



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



In the matter of:

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ISCR Case No. 09-00758

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: David Deitch, Esquire

August 11, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for alcohol consumption. Accordingly, his request for a security clearance is granted.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 26, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On December 14, 2009, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines (AG).² Applicant signed his notarized Answer to the SOR on January 25, 2010, in which he admitted three and denied two allegations in the Statement of Reasons. Department Counsel was prepared to proceed on February 19, 2010, and the case was assigned to me on March 4, 2010. DOHA issued a Notice of Hearing on March 25, 2010, and I convened the hearing as scheduled on April 8, 2010. During the hearing, I admitted four Government Exhibits (GE 1-4). Applicant testified and presented the testimony of one witness. I admitted ten Applicant Exhibits (AE A-J) and one Hearing Exhibit. DOHA received the transcript (Tr.) on April 21, 2010.

Findings of Fact

Applicant's admissions to the SOR allegations, as well as those in response to the DOHA interrogatories (GE 2, 3), are admitted as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional factual findings.

Applicant is 54 years of age. He has been married for 30 years and has two children who are 23 and 26 years old. Between 1978 and 1985, Applicant earned two bachelor's degrees and two master's degrees. In 1991, he received a doctorate in political science. He served on active duty as an Air Force officer from 1980 until his honorable discharge in 2006. He held teaching positions, and was also stationed in Washington, D.C. and overseas working in the area of international affairs. He received outstanding evaluations during his Air Force career. Applicant accepted employment with a defense contractor in May 2006, starting as a senior policy advisor. His evaluations indicate excellent performance. On a scale where a score of 5 indicates Outstanding, Applicant has received a 5 in every category in each year from 2006 through his most recent rating period of 2008-2009. In 2007, he was promoted to his current position of vice president. Applicant holds a top secret security clearance, which he has held continuously since 1980. (GE 1, 5; AE A, B, F; Tr. 19, 46-51, 53-56)

Applicant first drank alcohol in 1973, but drank infrequently. When he entered the Air Force in 1980, his drinking increased. Although his pattern varied, he had periods of increased drinking, such as 1990-1991, when he worked on his doctorate. From 1995 to 2005, he worked in high-level jobs in Washington, D.C and overseas. As work pressure increased, such as during his overseas assignments from 1999 to 2002, his drinking became heavier. Friction with his wife and family also escalated. In September 2005, Applicant submitted his Air Force retirement papers. (Answer; AE I; Tr. 56-60)

² Adjudication of this case is controlled by the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

In Fall 2005, several events occurred concerning Applicant's drinking: friends spoke to him about his drinking; his supervisor insisted he seek help; Applicant thought his work might be suffering from his use of alcohol; and his wife was unhappy with his alcohol use. In November 2005, Applicant sought help through the Air Force Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program at a local Air Force base. He reported to the location while under the influence of alcohol. He was evaluated and admitted into the program, and his duty location was transferred to the base where ADAPT was located.³ (Tr. 60-65, 68, 86-89)

The program required that Applicant abstain from alcohol during treatment. He abstained for the first three months, and drank intermittently during the last two months. Applicant was diagnosed with alcohol dependence by an Air Force clinical psychologist. He was advised to abstain from alcohol after completing treatment. The ADAPT discharge summary noted that Applicant chose to drink, but that he would be continuing with alcohol treatment. Applicant believed that abstaining indicated a failure of character because it meant he could not control his use of alcohol. He believed he could control it, and therefore opted to use the Rational Recovery method. It offers tools to achieve moderate alcohol use, for those who are able to control their drinking. The ADAPT counselor provided him with material about Rational Recovery. Applicant ended his treatment at ADAPT in April 2006, because he was retiring from the Air Force, and the program is limited to active duty personnel. When Applicant's ADAPT record was reviewed by the ADAPT Program Manager/clinical psychologist in January 2010, she interpreted the record as indicating that his treatment was successful. She also noted that his sobriety since November 2008 indicates that he has been making good judgments, and that he has a strong prognosis. (Answer; AE C, H; Tr. 60-67, 68, 86-89)

After leaving ADAPT, Applicant successfully followed the Rational Recovery approach for about one year. However, he became overconfident in his success, and his drinking slowly increased. In October 2007, he attended several events, drank too much alcohol, and decided to drive. He hit a parked car and was arrested. Before his court appearance, Applicant entered the Self-Management and Recovery Training (SMART) alcohol counseling program. Subsequently, he pled guilty to Operating a Motor Vehicle While Impaired. He was sentenced to 30 days in jail (suspended) and one year of probation; his driving privileges were revoked for six months; he was required to perform community service; and to attend an alcohol program and a victims' panel program. He met the court's requirements, including completing the 12-hour "About Face" DWI treatment course, and his probation was terminated early. (Answer; AE D, E; Tr. 67-74)

³ The SOR alleges that Applicant was found to be "not fit for duty." Applicant denied this description, and testified that he was designated "S4T" or "not worldwide qualified" because Air Force regulations require that ADAPT patients be placed on an S4T profile. See Air Force Instruction 44-121, §3.18.1.

Applicant started attending weekly SMART meetings in October 2007, after his arrest. His facilitator at SMART testified at the hearing. He also submitted a letter in which he describes SMART as a worldwide, abstinence-based, nonprofit organization generally viewed as an alternative to Alcoholics Anonymous (AA). When Applicant entered SMART, he abstained from alcohol for several weeks.⁴ The facilitator advised him to continue to abstain; however, Applicant believed he could drink moderately. He did so for six to eight months, but then the frequency and amount of his alcohol consumption began to increase. He stopped attending SMART in August 2008. Over the next few months, he realized the pattern was beginning again, and that he was causing pain to his wife and family. He had many discussions with his wife, who offered to provide whatever help he needed. He came to the conclusion that abstinence was the only solution. He consumed his last alcoholic drink on November 6, 2008. He then resumed attending SMART meetings. At the same time, he began attending weekly AA meetings. The SMART facilitator noted that Applicant is a major contributor to the group's discussions. He opined that Applicant has made a serious commitment, and is willing to work hard at maintaining abstinence. He considers Applicant to be a "success story." Currently, Applicant attends weekly meetings of both SMART and AA. (Answer; AE G; Tr. 23-44, 67-78)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the cited guideline.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant.

⁴ Applicant testified to several weeks of abstinence when he entered SMART. However, his Answer indicates three months of abstinence at the beginning of the SMART program. (Answer; Tr. 73).

⁵ Directive. 6.3.

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

Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁸

Analysis

Guideline G, Alcohol Consumption

The security concern about alcohol consumption 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).

AG ¶ 22 includes the following relevant conditions that can raise security concerns and may be disqualifying:

- (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; and
- (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.

Applicant's alcohol use since the 1980s has varied from moderate to heavy, and at times he drank to intoxication. In 2007, Applicant hit a parked car when he decided to drive after drinking. He pled guilty to operating a motor vehicle while impaired. His history supports application of AG ¶¶ 22(a) and 22(c). AG ¶ 22(e) also

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

applies because he was evaluated as alcohol dependent by a clinical psychologist when he attended the Air Force's ADAPT alcohol treatment program.

AG ¶ 23 provides two conditions that can mitigate security concerns in this case:

(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 had a history of alcohol use, at times heavy. In 2005, he realized he had a problem when his supervisor, friends, and family talked with him about it. He decided to attend the Air Force's ADAPT treatment program. He struggled with trying to use alcohol in moderation, rather than abstaining. However, he eventually realized through experience that moderation would not solve the problem. He now recognizes and accepts that he must abstain. He has established a pattern of abstinence since November 2008. AG ¶ 23(b) applies.

The ADAPT treatment records note that Applicant had not met his goal because he did not abstain from drinking. However, since that time, Applicant has committed himself to refraining from drinking alcohol. He has demonstrated commitment by remaining alcohol-free since November 2008. In addition, the current ADAPT Program Manager/psychologist who reviewed his ADAPT record in 2010 characterized his treatment as successful. Most importantly, she noted that his current record of abstinence indicates he is making good judgments and has a strong prognosis. His SMART facilitator notes his thoughtful participation and the significant contribution he makes at meetings. He attends weekly sessions of SMART and AA. AG ¶ 23(d) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant served honorably for 26 years in the Air Force. He established an impressive career both in the Air Force, and in his subsequent civilian career with a defense contractor. However, he has also had a long history of alcohol abuse and dependence. It has had serious negative effects on himself and his family. Despite spending time in the Air Force ADAPT alcohol treatment program, and the diagnosis of alcohol dependence, he continued to maintain that he could drink alcohol moderately. He used the Rational Recovery method in an effort to confirm his belief. Even after his conviction for driving a vehicle while impaired by alcohol, and the consequences of that conviction, he still believed he did not have to abstain.

Applicant entered the SMART program after his drunk-driving arrest. Its rational approach appealed to him, but he still struggled with the need to abstain completely. Finally, after a period when his alcohol use was again increasing, and after many discussions with his wife, he realized that he must abstain. As of November 2008, he no longer drinks alcohol. He has attended weekly SMART meetings since that time, and weekly AA meetings as well. He has the full support of his family. His facilitator at SMART considers him a success story. His conduct since 2008 shows serious commitment to avoiding the mistakes of the past.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. I conclude Applicant has mitigated the security concerns arising under Guideline G.

Formal Findings

Paragraph 1, Guideline G	FOR Applicant
Subparagraphs 1.a. - 1.e.	For Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge