has little memory of that night's events because he blacked out. He was given a pre-trial diversion, paid fees and court costs, and received court-ordered alcohol counseling. He participated in alcohol rehabilitation treatment from August 2006 until November 2006.

In June 2007, he was convicted of driving while intoxicated (DWI). He was sentenced to jail (suspended), paid fines and court fees, awarded probation, and ordered to attend an alcohol rehabilitation program. His driver's license was suspended for one year.

In September 2007, Applicant consumed alcohol to excess, blacked out and was arrested for public nudity and public intoxication. He was convicted of public intoxication, sentenced to jail (suspended), paid fines and court fees, and was placed on probation. He was ordered to undergo an alcohol rehabilitation program, which he attended from October 2007 until May 2008.

Applicant's treatment records show he cooperated fully with the counselors and indicated he truly wanted help to control his alcohol addiction. He admitted increased tolerance to alcohol. He was drinking more than intended, having withdrawal symptoms, his use was interfering with his obligations, and he wanted to develop coping skills to maintain abstinence. He was prescribed medication to control his alcohol abuse. Applicant's diagnosis included "alcohol dependence" and "bipolar I disorder, moderate" (Item 8).

In March 2008, while undergoing court-ordered alcohol treatment, Applicant relapsed. He disclosed his relapse to his counselors seeking further help. Notwithstanding, he successfully completed his treatment program. At the end of his 2008 treatment, Applicant had improved his condition, and his prognosis was considered "good." He was referred to continued AA participation.

During July and October 2008 follow-up interviews with a government investigator concerning his alcohol-related problems, Applicant was honest and forthcoming about his alcohol-related problems. He admitted that he has been struggling with alcohol addiction most of his life and that he suffers memory lapses because of his alcohol abuse. Applicant has been sober since March 2008, and consistently participates in AA meetings.

Applicant attributed his alcohol problems to the emotional and physical abuse he suffered in foster homes and by adopted parents after his mother abandoned him, and his 2006-2007 alcohol-related problems to the break-up of his first marriage in 2004. In his answers to the SOR and the FORM, Applicant expressed remorse for his alcohol-related problems. Applicant has taken personal responsibility for his actions. He averred he has been abstinent since March 2008. He voluntarily disclosed his 2008 relapse because he really wanted help. He claimed he currently attends AA meetings three times per week and benefits from the fellowship. He noted he is now remarried to a wonderful woman and they have a good relationship. He volunteers in his community helping the youth improve their leadership skills.

Applicant believes himself to be reliable and trustworthy because of his continued success. He has been successful at his job during the last 25 years, and was successful on his own entrepreneurial business. He was hired in February 2008, by his current employer (a government contractor) as senior software engineer. His supervisors consider him to be an invaluable member of the team. He is reliable, trustworthy, ethical, thorough, and technically competent. He has good analytical skills and is well adjusted. He is dedicated to his family. They rely on his judgment unconditionally.

Applicant's AA sponsor since May 2008 describes his progress in the AA program as honest and sincere. He considers Applicant to be one of the most reliable and trustworthy persons he knows.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered 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. The administrative judge's goal is to achieve a fair, impartial, and commonsense decision. 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. AG ¶ 2(c).

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 the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”¹ Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government.²

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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 Section 7; and Exec. Or. 12968 (Aug. 2, 1995), Section 3) Thus, a decision to deny a clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the stringent guidelines the President and the Secretary of Defense have established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

Under Guideline G the Government’s concern 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.

The Government established its case under Guideline G by showing that Applicant has a history of consuming alcohol to excess, extending from 1977, when he was 17, until March 2008, when he was 48 years old. His alcohol abuse led him to

¹ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

exercise questionable judgment as demonstrated by his involvement in five incidents of serious misconduct, including convictions for larceny, DUI, and public intoxication.

Applicant was abstinent from 1984 to 1991. Around 1995, he was diagnosed with alcohol dependence. This diagnosis was affirmed in 1981, 2006, and 2007 when he was court-ordered to participate in alcohol-related treatment as a result of his alcohol-related misconduct. He stopped consuming alcohol around October 2007, while attending court-ordered treatment. He relapsed in March 2008, and seeking further assistance, disclosed his relapse to his alcohol counselor. There is no evidence that Applicant has consumed alcohol after his March 2008 relapse. He does not intend to continue consuming alcohol in the future.

Guideline G disqualifying conditions AG ¶ 22(a): “alcohol-related incidents away from work, such as driving while under the influence;” 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;” AG ¶ 22(d): “diagnosis by a duly qualified medical professional of alcohol abuse or alcohol dependence;” AG ¶ 22(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 AG ¶ 22(f): “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program,” apply.

There are four Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

- (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);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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.

Considering the totality of the circumstances in this case, I find none of the Guideline G mitigating conditions fully apply. Applicant's initial diagnosis of alcohol dependence was in 1995. This diagnosis was affirmed in 1981, 2006, and 2007 when he was ordered to participate in additional alcohol-related treatment as a result of his alcohol-related misconduct.

Applicant's alcohol consumption appears to be tied to his depression and diagnosed bipolar disorder. Since 1977, he has been repeatedly involved in serious alcohol-related incidents of misconduct. He has recognized the danger of his alcohol abuse and has stopped drinking several times. He also sought professional help several times. Notwithstanding, Applicant either has not been able to learn from his mistakes or he has not been able to control his impulses. Applicant's alcohol-related incidents show alcohol impairs his judgment and that he has not been capable of controlling his impulses.

Applicant remarried and is in a stable relationship. He claimed he does not have any emotional or personal problems that could trigger his alcohol consumption. He is also doing well at work. He has acknowledged his alcoholism, successfully participated in alcohol counseling, has been abstinent since March 2008, and has been participating in aftercare counseling. His prognosis is good. Notwithstanding, Applicant's favorable evidence is not sufficient to show it is unlikely his questionable behavior will recur. In the past, Applicant stopped drinking several times for long periods after alcohol rehabilitation treatment and medication. He was not able to control his impulses and resumed his alcohol consumption which led to additional misconduct. Not enough time has passed since his last relapse to justify a finding that his alcohol-related behavior is not likely to recur.

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 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(c) were addresses under that guideline, but some warrant additional comment.

Applicant has been successful in his job for a government contractor since 2008. He is a mature man and a good worker. He has the support of his supervisors who trust him and laud his performance. He has sought help to overcome his alcoholism and seems to be doing well. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation.

Overall, on balance the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that, at this time, Applicant has failed to mitigate the security concerns arising from his alcohol consumption.

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
Subparagraphs 1.a-1.i:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge