



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



In the matter of:)	
)	
)	ISCR Case No. 09-04766
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

December 23, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 17, 2009. On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. 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 on September 1, 2006.

On May 17, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 24, 2010. The case was assigned to another administrative judge on June 28, 2010. The case was transferred to me on July 26, 2010. On August 23, 2010, a Notice of Hearing was issued scheduling the hearing for September 15, 2010. On September 14, 2010, the hearing was cancelled due to unforeseen circumstances. The hearing was rescheduled for October 28, 2010, and was held on that date. The Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 - 8 without objection. Applicant

testified, and offered no exhibits. The record was held open until November 19, 2010, to allow Applicant to submit additional exhibits. Applicant requested additional time to submit documents. An extension was granted until December 19, 2010. Two exhibits were timely received and admitted as Applicant Exhibits (AE) A and B. Department Counsel's response to AE A and AE B are marked as Hearing Exhibits (HE) I and II. The transcript was received on November 9, 2010. 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 all of the SOR allegations.

Applicant is a 37-year-old draftsman employed with a Department of Defense contractor who seeks a security clearance. He has been employed with his company since March 2009. This is his first time applying for a security clearance. The highest level of education he completed is several college courses. He is married and has a five-year-old daughter. (Tr at 7-8, 54; Gov 1)

The SOR alleges and Applicant admits that he has struggled with excessive alcohol use since 1986. He was arrested and charged with four alcohol-related driving offenses between 1993 and 1997. He also had two minor arrests in March 1991 for Trespassing, and in July 2000, for Simple Assault. (Gov 8) His alcohol-related driving offenses include:

An arrest and charge in July 1993 of Driving Under the Influence Liquor. Applicant pled nolo contendere. He attended an alcohol awareness class as part of his sentence. (Gov 2 at 7; Gov 4 at 13-16)

A July 1997 arrest and charge of Driving Under the Influence Liquor. Applicant pled nolo contendere. (Gov 2 at 7-8; Gov 4 at 10-12)

A November 1997 arrest and charge of Driving Under the Influence Liquor. Applicant pled nolo contendere. He was sentenced to six months home confinement, ordered to attend Alcoholics Anonymous (AA) meetings, and lost his license for six months. (Tr. 38; Gov 2 at 8; Gov 4 at 6-7)

A September 2008 arrest and charge with Evade-Injury/Property and Operating Under the Influence. Applicant pled guilty to Reckless Driving and was sentenced to 30 days in jail (suspended), fined, and placed on one year probation. (Gov 2 at 5-9; Gov 7) The September 2008 arrest occurred after he drank alcohol while taking the prescription drug Klonopin for depression. He was depressed because his wife and daughter were leaving him. He was drinking alcohol every day. While driving home, Applicant blacked out and hit some road posts. He continued to drive home. The police later showed up at his house. (Tr. 35-36)

Applicant has completed all of the terms of his past criminal sentences including probation. He currently has a valid driver's license. He has not been arrested since September 4, 2008. (Tr. 38, 48, 61-62)

Applicant started drinking around age 15. He would drink at parties about once a week. He would drink about 12 beers or less. He drank to intoxication about 75% of the time. He estimates he would become intoxicated after consuming 6 to 7 beers. During the years he was drinking he would occasionally experience blackouts. His alcohol use increased to about two to three times a week between age 18 – 20. He consumed over 10 beers each time. He would drink and drive about 50% of the time during this period. This pattern of drinking continued off and on until Applicant stopped drinking in September 2008. (Gov 2 at 6)

Prior to his arrest on September 4, 2008, Applicant drank on a daily basis. He drank approximately 12 or more beers per day. During the last few weeks, he drank hard liquor. He would start drinking in the afternoon. He admits to being still drunk in the morning when he woke up. (Tr. 49-50)

In November 1997, after his third alcohol-related arrest, Applicant voluntarily attended in-patient treatment for alcohol addiction. After attending treatment, he stayed sober and attended AA meetings for one year. He began drinking again because he thought he could control his drinking. (Tr. 38-39, 42; Gov 2 at 8-9; Gov 6) The record contains no documentation from his inpatient treatment in November 2007.

Applicant testified that he hit bottom with his September 4, 2008 arrest. He was briefly hospitalized after the arrest for being suicidal. He voluntarily attended out-patient alcohol treatment from September 9, 2008, to September 30, 2008. He received a diagnosis of alcohol dependence by one of the members of the staff. The diagnosis was made by the supervising clinician whose credentials are listed as an LMFT and CADC. The record evidence does not establish what the credentials mean but it is clear that the supervising clinician was not a duly-qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) or a licensed clinical social worker. (Tr. 40; Gov 5, see 7, 17, 32)

After attending alcohol treatment and getting sober in 2008, Applicant's attitude improved. He became more positive. His wife still wanted to leave him, but he was able to cope with it better. He and his wife eventually worked things out and their relationship has improved. He has not consumed alcohol since the night of his arrest on September 4, 2008. He intends to stay sober. Applicant testified that he knows that if he starts to drink again he will lose everything. He no longer socializes with friends who drink alcohol. He did not attend his 20-year class reunion to avoid "the alcohol situation." He now spends time with his wife and daughter. He has been busy remodeling their home in his spare time. (Tr. 28-30, 34, 40-41, 52-53)

After completion of his alcohol treatment in September 2008, Applicant attended AA meetings on a regular basis for a while. In response to interrogatories dated August

18, 2009, he indicated that he attended two AA meetings per week, one on Friday evening and one on Saturday morning. (Gov 4 at 4) He no longer attends AA meetings regularly because he begins work early in the morning and that was when he attended AA meetings. The last time he attended an AA meeting was one month prior to the hearing. He does not attend AA meetings every week because he has been remodeling his house. He does not have a sponsor and is not working a 12-step program. He feels good about his sobriety and does not think that he needs to attend AA meetings. His family and his brother are his support system. His brother quit drinking alcohol when Applicant quit drinking alcohol to support him. (Tr. 31-34)

When Applicant was hired by his current employer, he started as a pipefitter. After a year, he progressed to the position of draftsman. He has worked as a draftsman for the past four to five months. (Tr. 45-46) His supervisor provided a letter stating that Applicant has worked for him since March 23, 2010. He states Applicant's performance and work product receive positive comments from management and his peers. He feels fortunate to have Applicant on his team. (AE A at 3) His previous supervisor in the pipefitting department indicates he supervised Applicant from May 2009 to March 2010. Applicant proved himself to be an excellent employee. He was conscientious about doing the job right. He describes Applicant as "punctual, dependable, and willing to take on any job that I gave him." (AE A at 4)

Applicant's wife wrote a letter indicating that Applicant has become a completely different person because of his sobriety and new job. She states that their lives changed completely after her husband stopped drinking on September 4, 2008. Applicant is more positive. They have fun together as a family. She states that her husband is not ashamed to tell anyone that he is an alcoholic or about the problems alcohol caused in his life. He keeps himself busy with family projects and his full-time job. He continues to use the tools that he learned during recovery. He no longer socializes with the people with whom he used to drink. Her husband is much happier now that he is sober. Applicant's wife concludes, "Clearance or no clearance I have my husband back, my daughter has her daddy back and most of all [Applicant] has his life back. That is what is most important to us today." (AE B at 2)

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 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 to obtain 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 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

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 disqualifying conditions are relevant to Applicant’s case:

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) applies. Applicant has been arrested and charged with Driving While Under the Influence on four occasions. He has a long history of alcohol-related offenses.

AG ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant admits that he is an alcoholic. He acknowledges that his past excessive alcohol use impaired his judgment. He routinely drank alcohol to point of intoxication and occasionally suffered blackouts as a result of his excessive alcohol use. He used poor judgment when choosing to drive while intoxicated. His alcohol use caused problems with his family.

I find AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical social psychologist, or psychiatrist) of alcohol abuse or alcohol dependence) and 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) do not apply because the record does not establish that the clinician who evaluated Applicant and made the diagnosis of alcohol dependence was a duly qualified medical professional or a licensed clinical social worker.

AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program) applies because Applicant relapsed one year after he completed inpatient treatment in 1997 for what he testified was alcohol addiction. There are no medical records from the inpatient treatment so there is no formal diagnosis, but I conclude this disqualifying condition applies based on Applicant's own admissions.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies. While Applicant has a lengthy history of alcohol abuse, he finally accepted that he cannot drink alcohol after his arrest on September 4, 2008. He attended treatment and worked on his issues with alcohol. His attitude is more positive and he has developed a positive relationship with his wife and daughter. He has remained sober for two years and three months. Although he no longer attends AA meetings on a regular basis, his family is providing him a positive support system to help him remain sober. After becoming sober, he found a new job and is progressing in a new career field. His past alcohol use no longer casts doubt on his current reliability, trustworthiness, and good judgment.

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)) applies. Applicant is honest about his past alcohol problems. He attended formal alcohol treatment programs on two occasions in 1997 and 2008. After the September 2008 treatment program, Applicant has maintained over two years of consistent sobriety. Applicant acknowledges that he will lose everything if he chooses to drink alcohol again. His alcoholism is under control.

Applicant mitigated the security concerns raised under alcohol consumption. Guideline G is found for Applicant.

Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Adjudicative Guidelines:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

There are several Criminal Conduct Disqualifying Conditions which apply to Applicant's case, AG ¶ 31(a) (a single serious crime or multiple lesser offenses) and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). Between 1991 and 2008, Applicant was arrested and charged with six criminal offenses. Four of the offenses were alcohol-related. Drunk driving is a serious offense.

The following Criminal Conduct Mitigating Conditions are relevant to Applicant's case:

AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies. Most of Applicant's arrests occurred between 1991 and 1997 when he was younger. The September 2008 arrest was a wake-up call which convinced Applicant that he cannot drink alcohol. He has not been arrested since September 4, 2008. He has completed the terms of his court sentences, including probation. He has been sober for more than two years. Applicant's past criminal behavior is unlikely to recur.

AG ¶ 33(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement) applies for the reasons mentioned above. The favorable recommendations of his supervisors reveal that Applicant has a good employment record in his current job.

The Criminal Conduct concern is mitigated.

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 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 Applicant's past history of criminal arrests. Four of them involved driving while under the influence of alcohol. Applicant's history of alcoholism and alcohol-related offenses raises serious issues about his ability to protect classified information. During the hearing, he demonstrated that he is serious about remaining sober. His last arrest on September 4, 2008, was a wake-up call. He has not drunk alcohol or been arrested since that date. He successfully completed alcohol treatment and occasionally attends AA meetings. He has a good support system. His outlook and his relationship with his family has improved. He obtained his current job after becoming sober, and his supervisors praise his work performance. Applicant mitigated the concerns raised under criminal conduct and 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:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.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