



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



In the matter of:)	
)	
)	ISCR Case No. 09-04814
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Alan Edmunds, Esquire

September 8, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Adjudicative Guideline (AG) G, Alcohol Consumption. Applicant's eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 20, 2008. On March 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under AG G, Alcohol Involvement. DOHA acted 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On April 6, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 6, 2010. I convened a hearing on June 9, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced eight exhibits, which were marked Ex. 1 through 8 and admitted to the record without objection. Applicant testified, called four witnesses, and introduced 18 exhibits, which were marked as Ex. A through R. Exhibits A through N were admitted without objection. Ex. O, a letter of character reference, was admitted with the understanding that certain statements in the letter, which went beyond matters related to Applicant's character, would not be considered in my decision. Ex. P and Ex. Q were admitted without objection. The Government objected to the admission of Ex. R, a psychological evaluation of Applicant, and argued that Applicant's mental state was not at issue in the hearing. Applicant argued that the psychological evaluation was relevant and urged its admission. I admitted Ex. R, but only for the limited purpose of obtaining from it additional information about Applicant's alcohol involvement. At the conclusion of the hearing, I closed the record, since neither party requested that I leave it open to receive additional information or documentation. DOHA received the hearing transcript (Tr.) on June 16, 2010. On June 29, 2010, Applicant submitted a document, but did not provide an explanation of its relevance or why it should be admitted. I marked Applicant's transmission of the document and Department Counsel's remarks about the document as Hearing Exhibit (H.E.) 1. I marked the document as Applicant's Ex. S, but did not admit it to the record or consider it in my decision.

Findings of Fact

The SOR contains eight allegations under AG G, Alcohol Involvement (SOR ¶¶ 1.a. through 1.h.). In his Answer to the SOR, Applicant admitted three allegations (¶¶ 1.d., 1.e., and 1.g.) and denied five allegations (¶¶ 1.a., 1.b., 1.c., 1.f., and 1.h.) Applicant's admissions are admitted as findings of fact. (SOR; Answer to SOR.)

Applicant is 44 years old and employed as a classified network system administrator by a federal contractor. He is responsible for maintaining his employer's classified network. Applicant has a high school education, some college work, and specialized vocational training in computer software and technology. He has held a security clearance for approximately seven years. (Ex. 1; Tr. 78-79, 93-94, 100, 103.)

Applicant married for the first time in April 2009. He has a sixteen-year-old step-daughter, who lives in his household. Applicant's wife is employed as a special needs caregiver for an autistic child. (Tr. 100-101, 104.)

Applicant provided two narratives for the beginning of his use of alcohol. In an unsworn declaration to an investigator from the U.S. Office of Personnel Management

(OPM), he stated that he began to drink alcohol in about 1982, when he was 16 years old and working in a fast food restaurant. His coworkers in the restaurant drank alcohol. Applicant followed their example and also drank alcohol. He had no arrests or citations resulting from underage drinking. (Ex. 2 at 11.)

In a sworn, signed statement to a special agent of the Defense Security Service on November 14, 2001, Applicant stated that he began to consume alcohol in 1983/1984. In 1983 and 1984, he consumed two beers after work about two times a week. He reported that in 1987 his consumption increased:

From 1987 to Oct 97, I consumed from two to six beers, sometimes along with one or two mixed drinks like Seven Up and Seagrams Seven Whiskey (Seven and Seven), or up to two shots of Yukon Jack Whiskey, or gin and tonic, on a varying basis of once to three times weekly. I totally abstained from alcohol, marijuana, cocaine, and any other mind altering substances during the period of time I attended substance abuse treatment. . . for about 13 weeks starting in Oct 97. I was diagnosed as alcoholic.

(Ex. 7 at 2.)

In about 1983 or 1984, Applicant began using marijuana and cocaine.¹ In a sworn statement to an authorized investigator in November 2001, Applicant described his cocaine use as follows: "By October 97, I was consuming two to three grams per week, three nights per week, spending \$300.00 of the \$400.00 I was earning in salary each week to buy more drugs. I started using Cocaine because of the social aspect, but later it became a habit and I was addicted, constantly thriving [sic] for the high." (Ex. 7 at 2.)

Applicant also told the special agent that he was cited for Driving Under the Influence of Alcohol (DUI) in January 1987. He reported that he had consumed "an unrecalled quantity of gin and tonic" when he was pulled over for weaving within the lane. He was released to his mother's custody. He further reported that the arresting officer was killed in an unrelated traffic accident before he had a chance to file the charges. As a consequence, Applicant reported, he was never summoned to court to answer charges, and he stated that he doubted that a record had been made of the incident. (Ex. 7 at 2.)

Applicant then reported the following: "ERROR DUE TO OVERSIGHT: I INCORRECTLY LISTED THIS ARREST AS JAN 88 ON MY EPSQ. THIS ERROR WAS DUE TO OVERSIGHT ON MY PART AND THE LISTED JAN 88 ARREST PERTAINS TO THIS ARREST, DATED JAN 87." (Ex. 7 at 3.)

¹ Applicant also admitted he used LSD on one or two occasions in 1984/1985 and Mushrooms on one occasion in about 1989. (Ex. 7 at 2.)

At his hearing, Applicant revised his recollection of the events. He testified that the 1987 arrest for DUI never occurred. He testified that he was arrested for DUI, speeding, and no proof of insurance in June 1988. The charge was dismissed. (Ex. 2 at 13-14; Ex.7 at 3; Tr.104-110.)

In July 1993, Applicant left a bar after consuming beer and multiple shots of whiskey. He rear-ended another vehicle at a traffic light. He was arrested for DUI, speeding,² and unlawful possession of marijuana. He pleaded no contest to the charges. He was found guilty and sentenced to ten days in jail (with nine days suspended), three years of unsupervised probation, and fined \$2,500. Applicant did not pay the fine until 1997. (Ex. 7 at 2-3; Tr. 110-111.)

In 1997, Applicant spent most of his money on drugs and alcohol. He concluded that his drug use was out of control. He referred himself for substance abuse counseling and treatment. He was treated for chemical dependency, including alcohol, crack cocaine, and marijuana. The program he entered lasted for approximately 13 weeks. After completing the program, Applicant abstained from drug and alcohol use. He has not used an illegal drug or narcotic since that time. Applicant resumed alcohol use in about 2001 or 2002. (Ex. 74; Tr. 112-114.)

In April 2006, Applicant was arrested and charged with Driving While Intoxicated (DWI), second offense within 5-10 years; refusal for breath/blood test; and reckless driving. He was convicted of reckless driving. He was fined \$500, and his driver's license was suspended for six months. (Ex. M; Ex. 1; Ex. 2, 27-41; Tr. 115-116.)

On June 12, 2006, Applicant sought voluntary treatment for his alcohol use at an intensive outpatient program. Upon admission, he reported that he drank seven or more mixed drinks of 100-proof vodka daily. He reported also that his alcohol use impaired his work performance and caused him financial problems and legal issues. Applicant was diagnosed as alcohol dependent. After completing the outpatient program, Applicant attended Alcoholic Anonymous (AA) for approximately four months. He stopped going to AA meetings because he had scheduling conflicts. He resumed drinking alcohol in November 2006. (Ex. 8 at 19; Tr. 116-119.)

Applicant reported his alcohol use between 2002 and 2009 to be as follows: 2002 (3 drinks a night, four times a week); 2003 (January to October: two drinks a night, four times a week); 2003 (November: stopped drinking alcohol); 2003 (December: two drinks a night, four times a week); 2004 (two drinks a night, four times a week); 2005 (three drinks a night, five times a week); 2006 (January to April, three drinks a night, seven times a week); 2006 (May to October: stopped drinking for six months); 2006 (November and December: two drinks a night, four times a week); 2007 (three drinks a night, five times a week); 2008 (three drinks a night, four times a week); 2009 (January to April: two drinks a night, three times a week); 2009 (May to September: 3 to 5 drinks a night, five times a week). Applicant stated that he stopped drinking alcohol completely

² Applicant reported that he was charged with "Failure to Reduce or Control Speed." (Ex. 7 at 2.)

on September 28, 2009, after receiving interrogatories from DOHA which referenced DoD Directive 5220.6. He acknowledged that he has been unable to abstain from alcohol use for more than three or four years. (Ex. 2 at 53; Tr. 94-95, 115, 123.)

On October 5, 2009, Applicant was voluntarily admitted to an intensive outpatient program for chemical dependency. His diagnosis was chemical dependency (alcohol). In November 2009, Applicant's alcohol counselor reported that he was cooperating in the treatment program and realized that he could not control his drinking and needed to be completely abstinent. At that time, Applicant had three more weeks of treatment until he finished the program. The counselor reported that Applicant's wife's use of alcohol could trigger a relapse for him. He reported that in September 2009, Applicant had begun to attend AA meetings and had obtained an AA sponsor. "He will need to attend regular AA meetings (at least three per week is recommended) and to continue [t]o contact his sponsor on a daily basis," the counselor noted. (Ex. L; Ex. 2 at 26; Tr. 126.)

At his hearing, Applicant reported that his wife had quit drinking alcohol in order to support him in abstinence. He reported that he stopped attending AA meetings in January 2010 because he was responsible for caring for his mother-in-law in the evenings, while his wife was at work. He has not contacted the alcohol treatment center since completing his treatment in November 2009. He reported that he and his wife were attending church services and praying that he would be able to abstain from further alcohol use. He did not provide documentation to corroborate his statement that that he had successfully completed the outpatient alcohol treatment program. He reported that he had dropped out of the aftercare program to care for his mother-in-law. (Tr. 123-129.)

Applicant submitted a statement of intent never to use alcohol or controlled substances or to be involved with anyone who uses illegal drugs. He further stated that if there "[s]hould be any violation with regard to illegal drug use, I hereby consent to automatic revocation of my security clearance." (Ex. Q.)

Applicant presented 13 letters of character reference from managers, co-workers and friends who commute with him to work. These letters of character reference praised Applicant's technical skills, professionalism, competence, and demeanor. (Ex. A through Ex. F; Ex. I through Ex. L; Ex. N through Ex. P.)

Applicant's performance evaluations from 2007 to 2008 and from 2008 to 2009 showed him to be outstanding or above average in nearly all categories of evaluation. (Ex. G; Ex. H.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the

authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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, the administrative judge applies these guidelines 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 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

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, “[e]xcessive 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.”

The following conditions could raise disqualifying security concerns under ¶ 22 of the alcohol consumption adjudicative guideline:

- (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;
- (b) alcohol-related incidents at work, such as reporting for work in an intoxicated or impaired condition, or drinking on the job, 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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (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;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has a long history of alcohol consumption and of alcohol-related incidents away from work. While the record does not confirm Applicant's involvement in an alcohol-related incident in 1987, it does support his involvement in alcohol-related incidents away from work in 1988, 1993, and 2006. He has consumed alcohol, in excess and at times to intoxication, from 1987 to at least September 2009. In 2006, he was evaluated as alcohol dependent by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. After diagnosis as alcohol dependent and after completing the alcohol rehabilitation program in 2006, Applicant relapsed and began using alcohol again. While Applicant admits he has an alcohol problem, he has been unable to abstain from alcohol use for more than three or four years before resuming his use of alcohol. His most recent period of abstinence began in September 2009. These facts raise security concerns under AG §§ 22(a), 22(c), 22(e), and 22(f).

The Guideline G disqualifying conduct could be mitigated under AG § 23(a) if "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." The disqualifying conduct could also be mitigated under AG § 23(b) if "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)." If "the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress," then AG § 23(c) might apply. Finally, mitigation might be possible under AG § 23 (d) if "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 is now 44 years old. He began to drink alcohol in about 1982, when he was 16 years old. In 1997 and 1998, he was treated for chemical dependency. In 2006, when he was admitted for alcohol treatment and diagnosed as alcohol dependent, he admitted drinking seven drinks of 100-proof vodka a day. In 2009, he was drinking three to five drinks of alcohol, five days a week. His most recent arrest for driving under the influence of alcohol occurred in April 2006, and is therefore not recent. However, after completing an alcohol treatment program in 2006, and receiving a diagnosis of alcohol dependence, Applicant was unable to remain abstinent. By his own admission, until September 2009, he continued to drink alcohol to intoxication. He asserts that he has been abstinent since September 2009. However, he is not involved in aftercare, does not attend a support program such as AA, and has no AA sponsor. He failed to provide documentation showing he had completed his 2009 alcohol rehabilitation program. The

record is silent regarding his prognosis. Accordingly, I conclude that none of the Guideline G mitigating conditions fully applies to the facts of Applicant's case.

Whole-Person Concept

Under the whole-person concept, an 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has struggled with alcohol addiction for many years. His alcohol problem is not apparent to his supervisors and coworkers, who consider him to be a dependable and an excellent worker.

A security clearance determination is essentially a risk assessment. Applicant has been trusted with protecting classified information since 2003. During that time he has been arrested once for DUI. He has admitted consuming alcohol to excess, and twice he has voluntarily sought treatment. After a diagnosis of alcohol dependence in 2006, he relapsed and began to consume alcohol to excess again. At his hearing, he said he had not consumed alcohol since September 2009, a period of nine months. While Applicant is to be commended for his abstinence, his history suggests that insufficient time has passed to conclude that his alcohol use has been mitigated by the passage of time and is unlikely to recur. Applicant needs more time to demonstrate that he can manage his alcohol dependence by abstaining from alcohol.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate 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.:	For Applicant
Subparagraphs 1.c. – 1.h.:	Against 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.

Joan Caton Anthony
Administrative Judge