



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



In the matter of:)	
)	
)	ISCR Case No. 09-02827
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

January 22, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, Applicant's eligibility for access to classified information is denied.

Applicant completed and signed his Electronic Questionnaire for Investigations Processing (e-QIP) on January 7, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G on September 23, 2009. 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.

Applicant received the SOR on October 1, 2009. He submitted a notarized, written response to the SOR allegations on October 14, 2009, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on November 3, 2009. Applicant received the FORM on November 16, 2009. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence on December 11, 2009. DOHA assigned this case to me on January 11, 2010. The government submitted 12 exhibits, which have been marked as Item 1-12 and admitted into the record. Applicant's response to the FORM has been marked and admitted as Item 4. His response and attachments to the FORM are admitted into evidence.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in ¶¶ 1.a through 1.e of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 31 years old, works as a lead engineer for a Department of Defense contractor. He graduated from college with a bachelor of science degree in mechanical engineering in May 2003. He began working with his current employer one month later. The record contains no evidence of disciplinary problems or negative performance evaluations at his employment.¹

Applicant married in 2003. He has a seven-year-old daughter. He has no financial issues, and has no criminal record or record of past illegal drug use.²

Applicant began drinking alcohol with friends while a high school student. He continued to drink alcohol regularly and at times to excess as a college student and after college graduation. He drank alcohol at parties and at home. In November 2004, while waiting for his air plane, Applicant consumed alcohol at an airport bar. He passed out at the bar. Emergency medical services transported him to a local hospital. He remained in the hospital for two days. The hospital records show he was diagnosed with alcohol abuse. He did not consume alcohol for many months after his hospital admission. The treating physician prescribed an anti-depressant. He met with the physician about once a month for six months, then stopped his appointments because he was feeling better.³

¹Item 5.

²*Id.*

³Item 6; Item 11.

Applicant resumed his alcohol consumption in early 2006. He acknowledged that he consumed three to eight drinks, three or four times a week, and that as a result, he experienced side effects, such as staggering, slurred speech, and nausea. He also admitted that he missed one day a month from work because he had a hangover. He denied arriving at work intoxicated.⁴

In early 2008, he sought medical treatment for the flu. He discussed the possibility of seeking help for his excessive alcohol consumption. His physician recommended that he reduce his alcohol consumption and prescribed an anti-depressant, which he took for one month. He stopped taking the medication when he was feeling better.⁵

Upon receipt of the SOR on October 1, 2009, Applicant decided to stop drinking alcohol. On his own initiative, Applicant sought treatment for his excessive alcohol consumption. He admitted himself to an alcohol outpatient treatment program, which started treatment on October 19, 2009. The program records indicates Applicant began treatment for alcohol dependence. Applicant successfully completed this program on December 1, 2009. His treatment counselor recommended that his security clearance be granted based on his acceptance of his condition, and his need for treatment, as well as his active participation in the program. As part of his treatment, Applicant attends Alcoholics Anonymous (AA) meetings several times a week. He has an AA sponsor and is working through the first three steps of the 12-step AA program. He accepts that he has an alcohol problem. Applicant has developed a recovery plan, which includes no alcohol consumption, attending AA two to three times a week, and working on AA's 12 steps. As of December 7, 2009, Applicant had been sober for 68 days.⁶

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 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,

⁴Item 6.

⁵*Id.*

⁶Response to FORM; Response to SOR; Item 12.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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 an 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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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 ¶ 22 describes conditions that could raise a security concern and the following conditions may be disqualifying in this case:

- (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

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Applicant began consuming alcohol while a high school student. He continued to consume alcohol regularly and to excess for a long period of time. While waiting for a plane flight, Applicant consumed so much alcohol at an airport bar that he passed out, requiring emergency medical care followed by inpatient hospital treatment. After one year of abstinence, Applicant began drinking again and to excess. He entered a treatment program in October 2009 for alcohol dependence. Based on Applicant's pattern of alcohol consumption, diagnosis, missed time from work, and airport incident, the above disqualifying conditions apply.

AG ¶ 23 provides conditions that could mitigate security concerns and the following may be applicable 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 acknowledges he has an alcohol problem. He realized his drinking causes a problem even though he does not have problems with his work performance or his finances. When he received the SOR, he decided that he needed to address his drinking and did. He self-enrolled in a treatment program, which he successfully completed. He attends AA and has an AA sponsor to support him, as he works his way through the AA 12-step program. These mitigating conditions are partially applicable. However, the mitigating conditions cannot be fully applied because Applicant's pattern of abstinence has not been long enough.

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 an applicant's conduct and all 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has successfully worked at his job for more than six years. His finances are in good shape. He has a good relationship with his wife and daughter. He has not been arrested for any alcohol-related incident. However, since high school, he has drunk to excess for many years. He did not believe he had a drinking problem, even though he passed out in an airport. With the threat of a loss of his security clearance, he decided he needed to seek help with his drinking. He made a good decision. He sought and completed an alcohol treatment program. He continues with his recovery through AA. He has a sponsor, who provides support to him with his recovery. He has a recovery plan, which he is following. He only recently started his recovery. He stopped drinking for more than a year after he passed out at the airport. He resumed drinking after he felt better. Given that he once stopped drinking for a year, his abstinence of 68 days is not long enough to establish a sufficient pattern of abstinence. He not only returned to drinking when he felt better in 2006, he stopped using his anti-depressant medication in 2008 when he felt better. The security concern for Applicant relates to his behavior for returning to drinking alcohol when he feels better. Applicant needs to show that he can remain alcohol free for a more substantial period of time in order to demonstrate he will not return to excess

drinking when he feels better. At this time, a concern remains about his alcohol consumption.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge