



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



In the matter of:)	
)	
)	ISCR Case No. 09-00339
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard B. Stevens, Esquire, Department Counsel
For Applicant: Joseph Egan, Jr., Esquire

July 13, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86), on July 11, 2006. On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, to Applicant. 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.

On March 24, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 1, 2009. The case was assigned to me on May 15, 2009. On June 1, 2009, a Notice of Hearing was issued scheduling the hearing for June 16, 2009. The hearing was held, as scheduled. During the hearing, it was discovered Applicant did not receive the Notice of Hearing 15 days prior to the date of the hearing as required by the Directive. Applicant waived the 15-day notice requirement. (Tr at 8) The Government offered three exhibits

which were admitted as Government Exhibits (Gov) 1 – 3 without objection. The Applicant offered three exhibits which were admitted as Applicant Exhibits (AE) A - C. Department Counsel objected to two of the character letters that were included in AE B because they were not signed. One of the authors of the letters also testified and verified that the letter was written by him. The record was left open for two weeks for Applicant to submit a signed copy of the other character letter. He timely submitted a two-page document which was marked as AE D. Applicant testified and called four witnesses. The transcript was received on June 24, 2009. The record closed on July 1, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits to all of the allegations.

Applicant is a 50-year-old employee with a Department of Defense contractor seeking a security clearance. He is a calibration technician and has worked for his current employer since February 2000. (Several defense contractors have successfully bid on the contract over the years but the employees have remained the same.) Applicant grew up in a military family. He enlisted in the United States Navy on February 1, 1978. After serving over 18 years on active duty, he applied for early retirement. He retired from the United States Navy as an E-6 on October 31, 1996. After his retirement from the United States Navy, he worked several jobs prior to accepting his current position. He has been married for 30 years. He and his wife have three children. Their oldest son passed away, which was the main reason for his early retirement from the United States Navy. Their two other sons are ages 26 and 27. (Tr at 72 - 79; Gov 1; AE A)

Applicant started drinking alcohol when he was younger. He drank alcohol while in the United States Navy. He admits to occasionally drinking to intoxication. He has never experienced a black out after drinking alcohol. He has never craved alcohol. He has never felt the need to drink alcohol in the morning after drinking alcohol the night before. He has never thrown up from drinking too much alcohol. He has never been diagnosed or characterized as someone with an alcohol problem. (Tr at 79, 90, 111)

In October 2003, Applicant was arrested and charged with Driving Under the Influence and Careless Driving. He was found guilty of Driving Under the Influence. On the night in question, Applicant and his wife had a couple drinks at two bars that were located not far from where they live. Applicant recalls drinking two or three drinks at the first bar. They went to another bar and shared about ½ pitcher of beer. While driving home, Applicant started to turn left onto the wrong road but corrected himself prior to completing the turn. A police car pulled him over. Upon approaching his car, the police officer smelled alcohol on his breath and gave him a breathalyzer test. He registered a 0.12. (Tr at 84, 117)

On June 4, 2006, Applicant was arrested and charged with Driving Under the Influence, Refuse Breath/Urine Test After Previous Misdemeanor, and Failure to Use a Designated Lane. He was found guilty of Reckless Driving. Applicant's license was suspended. He paid fines and court costs. Prior to his court date, he voluntarily entered counseling classes and attended AA meetings. (Tr at 85-88, 95, 109-110, 117; Gov 1, question 23; Gov 2; Gov 3)

On the day of the arrest on June 4, 2006, Applicant and his wife spent the day at the local American Legion post. He was an officer. They were nominating a new commander. He and his wife planned to stay until the bartender closed down so that she would not have to leave by herself. Another customer came in so Applicant decided to drive home. He had about three or four drinks during the time he was there. He was pulled over by the police on the way home for activating his turn signal too early. The police officer smelled alcohol on his breath. Applicant refused to take a breathalyzer or a field sobriety test. He was subsequently arrested. (Tr at 85; Gov 2)

Applicant reported his two arrests for DUI to his supervisor the next time he came in for work. He listed the two DUI arrests on his security clearance questionnaire. He did not try to hide the DUI arrests. (Tr at 106; Gov 1, section 23)

Applicant states the second DUI arrest was a signal to him that he needed to change his life. He decided that he could not go through another DUI arrest. He occasionally drinks alcohol but never drinks and drives. He does not drink to excess. His definition of drinking to excess is drinking more than three or four drinks in one sitting. He drinks once or twice a month at the American Legion or the VFW post. He occasionally drinks non-alcoholic beer. (Tr at 87-94)

During the hearing, Applicant testified, "I've got a noose around my neck and I know it and I'm the only one with my hand on the trap door." (Tr at 111) His experience with the DUI arrests and his attendance at AA meetings showed him how alcohol can adversely affect a person's life. He would never do anything to harm this country (United States of America). (Tr at 111-112)

Four of Applicant's colleagues took time off from work to testify on his behalf. The Business Manager and CEO of the International Brotherhood of Electrical Workers testified. He is on leave from the company where Applicant works. When not serving in his union position, he is a metrologist. Metrology is the field of measurement, test equipment, and calibration. He used to be Applicant's lead prior to departing for the union job. He states Applicant was hired 10 years ago. Applicant's job requires being very meticulous and demands a very technical type of analytical thinking. He states Applicant is an excellent worker. He is very dependable. He does not believe Applicant is an alcohol abuser. Although he does not socialize with him outside of work, he has never seen him intoxicated. He has never smelled alcohol on his breath. He never observed him to be affected from drinking alcohol at work. He is aware of Applicant's two DUIs. (Tr at 25 – 33)

Another co-worker, a calibration specialist, has known Applicant for seven years. He and Applicant are co-workers. He works down the hall from Applicant. They see each other on a daily basis. Each time Applicant was arrested for DUI, he told his co-workers that he was arrested within the next work day. Applicant was not secretive about his DUI arrests. Applicant's reputation pertaining to his technical skills, as well his honesty and integrity are impeccable. Applicant is always working. He never complains. He never has observed Applicant to be under the influence of alcohol in the work place. The co-worker and Applicant do not socialize much outside of work because the co-worker lives 40 miles away from work. (Tr at 35-44)

The Calibration Support Coordinator testified that Applicant is a very hard worker. Applicant is honest and straight-forward. He is a good technician who is very well liked. He interacts well with others and is ethical. The Calibration Support Coordinator is aware of Applicant's two DUIs. He occasionally socializes with Applicant outside of work. He has never observed Applicant being drunk or out of control. He is aware that Applicant volunteers with Toys for Tots. (Tr at 50-56)

Mr. A., a metrologist, has a direct working relationship with Applicant. Mr. A. has known Applicant for seven years. They work the same shift and interact with each other daily. Applicant cares about the work. He has never had any concerns about Applicant's work performance over the past six years. He has never noticed Applicant under the influence of alcohol on the job. If he had noticed that Applicant was impaired by alcohol, he would have notified management because they cannot afford to have an employee be impaired in their line of work. After Applicant's second DUI, he noticed Applicant was disappointed in himself, and fearful as to how his second DUI arrest would affect his ability to work. He was aware that as part of his DUI punishment, Applicant lost his license for a year. He never saw Applicant drive during that period. During the period that Applicant's license was suspended, a co-worker drove him to work. (Tr at 58-72)

The people who wrote reference letters on Applicant's behalf say similar favorable things about Applicant. They attest to his honesty and work ethic. (AE B and AE D) Recently, Applicant attempted to rescue an elderly woman from a house fire. She lived about three doors down from Applicant. Applicant and his son noticed her house was on fire. Applicant's son called 911 and Applicant crawled into the house. He tried to get to his neighbor who was in a bedroom. He eventually had to turn back due to the flames and smoke. His neighbor died of smoke inhalation. (Tr at 113-115)

Applicant's awards and decorations from his active duty service include: Master Training Specialist, Sea Service Deployment Ribbon (4 devices); National Defense Service Medal (1 device); Navy Achievement Medal (2 devices); Good Conduct Award (4 devices); Enlisted Surface Warfare Specialist; and the Meritorious Unit Commendation. (AE A)

In his spare time, Applicant volunteers at the American Legion and the Veterans of Foreign Wars (VFW). He is an avid motorcyclist. He is the Safety Officer for the American Legion Riders. His volunteer activities include raising funds for Meals on

Wheels and Toys for Tots. He also volunteers for an organization called The River Rats which is an organization that provides help and support to military veterans. (Tr at 82, 115-116; AE B at 5)

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. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 as to 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

The security concern relating to the guideline 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 disqualifying conditions that could raise security concerns. The following Alcohol Consumption Disqualifying Condition (AC DC) is relevant to Applicant’s case:

AC DC ¶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) applies with respect to Applicant’s two DUI arrests in October 2003 and June 2006.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption. The following Alcohol Consumption Mitigating Condition (AC MC) is relevant to Applicant’s case:

AC MC ¶ 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 and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) applies. While security concerns were raised as a result of two DUI arrests within a three-year period, Applicant has mitigated the concern. He fully disclosed his two arrests to his supervisor shortly after the arrest. He is open and forthcoming about the arrests. He completed the terms of his court sentence for both arrests. The second DUI clearly affected Applicant. Although he still occasionally drinks a moderate amount of alcohol, he refuses to drive when he does drink alcohol. The record contains no evidence that he was diagnosed as an alcohol dependent or an alcohol abuser. Numerous co-workers testified or wrote letters on his behalf attesting to his honesty and work ethic. Most of them also indicated that they have never observed Applicant under the influence or impaired by alcohol. Applicant has learned his lesson. For the past three years, he has had no alcohol-related incidents. Future incidents are unlikely to recur. Applicant’s past DUIs, while serious, do not cast doubt on his current reliability, trustworthiness or good judgment.

Guideline G is found for Applicant.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 considered Applicant's honorable service with the United States Navy. I considered his favorable employment history after his retirement from the military. Applicant is highly thought of by his superiors, co-workers, and peers. In his spare time, he volunteers within the community. While Applicant's two DUIs raised some warning signs, Applicant's demeanor and testimony at hearing indicates that he has learned a grave lesson about drinking and driving. He did not attempt to hide his DUI arrests from his employer. His current level of alcohol use does not raise a concern that he is an alcohol abuser or alcohol dependent. Though he occasionally drinks alcohol, he refuses to drive after drinking. He is aware that a future DUI arrest could jeopardize his ability to maintain a security clearance and possibly his job. Guideline G, Alcohol Consumption, is found for Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

ERIN C. HOGAN
Administrative Judge