

Applicant received the SOR on March 24, 2010; answered it on March 26, 2010; and requested a determination on the record without a hearing. DOHA received his response on March 30, 2010. Department Counsel submitted the government's written case on May 19, 2010. On May 20, 2010, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. Applicant received the FORM on June 6, 2010, but he did not respond. The case was assigned to me on August 11, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since January 1978.

Applicant used marijuana about 75 times between 1977 and 1987, used cocaine four or five times between 1982 and 1984-85, and used amphetamines four or five times between 1982 and 1986. He abused a prescription drug from the early 1980s until about 1986, taking up to 10 or 12 tablets a day and frequently mixing the drug with alcohol. He voluntarily sought treatment for polysubstance abuse disorder in September 1991. The record does not reflect the medical qualifications of the person who diagnosed him. He received inpatient treatment for a week, followed by outpatient treatment for about a month and aftercare for about a year, completing the program around November 1992. (Government Exhibits (GX) 9, 10, 16.)

In February 1992, Applicant was interviewed in connection with his application to continue his clearance, and he admitted intentionally omitting his previous illegal drug use from his security clearance questionnaires. (GX 10.) He did not respond to an SOR in June 1992, and his clearance was suspended. (GX 11-13.) At some time not reflected in the record, it was terminated.

Applicant reapplied for a security clearance in 2003. During the security investigation, he stated that he had abstained from alcohol since September 1991, maintained a healthy lifestyle free from alcohol and drugs, and participated regularly in Alcoholics Anonymous (AA). He also submitted evidence verifying his treatment in September 1991 and providing a favorable prognosis, but the evidence does not reflect the medical qualifications of the person who diagnosed him. (GX 16.) He was granted a clearance in January 2007. (GX 6.)

In March 2008, Applicant was arrested for DWI and failure to maintain a single lane. He failed a field sobriety test, and his breath test registered .203. He pleaded guilty and was sentenced to two years of supervised probation, two days of work release incarceration, and a fine. His probation ended in July 2010. (GX 7-8.)

In April 2009, Applicant admitted to a security investigator that he resumed drinking socially around 2003 and occasionally became intoxicated. He said he had not used any alcohol or medications since May 2008, has been receiving therapy once or twice a month since July 2008, and has been complying with his therapist's recommendation that he attend AA meetings. (GX 7.)

Policies

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline G, Alcohol Consumption

The SOR alleges that Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1979 to at least May 2008 (¶ 1.a), that he received treatment for a polysubstance abuse disorder from September 1991 to March 1992 (¶ 1.b, and that he resumed drinking alcohol in 2003 (¶ 1.c). It also alleges that he was arrested for DWI and failure to maintain a single lane in March 2008, pleaded guilty, and was sentenced to two days of work release incarceration, a fine, and two years of supervised probation (¶ 1.d). Finally, it alleges that he received alcohol counseling from September 2008 to at least April 2009 for alcoholism relapse (¶ 1.e).

The security concern under this guideline is guideline 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 evidence raises two disqualifying conditions under this guideline:

AG ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent); and

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 abuser or alcohol dependent).

A disqualifying condition also may be raised either by "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence" or by "evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." AG ¶ 22(d) and (e). Finally, a disqualifying condition may be raised by "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program." AG ¶ 22(f). These disqualifying conditions are not

raised because the record does not reflect the medical qualifications of the persons who diagnosed him.

The allegations in SOR ¶¶ 1.b and 1.e are based on medical diagnoses. Applicant admitted that the two diagnoses were made, but he has not admitted that they were made by “a duly qualified medical professional” or a “licensed clinical social worker.” I have resolved these allegations in Applicant’s favor because there is no evidence of the medical qualifications of the persons who made the two diagnoses that are alleged.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 22(a) and (c), the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated 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.” AG ¶ 23(a). The first prong of this mitigating condition (“so much time has passed”) focuses on whether the criminal conduct was recent. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant has abstained from alcohol for two years, which is “a significant period of time.” However, in the context of a history of almost 30 years of substance abuse, treatment, and relapse, it is not a sufficient period of time to demonstrate reform or rehabilitation. Applicant’s alcohol abuse is recurrent and has not happened under unusual circumstances. Applicant did not request a hearing, thereby limiting my ability to assess his credibility and sincerity. I conclude that AG ¶ 23(a) is not established.

Security concerns also may be mitigated 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).” AG ¶ 23(b). Applicant has acknowledged his problem with alcohol and provided evidence of his attempts to overcome his problem, but not enough time has elapsed to establish a pattern of abstinence or responsible use. I conclude AG ¶ 23(b) is not established.

Security concerns also may be mitigated 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 successfully completed a treatment program in 1992. He is currently undergoing treatment, but there is no evidence of a favorable prognosis from his current caregiver and no evidence of the medical credentials of his current or previous caregivers. I conclude AG ¶ 23(d) is not established.

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 the applicant's conduct and all the relevant 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult who has struggled with substance abuse for most of his adult life. He has worked for the same employer for more than 32 years. He lost his clearance in 1992 but regained it in 2007. He drove while intoxicated in March 2008. He was on supervised probation until last month. He has presented no evidence of his work record or his reputation for trustworthiness, reliability, and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has

not mitigated the security concerns based on alcohol consumption. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge