



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



In the matter of:)	
)	
)	ISCR Case No. 08-11851
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Dennis J. Sysko, Esquire

October 13, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 19 June 2009 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, Alcohol Consumption, H, Drug Involvement, J, Criminal Conduct, and F, Financial Considerations.² Applicant timely answered the SOR, and requested a hearing. DOHA assigned the case to me 28 August 2009, and I convened a hearing 6 October 2009. DOHA received the transcript 14 October 2009.

¹Consisting of the transcript (Tr.), Government's Exhibits (GE) 1-8, and Applicant's Exhibits (AE) A-F.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.h, 3.a, and 4.a. He is a 48-year-old network administrator employed by a defense contractor since March 2003. He served on active duty for over 20 years in the U.S. Air Force, retiring as a Technical Sergeant (paygrade E-6). He seeks to retain the clearance he obtained in the Air Force in 1992, and transferred to his civilian employment when he retired.

Applicant grew up in a dysfunctional family, and began drinking when he was 13 or 14 years old. An older sister died from an aneurism that was related to her drug abuse. He has a history of excessive alcohol consumption, punctuated by four alcohol-related incidents between May 1984 and June 2000, and culminating in his first diagnosis of alcohol dependence in April 2001.

In May 1984, Applicant was arrested for DUI (>.10% BAC) and later convicted. Because of this arrest, he was referred for a military evaluation, which concluded that Applicant was a problem drinker who was in the early/middle stages of alcoholism, and recommended him for a rehabilitation program. However, he was not sent to the program.

In June 1991, Applicant was again arrested, and later convicted, for DWI. He paid a fine. In November 1998, he was arrested for DWI (.12% BAC) and later convicted. The pertinent part of his sentence was five year's probation and an order to attend Alcoholics Anonymous (AA). His final DWI (.13% BAC) was June 2000. His January 2001 sentence for that conviction included jail time and another year's probation

Because of his June 2000 arrest, Applicant received alcohol treatment from October 2000 to April 2001. The evaluator was a Certified Associate Counselor Alcohol and Drug (CAC-AD), the designation of his state licensing board. Applicant was ordered to treatment by the judicial system. Applicant abstained from alcohol while in treatment, and had six negative urinalyses during the program. He resolved his legal problem, gained a working knowledge of alcohol dependency, and developed a support system for ongoing recovery. The narrative summary noted:

It appears that this client is taking his Alcohol Dependency very seriously and is willing to take the necessary steps to treat his Alcohol Dependency on a daily basis. It is this counselor's impression that his client has accepted that he is Alcohol Dependent. (GE 2)

Applicant was diagnosed as alcohol dependent, told to abstain from alcohol, attend at least two AA meetings per week for two years, and continue to use his support system to fully understand the 12-step AA program for ongoing recovery. His prognosis was good, provided he followed his continuing care plan.

On 22 December 2004 DOHA required Applicant to get a current medical prognosis concerning his resumption of alcohol following treatment (GE 2). The evaluation was to be performed by a treatment professional within the meaning of AG ¶ 22. (d) and (e),³ and include consideration of Applicant's answers to other questions in the interrogatories. Applicant went to the same counselor who treated him in 2000-2001, and got an evaluation dated 15 January 2005.⁴ There is conflicting evidence on what the evaluation consisted of. At the hearing, Department Counsel proffered that based on representations by Applicant and his counsel, the evaluation—although dated 15 January 2005—reflected only Applicant's program participation in 2000-2001, rendering SOR 1. h moot. Based on those representations, SOR 1.h was stricken (Tr. 16-17). However, at the conclusion of Applicant's testimony (Tr. 95-93), I reinstated the allegation in accordance with ¶ E.3.1.17 of the additional procedural guidance (Directive, Enclosure 3).⁵ Neither party requested additional time to address the allegation, and both declined the opportunity to further question Applicant (Tr. 93).

Contrary to Applicant's assertions, the 15 January 2005 evaluation shows that it was based on a detailed reevaluation of Applicant on that date. The evaluation correctly states that Applicant had to get an evaluation for his security clearance processing. The evaluation records the tests and techniques used by the counselor, the test results, and the interpretation of the test results—items missing from the April 2001 evaluation. The counselor concluded that Applicant was alcohol dependent (early stage), but had excellent knowledge about alcohol dependency. He recommended no treatment, and stated that Applicant was medically and mentally fit to perform his job duties. However, he noted that Applicant had test results:

. . . that are consistent with the scores of an individual who is Alcohol Dependent, which (sic) has an excellent knowledge of Alcohol Dependency. His verbal responses, his self reported Drinking History (sic) tends to support this finding.

³¶ 22. (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;

⁴The evaluation contained in both GE 2 and 3 is dated 01/15/05 at the beginning of the evaluation and 01/15/04 at the end of the evaluation—which I consider a typographical error for two reasons. First, Applicant got the evaluation because of DOHA's December 2004 requirement. He could not have gotten the evaluation in January 2004. Second, the counselor who made the evaluation also executed the interrogatories which were hand-dated 15 January 2005 by Applicant when he submitted them to DOHA.

⁵¶ E3.1.17. The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause.

The counselor emphasized that “[e]ach component of this evaluation was discussed with [Applicant] in detail. [Applicant] is aware that he needs to address his Alcohol Dependency on a daily basis.”

Applicant no longer drinks and drives, and he does not go out to drink. He estimates that he drinks two glasses of wine with dinner 3-4 times per week, and maybe a few beers per month. He has had no alcohol-related incidents since 2000.

Applicant states that the counselor did not conduct an interview in January 2005 or give him any tests (Tr. 72). He says their meeting was only to get the counselor to confirm his treatment in 2000-2001. He admits that the counselor told him he was alcohol dependent in 2001, and recommended that he use the AA 12-step program. He insists that he was told to abstain from alcohol only during his treatment. He last went to an AA meeting in 2003 and cannot recite any of the 12 steps. When he went to AA, sometimes he thought he was an alcoholic, and sometimes not. He does not think he is an alcoholic now, but admits he had an alcohol problem in 2000. He admits it was important for his criminal case and his job for him to get a favorable evaluation from the counselor in April 2001 (Tr. 75).

On 21 August 2009, Applicant consulted a Licensed Clinical Professional Counselor (LCPC) for “an alcohol assessment and evaluation for security purposes for his job.” (AE B) The counselor interviewed him for about 1½ hours, but performed no tests. Applicant told her that he had been treated for alcoholism, but had not had a drink in public for many years, although he occasionally drank wine spritzers in his home. She did not render a diagnosis or prognosis, but stated he was fully capable of performing his job duties. However, she recommended he get a second opinion.

Applicant got the second opinion in September 2009, when he consulted a Licensed Clinical Alcohol and Drug Counselor (AE C). The counselor directs a program that has been approved by several state agencies and courts. The counselor examined Applicant and concluded:

[a]fter an in-depth interview, a psycho-social assessment, cortical function test, and [state] Addictions Questionnaire, it is my belief that [Applicant] does not have a problem with drugs and/or alcohol. Therefore, I feel that neither an educational program nor treatment program is necessary at this time.

However, the counselor did not otherwise explain the basis for his opinions, specifically in light of Applicant’s resumption of alcohol after treatment and diagnosis as alcohol dependent. The record is silent on any scope of practice limitations concomitant with licensing as a CAC-AD, LCPC, or LCADC.

Applicant used marijuana one time in 1999, when he held a clearance. Applicant also failed to report rental income on his income tax returns from April 2000 to May

2002. He bought a house in 2000. A friend needed a place to stay, and Applicant obliged him. The friend lived on and off with Applicant for about two years and paid him rent sporadically. Applicant did not know he had to claim those payments as income. When he found out he had to claim the income, he submitted amended tax returns and paid the additional tax, penalties, and interest (AE D, E).

Applicant's supervisor and coworker consider him an excellent employee, who is honest and trustworthy. He has good evaluations (AE F). Both witnesses are somewhat aware of Applicant's alcohol issues, but neither is aware of the full extent. They have not observed him under the influence of alcohol or drugs at work.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁶

Analysis

The Government established a case for disqualification under Guideline G, by demonstrating Applicant's history of alcohol abuse, punctuated by four alcohol-related arrests between May 1984 and June 2000, his subsequent diagnoses of alcohol

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

dependence in April 2001 and January 2005, and discontinuing his recovery program and abstinence after his 2001 release from his rehabilitation program.⁷ Applicant failed to fully mitigate the security concerns.

The mitigating conditions under Guideline G provide incomplete amelioration of the security concerns. Although his alcohol abuse was not recent, as measured by alcohol-related incidents, it was frequent, and not under unusual circumstances.⁸ Applicant's acknowledgment of his alcohol abuse is limited to the period 1984-2000. He views the problem as limited to his drinking and driving; thus the only action he took to overcome the problem was drinking only at home. Arguably, he has established a pattern of responsible use, but this only applies to a diagnosis of alcohol abuse.

Applicant was diagnosed as alcohol dependent in 2001, and he has not established a pattern of abstinence.⁹ His claim that he was to abstain from alcohol only while in the rehabilitation program is simply unbelievable, as is his claim that he did not undergo a full evaluation in January 2005, an evaluation which confirmed his diagnosis of alcohol dependence. Applicant stopped going to AA in 2003, and has no other support system in place. Without some kind of program, his demonstration of responsible drinking is insufficient where abstinence is the standard.¹⁰ Finally, Applicant returned to drinking after he completed his treatment program in 2001, a circumstance that led to his being again diagnosed as alcohol dependent in 2005. His 2009 evaluations do little to refute that diagnosis.

Applicant completed a rehabilitation program in 2001, but returned to drinking and stopped going to AA, contrary to treatment recommendations. His 2001 prognosis was good, but conditioned on his continued adherence to his recovery program. His 2009 evaluations note only that Applicant does not currently demonstrate any alcohol problem. But neither of them reconciles this finding with the earlier diagnoses of alcohol dependence, neither of them addresses their findings in the context of Applicant's

⁷¶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; . . . (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; (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; (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

⁸¶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;

⁹¶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);

¹⁰¶23.(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;

resumed alcohol consumption, and neither of them contains a prognosis for Applicant.¹¹ Without a prognosis, Applicant's drinking at home limits the likelihood that he will drink and drive, but does not vitiate the security concerns that Applicant's drinking will evolve to abusive drinking again. Put another way, once Applicant was diagnosed as alcohol dependent and resumed drinking contrary to treatment recommendations, he had the burden of establishing that the diagnosis of alcohol dependence was no longer valid and that his current alcohol consumption presented no security concerns despite the earlier diagnosis. Applicant's 2009 evaluations fail to meet that burden. Accordingly, I resolve Guideline G against Applicant.

The Government established a case for disqualification under Guideline H.¹² However, Applicant mitigated the security concerns. Although Applicant's drug abuse occurred when he had a clearance, the remoteness and infrequency of use, the circumstances of that use, and 18 years abstinence from drug use, suggest he is unlikely to use drugs in the future.¹³ With no indication of any psychological or physical dependence on drugs, his 18 year abstinence from drug use is adequate to demonstrate an intent to refrain from drug use in the future.¹⁴ I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

The Government established a case for disqualification under Guideline J by establishing Applicant's alcohol-related criminal conduct and his illegal use of drugs.¹⁵ However, the gravamen of the security concerns in this case revolve around Applicant's alcohol abuse issues. Separate allegation of the criminal nature of his conduct, whether alcohol abuse or drug abuse, adds nothing of substance to the analysis of Applicant's fitness for access to classified information. I resolve Guideline J for Applicant.

The Government failed to establish a case for disqualification under Guideline F. Applicant's not knowing that the sporadic "rent" payments made to him by the friend who lived with him occasionally was income, and thus not declaring those payments as

¹¹ ¶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, . . . 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.

¹² ¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ;

¹³ ¶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;

¹⁴ ¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

¹⁵ ¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

income on his tax returns, does not demonstrate poor judgment, untrustworthiness, or unreliability. Once he knew it was income, he amended his tax returns and paid the amounts due. Further, the additional taxes, penalties, and interest imposed did not create any financial difficulty for Applicant. I resolve Guideline F for Applicant.

In my whole-person evaluation of Applicant, I have given particular consideration to his 20 years honorable military service, his favorable work and character references, and the favorable conclusions of his 2009 alcohol evaluations. However, I find those factors insufficient to overcome the adverse inferences attendant to his resumption of alcohol after his diagnoses of alcohol dependence.

Formal Findings

Paragraph 1. Guideline G: AGAINST APPLICANT

 Subparagraphs a-f: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

 Subparagraph a: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

 Subparagraph a: For Applicant

Paragraph 4. Guideline F: FOR APPLICANT

 Subparagraph a: For 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 or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge