



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



In the matter of:)	
)	
)	ISCR Case No. 09-03188
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: David P. Price, Esquire

September 17, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On December 10, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) as part of his employment with a defense contractor. On May 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on May 11, 2010.

Applicant answered the SOR on May 28, 2010. He admitted the four allegations of alcohol consumption under Guideline G, but denied that the allegations are now a security concern. He requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on June 30, 2010, and the case was assigned to me on July 1, 2010. DOHA issued a Notice of Hearing on July 7, 2010, for a hearing on July 28, 2010. I convened the hearing as scheduled. The Government offered nine exhibits, marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 9. Applicant and one witness testified on his behalf. Applicant offered four exhibits marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through D. The exhibits have multiple parts. The record was held open for Applicant to submit additional documents. Applicant timely submitted four additional documents marked and admitted without objection as App. Ex. E through H. (Gov. Ex. 10, e-mail, dated August 16, 2010) DOHA received the transcript of the hearing (Tr.) on August 5, 2010.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all the allegations under alcohol consumption. His admissions are included in my findings of fact.

Applicant is 30 years old and has worked for his defense contractor employer for almost two years as a software engineer. He is a college graduate with a bachelor's degree in information technology. He is married and he has one stepchild. (Tr. 43-45; Gov. Ex. 1, e-QIP, dated December 10, 2008)

Applicant has a history of alcohol abuse from 1999 until 2006. Applicant admitted and court records show that he was arrested and found guilty of driving while intoxicated in 1999. He was fined, sentenced to six months probation and 40 hours of community service. (SOR 1.a. The SOR has the date as 2001, but Applicant stated it happened in 1999) Applicant admits and court records confirm that Applicant was arrested for driving while intoxicated in February 2003. He was sentenced to 12 months probation, two days in jail, and was fined. (SOR 1.b) Applicant admits and court records confirm that he was arrested for driving while intoxicated and driving on a suspended license in February 2004. He was sentenced to 12 months probation and fined. (SOR 1.c) Applicant admits and court records confirm that he was arrested for driving while intoxicated, giving a false name to a police officer, disorderly conduct, obstruction of an officer, leaving the scene of an accident, and failure to maintain a lane. He pled guilty to the driving while intoxicated offense and was sentenced to ten days in jail, 30 days of community service, and fined. He pled guilty to giving a false name to an officer, obstruction of an officer, and leaving the scene of an accident charges and was sentenced to 12 months probation and fined. The other charges were not prosecuted. (SOR 1.d)

For most of his life, Applicant lived in the town where he was born. His family supported his ambition to have a career as golf professional. He entered and won some tournaments as a youth. He also won tournaments as a high school golfer. However when he graduated from high school in 1998, he was not offered a college golf scholarship because his academic record was not adequate for a scholarship. The

college golf coach did not select him for the college golf team as a walk-on. He was devastated by his inability to be on the college golf team. After this disappointment, Applicant admitted he started hanging out with the wrong people and made poor choices in friends and activities. He was fired from two part-time jobs. While not charged as a security allegation, Applicant admitted that in 1999 he was arrested for and found guilty of possession of marijuana. He had purchased a small amount of marijuana from a friend. He was stopped by police for not having an operating headlight. The police searched the car and found the marijuana. He was charged with possession of a small amount of marijuana, a misdemeanor. He was fined \$1,000, placed on probation for six months, and to perform 40 hours of community service. He fulfilled all obligations of his sentence. He has not used marijuana since shortly after this incident in 1999. (Tr. 42-49; Gov. Ex. 2, Answers to Interrogatories, dated January 28, 2010; Gov. Ex. 3, Criminal Justice Report; App. Ex. A2, Applicant's parent's statement, dated July 14, 2010; App. Ex. D2, Attorney's letter, dated December 2, 1999; App. Ex. D3, D4, D5, court clerk's certificates, dated August 5, 2010)

In 1999, Applicant had been drinking alcohol in a bar. He was stopped by police. He was convicted of driving under the influence of alcohol, fined \$1,000, ordered to perform 40 hours of community service, and to attend a four-day driving while intoxicated reduction class. He completed all aspects of his sentence. (Tr. 49-50; App. Ex. 2, Answers to Interrogatories, dated January 28, 2010)

In 2003, Applicant was socializing and drinking alcohol in a bar with friends. He left the bar and planned to drive to another bar. He headed in the direction of the bar, changed his mind, and turned around in a gas station. A police officer saw him turn around, became suspicious because the gas station was closed, and stopped Applicant. Applicant failed a breathalyzer test with a .167 alcohol reading, and was arrested for driving while intoxicated. He was fined \$730, placed on probation for 12 months, and directed to attend alcohol awareness classes. He completed all obligations under his sentence. (Tr. 50-51; Gov. ex. 2, criminal justice report; Gov. Ex. 4, arrest report, dated February 23, 2003; Gov. Ex. 5, court action, dated March 19, 2003)

In May 2004, Applicant was drinking with friends at a bar when he elected to drive a friend home because the friend had been drinking too much alcohol. He was stopped by police for having a tail light out. The police smelled alcohol on Applicant. Applicant refused a breathalyzer test. He was arrested for driving while intoxicated and driving on a suspended license. He was found guilty of driving while intoxicated, fined \$1,230, and 12 months probation. He was found guilty of driving on a suspended license and fined an additional \$630, 12 months probation, and 20 days in jail suspended. (Gov. Ex. 2, Criminal justice report; Gov. Ex. 6, police report, dated February 27, 2004; and Gov. Ex. 7, court sentence, dated May 11, 2004)

In March 2006, Applicant had been socializing and drinking with friends in a bar. He left the bar and lost control of his car and crashed into a ditch. A friend picked up Applicant and they left the scene. Police learned that Applicant was driving the car and looked for him. While they were at the scene of the accident, they noticed a car drive by

with a person matching Applicant's description in the front seat. Applicant at first denied his identity, but then admitted driving the car. He said he was in an accident involving a deer. Applicant was apprehended but refused to take a breathalyzer test. He was found guilty of driving while intoxicated, providing false information to police, and fined \$1,526, placed on probation for 12 months, ordered to spend ten days in jail, his driver's license was suspended for a year, and he was ordered to have an alcohol interlock device placed on his car for one year after his license suspension was completed. (Gov. Ex. 2, Answers to Interrogatories, dated January 28, 2010; Gov. Ex. 3, criminal justice report; Gov. Ex. 8 Incident report, dated March 4, 2006; Gov. Ex. 9, Court records, dated January 12, 2007) Applicant was never ordered to undergo evaluation for alcohol abuse or alcohol dependence. He was never ordered to attend Alcoholic Anonymous. His only alcohol counseling was a 17-week group course after his convictions for the 2006 incident. He never drove after this offense when his license was suspended. Either his mother or his wife drove him to and from work. (Tr. 60-63)

Applicant received an associate's degree in December 2002. (App. Ex. B1, Certificate, dated December 7, 2002) He graduated with a bachelor's degree in information technology in May 2006. He was on the dean's list for some of his semesters. (App. Ex. B2, Diploma, dated May 12, 2006; App. Ex. B3, Dean's list certificate, Spring 2005; App. Ex. B4, Dean's list certificate, Spring 2006) He also had a web design internship at the local district attorney's office. (App. Ex. B5, Internship description, fall 2005) He started working for a defense contractor about three months later in web design and software engineering. His performance evaluations were outstanding. He also realized he had to make a change in his life, and take responsibility for his actions. He wanted to be 'somebody' and needed to take positive actions. He was humiliated and embarrassed about his past conduct. He understood he made the wrong decisions to drink and drive. He was upset for having to spend nights in jail. He was further embarrassed because he had to have an interlock device on his car for a year. He would leave work at 5:00 pm and blow into the device to start his car in such a way that his fellow workers could not see him. After two years with his first employer, Applicant realized he could make more money and he posted his resume on line. (App. Ex. E, no performance evaluation available from this employer) He received a call from his present employer, a large defense contractor, and he started with that employer in October 2006. He has received one performance rating which is outstanding, and he received pay raises and was promoted to a higher level position. He started with the company making \$55,000 per year and his salary is now \$72,000 per year. His supervisors constantly tell him that he is one of their best employees. (Tr. 50-56; App. Ex. B6, performance evaluation, dated December 31, 2009; App. Ex. B7, salary increase, dated August 15, 2009; App. Ex. B8, salary increase, dated March 27, 2010)

At the time of his last arrest for driving while intoxicated, Applicant was 25 years old. At the time he was not excited about his life or his future. His parents were supportive of him and helped him by driving him to work. He was embarrassed by the humiliation he caused them. Since then, he has dreams and aspirations. He met his wife and she has been emotionally supportive of him. She had a child by a previous

marriage and he now has family responsibilities. He is hoping to adopt the child. He has resumed playing golf, and is even hoping to have his future stepson learn golf. His life is good since he has a supportive wife, a family, good supportive parents, and an excellent job. He only drinks sparingly and now makes the right decisions concerning his personal conduct. He enumerated the big changes in his life since 2006 that led to his change of behavior as the influence of his wife, his maturing, having a good job, his realization of a sense of responsibility, the embarrassment to his wife and family for his actions and his need for probation, community service, and fines, and his realization that he has hopes and dreams he could meet. (Tr. 61-69; App. Ex. A7, Statement, dated July 27, 2010)

In 1998, Applicant's wife moved with her family from her original home in the southeast to the gulf coast. She had a son in 1999 but her first husband was an alcoholic and abusive. She left him in 2004. When Katrina hit in 2005, her family moved back to the southeast. Applicant's wife had no choice but to go with them since she was as single mother and needed help with her son. After moving, she started working and through a co-worker met Applicant in November 2006. They started dating in January 2007. Applicant was on probation for his last driving while intoxicated offenses and did not have a driver's license. She was hesitant at first to form a relationship with Applicant because of her previous experience with a person with alcohol issues. She eventually did get to know Applicant. She had to accompany her family when they moved back to the area hit by Hurricane Katrina in April 2007 because she was still a single mother and was unsure of her relationship with Applicant. She and Applicant spent a few months in a long distance relationship before she agreed to return, and moved in with Applicant in August 2007. Applicant married his wife on November 14, 2008. She found work and her son and Applicant have a good relationship. They are trying to determine if Applicant is eligible to adopt her son. (Tr. 23-32; App. Ex. A5, Statement, dated July 27, 2010; App. Ex. A6, Statement, dated July 27, 2010)

When his wife returned to the southeast, they initially stayed with his parents. Applicant was still on probation for his last driving while intoxicated offense, his driver's license was still suspended, and Applicant was attending the risk-reduction alcohol-awareness classes and spending one night a week in jail. His parents were supportive of his change in attitude, and it was easier for them to have support from his family. Applicant's wife's parents are aware of Applicant's previous problems with alcohol, but have seen the changes in him. They support their daughter and Applicant in their relationship. When Applicant completed the sentence requirements and had his license back, she and Applicant moved to a rented house for six months. Since then they have purchased a house. (Tr. 32-36; App. Ex. A4, Statement, undated)

When Applicant received his license back, he was required to have the interlock device on his car. His wife observed that Applicant was very ashamed and embarrassed. If he had any alcohol at all, it was very little. If he did drink, he either had someone else drive or he called a cab. She never saw him drive while his license was suspended, and he never asked her to activate the interlock device for him. Either she or Applicant's mother would drive him when needed. They occasionally have alcohol at

home but only when her son is not at home. If they go out socially and have alcohol, it is very little, and they do not drive but have a cab transport them. She has no concerns about Applicant's use of alcohol. His work performance is excellent, he received salary increases and they are able to save money. Their finances are very stable and continuously improving. They purchased a house, have a saving and retirement program, and a good credit score. Her relationship with her husband is wonderful, and he helps her with her son and supports her emotionally. She knows Applicant has made mistakes in the past, but he has learned from those mistakes and has grown as a person and father. (Tr. 36-41; App. Ex. C1, Retirement account, dated June 30, 2010; App. Ex. C2, Settlement documents, dated March 6, 2009; Credit Report, dated June 29, 2010)

One of Applicant's supervisors, a retired Air Force chief master sergeant, wrote that he has known Applicant for almost two years. Applicant's performance is outstanding and his attitude is professional with a strong willingness to work. Applicant learned the nature of his position rapidly and quickly became successful. He is aware of the alcohol issues affecting Applicant's security clearance. He states that Applicant is honest and trustworthy and should receive access to classified information. (App. Ex. A1, Statement, dated June 30, 2010) Another one of Applicant's supervisors, a retired Air Force senior master sergeant, wrote that he has known Applicant on a daily basis for over two years. Applicant is dependable both personally and professionally. Applicant's work ethic is beyond reproach and he reliably performs his duties. He knows about Applicant's previous problems with alcohol. It is his opinion that Applicant is a good person who made mistakes when he was younger. He is now mature, responsible, dependable, and trustworthy. He should be granted access to classified information. (App. Ex. A3, Statement, dated July 7, 2010)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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. 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, 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 for 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption and Criminal Conduct

Applicant admitted the four allegations of driving while intoxicated which raise alcohol consumption security concerns. Excessive alcohol consumption is a security concern because it 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)

Applicant's four arrests and convictions for driving while intoxicated alcohol raise Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 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). Since each incident was separate and there was a long period of time between the incidents, AC DC 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 abuse or alcohol dependent) is not raised. Additionally, Applicant was never diagnosed as an alcohol abuser or alcohol dependent, so AC DC AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence), AD DC AG ¶ 22(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), and AC DC AG ¶ 22(f) (relapse after diagnosis

of alcohol abuse or dependence and completion of an alcohol rehabilitation program) are not raised. The available information shows Applicant always complied with court directives after his convictions for driving while intoxicated. AC DC AG ¶ 22(g) (failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence) is not raised.

I considered Alcohol Consumption Mitigating Condition (AC MC) AG ¶ 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) and determine that it applies. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of misconduct, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. Applicant admits that he was arrested and convicted four times from 1999 to 2006 for driving under the influence of alcohol. During that time, he was from 19 to 25 years of age, immature, and unable to manage the disappointment of not fulfilling his dream of being on a college golf team. However, he has not had an alcohol-related or other law enforcement incident since his last alcohol-related incident in 2006. He established that his life circumstances have changed. He has matured, graduated from college, married, has a step-son to care for, and been successfully employed by a defense contractor. His finances are very good with the purchase of a house and savings for retirement. A significant period of time, four years, has elapsed since the last incident of alcohol-related misconduct the evidence shows a change of circumstances to indicate Applicant has been reformed or rehabilitated. The circumstances show it is unlikely his previous alcohol consumption problems will recur. His present circumstances and life style show that his past conduct does not now reflect adversely on his current reliability, trustworthiness, and good judgment.

I also considered AC MC AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). The mitigating condition applies. Applicant acknowledges that in the past when he was young and immature, he had a problem with alcohol. However, he is now mature, drinks sparingly, does not drive if he drinks, has a family that supports him, and performs his job well. He was never required to be evaluated for alcohol abuse or alcohol dependence. He completed all sentencing requirements to include an alcohol risk education program, losing his driver's license for a year, and using an interlock device on his car for another year. While there was no formal alcohol-related program Applicant had to attend, he demonstrated that he participated in counseling, has not had a relapse of alcohol-related incidents in over four years, and is making good progress. He established a clear pattern of modified alcohol consumption. In total, Applicant has presented sufficient information to meet his burden to establish that his past alcohol use is under control and his alcohol consumption does

not reflect now on his reliability, trustworthiness, and good judgment. Appellant has mitigated security concerns for alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an 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.

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is a good employee and has received the endorsement of his supervisor for access to classified information. Applicant's alcohol-related problems happened when he was young and immature. He has established he is now older, wiser, focused, and mature. He graduated from college, found good steady employment at which he excels, is married to a supportive wife, and his finances are excellent. There is every indication that his present alcohol consumption is minor and under control. His finances indicate that he has no alcohol-related issues. His last alcohol-related incident was over four years ago and he is now a changed person. His alcohol-related actions are in the past and do not indicate poor self control, lack of judgment, and unwillingness to abide by rules and regulations. The record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the alcohol consumption security concerns.

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 - 1.d: For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge