



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



In the matter of:)
)
) ISCR Case No. 09-05333
)
)
Applicant for Security Clearance)

Appearances

For Government: Bill O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

November 26,

Decision

RIVERA, Juan J., Administrative Judge:

Based on Applicant's previous academic performance, his outstanding job performance during the last three years, his life-style changes, his contrite testimony, and the passage of time, I find that his past questionable behavior is unlikely to recur and it does not currently cast doubt on his reliability, trustworthiness, or judgment. He mitigated the security concerns arising from his alcohol consumption. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on August 15, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On June 14, 2010, DOHA issued Applicant an SOR, which specified the basis for its decision - security concerns addressed in the Directive under Guideline G (Alcohol Consumption) of the adjudicative guidelines (AG).²

On July 7, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 6, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on August 26, 2010. The hearing was convened as scheduled on September 7, 2010. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and presented Exhibits (AE) 1 through 5, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 15, 2010.

Procedural Issue

Applicant requested an expedited hearing. He had sufficient time to prepare for his hearing, was ready to proceed, and affirmatively waived his right to have 15 days advance notice of the day of the hearing. (Tr. 13-14).

Findings of Fact

Applicant admitted all factual allegations under SOR ¶¶ 1.a through 1.f, with explanations. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 25-year-old reliability engineer working for a government contractor. He requires a security clearance to continue his job. He has never been married and has no children.

While in high school, Applicant was an honor roll student, graduating with a 3.9 grade point average (GPA). He attended college from 2002 until 2007, and received a bachelor's degree in mechanical engineering. He graduated with a 3.5 GPA in his engineering specialty, and with a 3.0 GPA overall. While in high school and college, Applicant supported himself by working part-time jobs and took student loans to pay for his college education. Applicant plans to pursue a master's degree in systems and mechanical engineering in the near future.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

In July 2007, Applicant was hired by his current employer, a government contractor, to provide support to a government agency. He received access to classified information at the top secret level in December 2007. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations.

Applicant started consuming alcoholic beverages in college, when he was around 19 years old. While in college, he usually consumed about three to four beers over a period of four to five hours. Sometimes he would consume 10 beers a night, two to three times a week. He consumed alcohol, at times to excess and to the point of intoxication, from approximately 2003 until at least June 2009.

In his August 2007 security clearance application, Applicant disclosed two alcohol-related offenses. In 2003, at age 19, Applicant was arrested while drinking beer in a bar. He was found guilty of Possession of Alcohol by a Minor, spent one night in jail, and paid a fine. He knew it was illegal for him as a minor to consume alcoholic beverages. He explained that at the time he was immature and did not understand the consequences of his actions. In 2006, Applicant went to a bar with friends. His friends became intoxicated and he took them to his apartment to continue with the party. At his apartment, his friends became loud and disorderly, and he was charged with a noise violation. Applicant pled guilty to a noise violation offense and paid a fine. He acknowledged that he had consumed a couple of drinks, but claimed he was not intoxicated and that his friends were the ones that became obnoxious. He was cited because he was leasing the apartment.

In October 2007, Applicant was interviewed by a background investigator concerning, among other things, his two alcohol-related offenses. He was made aware of the government's security clearance concerns about his alcohol consumption.

In August 2008, Applicant consumed alcoholic beverages at a party and drove his car under the influence of alcohol. He was detained for speeding and a subsequent breathalyzer test indicated he had an .11% blood-alcohol content. Applicant was charged with driving while impaired (DWI). He pled guilty, and the charge was disposed through probation before judgment (PBJ). He was required to attend a 12-week state-sponsored alcohol and drug recovery program, to serve 40 hours of community service, his driver's license was suspended for 45 days, and he was placed on 18 months unsupervised probation. During the course of the alcohol and drug recovery program he was diagnosed as alcohol dependent.³ Applicant successfully completed his alcohol

³ Applicant admitted, and GE 3 states, he was diagnosed as alcohol dependent, but it is not clear who made that diagnosis. The record evidence fails to establish that the diagnosis was made by "a duly qualified medical professional," or by "a licensed clinical social worker who is a staff member of a recognized alcohol treatment program" as required by AG ¶¶ 22(d) and (e), respectively.

and drug recovery program. His prognosis at the time of his discharge was considered "Good." He also successfully completed the terms of his PBJ, including his probation.

As a result of his DWI and alcohol treatment, Applicant modified his drinking habits. He currently consumes one or two beers during the weekends, and he no longer drives after consuming alcohol. His state's driving and criminal records show he has not been involved in any further traffic or criminal offenses since his August 2008 DWI.

At his hearing, Applicant submitted three character letters: one from the vice-president of his company, a retired Navy captain; the second from his government agency supervisor; and the third from his girlfriend of six-years. Applicant is considered to be an invaluable worker and team player who has demonstrated outstanding

Additionally, the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR). Washington, DC, American Psychiatric Association, 2000, defines "alcohol dependence" to be a psychiatric condition that meets the following diagnostic criteria:

A maladaptive pattern of alcohol use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- (1) Tolerance, as defined by either of the following: (a) a need for markedly increased amounts of the alcohol to achieve intoxication or desired effect; or (b) markedly diminished effect with continued use of the same amount of the alcohol.
- (2) Withdrawal, as manifested by either of the following: (a) the characteristic withdrawal syndrome from the alcohol; or (b) the same (or a closely related) alcohol is taken to relieve or avoid withdrawal symptoms.
- (3) The alcohol is often taken in larger amounts or over a longer period than was intended.
- (4) There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
- (5) A great deal of time is spent in activities necessary to obtain the alcohol (e.g., visiting multiple doctors or driving long distances), using the alcohol, or recovering from its effects.
- (6) Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
- (7) The alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the alcohol (e.g., continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

Available at <http://www.rma.gov.au/SOP/08/017.pdf>.

Considering the evidence as a whole, a diagnosis of "alcohol abuse" would be more consistent with the facts of this case. Alcohol abuse, as described in the DSM-IV, is the recurring use of alcoholic beverages despite the knowledge that continued consumption poses significant social or interpersonal negative consequences. See DSM-IV-TR, "Substance Abuse," p. 198; and "Alcohol Abuse," p. 214.

judgment and integrity. He was lauded for his work ethic, professionalism, knowledge, and dedication to his mission. He is respected by co-workers and his customers for his attention to detail and the protection of proprietary and sensitive information. He is also considered to be an asset to his employer and the agency he serves. Because of his outstanding performance during the last three years, he was offered a position with the government agency. Both supervisors recommended Applicant receive access to classified information.

Applicant appears to be sincerely remorseful and contrite about his alcohol-related behavior. He believes he has let down his family and supervisors because of his questionable behavior. He averred that although he has continued to consume alcoholic beverages, he has made changes in his life-style that would prevent him from engaging in similar questionable conduct in the future. He now consumes only one or two beers when he is socializing during the weekends. He no longer visits bars or goes out with his drinking buddies. He has become more of a family man, visiting his grandmother and spending time with his girlfriend. In sum, he is maturing, transitioning from an immature college student into a responsible adult. He has taken responsibility for his actions and has learned to drink responsibly.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any expressed or implied determination about Applicant’s allegiance, loyalty, or patriotism. It is merely an indication that 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Under Guideline G, the Government’s concern is that 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 ¶ 21.

The Government established its case under Guideline G by showing that Applicant has consumed alcohol, at times to excess, from around 2002 until at least August 2008. During that period, Applicant exercised questionable judgment by being involved in three alcohol-alcohol related incidents, including a serious DWI. He was diagnosed with alcohol dependence in 2008-2009.

In 2008, Applicant attended court-ordered alcohol rehabilitation treatment and his prognosis was considered good. He continued consuming alcohol after his 2008

diagnosis of alcohol dependence. However, based on his work performance and traffic and criminal record, his alcohol consumption has been responsible.

Disqualifying conditions AG ¶ 22(a): “alcohol-related incidents away from work . . . ,” 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,” apply. AG ¶¶ 22(d) and (e) do not apply because the record evidence fails to establish that the diagnosis was made by “a duly qualified medical professional,” or by “a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” respectively.⁴

There are four Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

(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;

(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);

(c) 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; 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’s last alcohol-related incident, his DWI, occurred in August 2008. There is no evidence to show Applicant has been involved in any additional questionable alcohol-related misconduct. He successfully completed his alcohol rehabilitation treatment and the terms of his probation. His prognosis was considered good. Considering the evidence as a whole, his DWI offense appears to be a one-time incident. Based on his previous academic performance, his outstanding job performance during the last three years, his life-style changes, and his contrite

⁴ See footnote 3, *infra*.

testimony, I find that his past questionable behavior is not likely to recur. I also find that his past questionable behavior does not currently cast doubts on Applicant's reliability, trustworthiness, or judgment. AG ¶ 23(a) applies.

Applicant has acknowledged his issues with alcohol, has successfully participated in court-mandated alcohol rehabilitation treatment, has established life-style changes, and appears to be consuming alcohol responsibly. AG ¶¶ 23(b) and (c) partially apply.

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 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(c) were addresses under that guideline, but some warrant additional comment.

Applicant did well in high school and college, and he has been successful in his job for a government contractor since 2007. He is a mature man and a good worker. He has the support of his supervisors who trust him and laud his performance. He has sought help to overcome his alcoholism and seems to be doing well. There is no evidence he has ever compromised or caused others to compromise classified information. Based on his previous academic performance, his outstanding job performance during the last three years, his life-style changes, and his contrite testimony, I find that his past questionable behavior is not likely to recur. I also find that his past questionable behavior does not currently cast doubts on Applicant's reliability, trustworthiness, or judgment.

On balance, the record evidence establishes Applicant's eligibility and suitability for a security clearance. Applicant 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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge