



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-11929
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel
For Applicant: *Pro se*

July 30, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline G (alcohol consumption). Clearance is granted.

Statement of the Case

On August 23, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 27, 2009, 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 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) effective within the Department of Defense for SORs on September 1, 2006.

Applicant answered the SOR on September 18, 2009, and DOHA received his answer on September 21, 2009. Department Counsel was prepared to proceed on

October 27, 2009. The case was assigned to me on November 5, 2009. DOHA issued a notice of hearing on January 12, 2010, scheduling the hearing for January 27, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant offered Applicant Exhibits (AE) A and B, which were received without objection, and he testified on his behalf.

I held the record open until February 12, 2010, to afford Applicant the opportunity to submit additional documents. Applicant timely submitted AE C, which was received without objection. DOHA received the hearing transcript (Tr.) on February 3, 2010. The record closed on February 12, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations except for SOR ¶ 1.c., which he denied. His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Applicant is a 26-year-old database analyst, who has been employed by a defense contractor since August 2007. (GE 1, Tr. 12-13) He seeks to retain his security clearance, which he has held since August 2007. Maintaining a security clearance is essential for Applicant to remain in his current position. (Tr. 15-16.)

Applicant graduated from high school in May 2002. He attended university from August 2002 to May 2007, and was awarded a Bachelor of Science Degree in Management Information Systems. He has never married and has no dependents. (GE 1, Tr. 13-15.)

Applicant has a history of episodic alcohol abuse, marked by excessive alcohol consumption, a December 2005 driving under the influence (DUI) arrest, driving a vehicle while impaired, and three blackouts. He began drinking while he was in high school, and his drinking increased while in college. He does not dispute the fact that during this timeframe he drank excessively and to the point of intoxication. (SOR ¶ 1.a., Tr. 16-17.)

In December 2005, Applicant was arrested and charged with DUI, speeding, and DUI with a BAC of .08 or more. At the time of his arrest, he was 21 years old and still in college. He was driving home from a bowling ally after a late night outing when he was stopped for speeding. The charges were later dismissed. (SOR ¶ 1.b., Tr. 17-23.) Applicant significantly reduced his alcohol consumption after his DUI arrest, however, he later increased his alcohol consumption for a short time. He stated, "I know that I drank heavily in college after my first girlfriend broke up with me. I'm not sure if it was directly related (to it) or if it was just being irresponsible with college dorm mates." (Tr. 23-24, 26-28.)

SOR ¶ 1.c. alleged that between 2000 and December 2005, Applicant drove a motor vehicle approximately five to fifteen times while intoxicated. He denied this allegation in his Response to SOR. He takes exception to the number of times he purportedly drove a motor vehicle while intoxicated. He does, however, concede there were a “number of times” that he chose to get behind a motor vehicle while intoxicated (Tr. 25.) Applicant had about three alcohol-related blackouts between 2002 and 2008. (SOR ¶ 1.d.) He denied having any blackouts since then. (Tr. 32.)

Applicant applied for access to Sensitive Compartmented Information (SCI) with another Government agency (AGA) in 2008, and his alcohol history was identified as a security concern. The AGA referred Applicant to a clinical psychologist who prepared a psychological consultation report in May 2008. The AGA denied him SCI access noting that “[w]hile [Applicant] was not diagnosed with Alcohol Abuse or Dependence, he is deemed a high risk to engage in behaviors indicative of poor judgment, impulsivity, or irresponsibility in the future. This coupled with his seemingly high consumption habits, recent blackouts, and history of driving under the influence of alcohol renders [Applicant] ineligible for access to [AGA] SCI.” (GE 3.)

Applicant has significantly reduced his alcohol consumption. The last time he became intoxicated was on New Year’s Eve with his friends. (Tr. 33-34.) He stated, “I think it (past alcohol consumption) helped me realize that it was about time to grow up. I think it was just being a little bit juvenile in my alcohol consumption.” (Tr. 35.) Applicant described his current alcohol consumption as “[s]ometimes I don’t drink at all for the week, sometimes I’ll have a glass of wine with dinner, sometimes I won’t.” (Tr. 37.) Applicant acknowledged that he had a problem with alcohol in the past, but stated he drinks responsibly now. (Tr. 39.)

Psychological and Substance Abuse Evaluation

Post-hearing, Applicant submitted a Psychological and Substance Abuse Evaluation prepared in February 2010. (AE C.) Briefly, the neuropsychologist’s credentials consist of over 30 years of experience in alcohol and other drug abuse assessment, treatment, and research. He has designed and managed chemical dependency treatment programs, and has been a consultant to private, state, county, federal, and national chemical dependency treatment programs. He is a Ph.D. trained neuropsychologist, a Board Certified Forensic Examiner, a Fellow of the American College of Forensic Examiners International, and holds the APA Certificate of Proficiency in Alcohol and Other Substance Abuse Treatment. (FRE 702.)

Under Diagnostic Considerations, the neuropsychologist stated that Applicant’s MMPI-2 profile listed no diagnostic possibilities adding that all available sources of information should be considered before establishing final diagnoses. Under Axis I Diagnostic Considerations, he listed 305.00 Alcohol Abuse, and under Axis II, he listed 799.0 Diagnosis Deferred on Axis II, alternatively stated, incomplete data precludes diagnostic judgment. The neuropsychologist listed under conditions and experiences that may compromise Applicant’s employment success: (1) he started his substance

abuse in his teenage years, (2) he used alcohol to cope with problems, (3) he was arrested for DUI, and (4) he has a high tolerance for alcohol.

Listed under characteristics and conditions that will improve his chances for success: (1) he has had periods of abstinence, (2) he has significantly reduced his drinking frequency and amount, (3) he has a supportive family, (4) he have moved out of a peer situation with alcohol abuse norms, (5) there is no family history of substance abuse or dependence, (6) there is no family history of mental illness, (7) he has reasonably good social skills, (8) he has a track record of demonstrated success in business and academia, (9) he has alternatives for positive addictions, (10) he does not have personality disorders that would increase his risk for failure, and (11) he experiences anxiety, guilt, and remorse that can motivate positive lifestyle changes.

Character Evidence

Applicant submitted a reference letter from his company vice president. He stated that Applicant “consistently met or exceeded all job requirements as needed by both management and his team.” He further stated that Applicant “is an individual of high character, who may have just made some juvenile mistakes” and recommended him for a security clearance. (AE A.)

Applicant also submitted a statement from his girlfriend, who is an attorney. She stated, “[i]n these past four years I have seen [Applicant] mature immensely. On weekends, we spend our nights trying out new recipes rather than frequenting college bars. She concluded by saying that Applicant “has drastically reduced his alcohol consumption. He has replaced old vices with new hobbies and matured significantly. I am confident in my positive review of [Applicant’s] character, and affirm that he is a nothing short of a responsible individual.” (AE B.)

Personal Observations

Having observed Applicant’s demeanor closely, I find his testimony credible. At his hearing, Applicant promptly answered all the questions asked. He was frank, candid, and forthcoming in his answers and explained his answers without hesitation. He readily acknowledged his bad behavior.

Policies

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

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.

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 protect or 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 Executive Order 10865 provides that 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

Under Guideline G (alcohol consumption), 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 through Applicant’s admissions and the evidence presented. Applicant consumed alcohol excessively and at times and to the point of intoxication from 2000 to 2009, was arrested for DUI in

December 2005, drove a motor vehicle various times while intoxicated from 2000 to 2005, and experienced at least three alcohol-related blackouts between 2002 and 2008.

A review of the evidence supports application of two alcohol consumption disqualifying conditions. AG ¶ 22(a): “alcohol-related incidents away from work, such as driving while under the influence,” 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,” apply.

Considering the totality of the circumstances in this case, I find that application of one alcohol consumption mitigating condition is appropriate. 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).” Although Applicant has never been diagnosed as alcohol dependent or as an alcohol abuser, he has acknowledged and recognizes the deleterious effect the misuse of alcohol has had on his life. Two qualified medical professionals have evaluated Applicant and neither concluded that he was an alcohol abuser or alcohol dependent. The first evaluation was conducted in May 2008 by a psychologist on behalf of AGA, and the second evaluation was conducted in February 2010 by a neuropsychologist selected by Applicant. Neither medical professional diagnosed Applicant with an underlying alcohol dependence or alcohol abuse problem.

Applicant presented credible evidence of actions taken to overcome his problem, and established he has significantly modified his behavior and alcohol consumption over the last two years. He is remorseful for his behavior and has initiated changes in his lifestyle. The statement from a senior company representative shows Applicant’s work behavior has not been indicative of an alcohol problem. He is viewed as a valuable employee, who is reliable, dependable, and professional. Applicant’s sobriety and responsible use of alcohol is supported not only by his company vice president, but also by his attorney-girlfriend of four years. Furthermore, Applicant acknowledged the problems his misuse of alcohol has caused him, demonstrated remorse, and a steadfast commitment to continue lifestyle changes consistent with the responsible use of alcohol.

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) 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.

Applicant has been forthright and cooperative throughout this entire process. He voluntarily underwent a post-hearing psychological and substance abuse evaluation from a qualified neuropsychologist. At age 26, he recognizes the adverse consequences of misusing alcohol. Apparently, these consequences were not part of his thought process during his high school and college years. Applicant has been willing to do whatever is necessary to demonstrate his responsible alcohol consumption. He has family support, stable employment, and a strong work ethic. His willingness to make significant lifestyle changes accompanied by company, family and girlfriend support should ensure his continued success. Applicant demonstrated the correct attitude and commitment to being sober. Considering his demeanor and testimony, I believe Applicant has learned from his mistakes, and his questionable behavior is unlikely to recur. In sum, I find Applicant has presented sufficient evidence of rehabilitation.

Also noteworthy is Applicant's past behavior, which serves as a reliable indicator of future behavior. In particular, he has successfully held a security clearance since August 2007. He does not drink and drive, he has disassociated himself with his "frat house" college and post-college lifestyle. He has been cooperative throughout this process and recognizes the gravity of these proceedings. Applicant is living a different lifestyle from the person who was arrested for DUI in December 2005. He is in a stable relationship, is a responsible and contributing citizen, and is a trusted and valued employee.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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. – d.:	For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge