



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



In the matter of:)
)
) ISCR Case No. 09-05400
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

November 4, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On June 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR with an undated response, and requested an administrative determination. Department Counsel made a timely request for a hearing before an administrative judge. The case was assigned to me on August 3, 2011. DOHA issued a notice of hearing on August 4, 2011, and the hearing was convened as scheduled on August 25, 2011. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified and offered exhibits (AE) A-B that were admitted without objection. Applicant's exhibit index is marked as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on September 9, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. These admissions will be treated as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He has been married one year and has no children. Since 2008, he has worked as quality production technician for a defense contractor. He has a bachelor's degree. He has no military background, has never deployed for his current company, and has never held a security clearance in the past.¹

Applicant's conduct raised in the SOR includes: (1) continued use of alcohol since November 2009; (2) being diagnosed as alcohol dependent in June 2006; (3) receiving substance abuse treatment in 2003; (4) being arrested and charged with driving under the influence (DUI) in February 2003; (5) receiving substance abuse treatment in 1998 and 1999; (6) being charged with operating a vehicle under the influence of alcohol (OUI) in October 1997; (7) receiving substance abuse counseling in 1991; (8) being arrested for OUI in June 1991; (9) being arrested for being a minor in possession of alcohol in July and August 1990; (10) being arrested for possession of marijuana and drug paraphernalia in March 1999.

Applicant started drinking alcohol when he was 16 years old and first became intoxicated at the same age. His drink of choice was beer. One of his underage alcohol possession charges happened when he attended a high school party that the police interrupted. The other underage alcohol incident occurred when he was cited by a police officer for holding an open container of alcohol during a local parade. He was arrested for his first OUI in 1991. He consumed several beers while eating at a restaurant then he and a friend drove away. He was stopped by police for not completely stopping at a stop sign or light. He pleaded guilty and was ordered into alcohol counseling. Because of his youth, the counseling had very little impact on him at the time. In 1997, he was arrested for his second offense OUI. On this occasion, he had been drinking beers with his uncle when he went to pick up his aunt who had car trouble. He was stopped by the police when his aunt threw an empty beer can at the police car. He was given breathalyzer tests that registered blood alcohol results of .14% and .13%. He was again ordered by the court to attend substance abuse treatment in

¹ Tr. at 5, 30-32; GE 1.

1998. He attended and completed court-ordered substance abuse treatment in 1998 and 1999. In March 1999, while visiting his cousin, he was cited and fined for possession of marijuana and paraphernalia while partying outside of a local beachside bar. He does not recall who gave him the marijuana. He has not used marijuana or any other drug since that occurrence. In February 2003, he was at a bar with a friend, who was supposed to be the designated driver, and ended up driving from the bar. He does not remember how much alcohol he consumed. He was stopped by the police for speeding. His blood alcohol level was .14%. He was arrested and charged with OUI. Once again he pleaded guilty and was sentenced to probation, which included court-ordered alcohol treatment. He completed the drug counseling program and was released from probation. In June 2006, he was evaluated by a licensed substance abuse counselor for the purpose of determining whether his driving privileges could be restored. The counselor considered Applicant's entire substance abuse history, his test results, and his criminal offenses. The counselor diagnosed Applicant as alcohol dependent currently in a full sustained remission. The counselor based this diagnosis on Applicant's three year history of abstinence at that time and his Alcoholics Anonymous (AA) participation. The counselor also recommended that Applicant continue AA attendance at least once a week in order to assist with his on-going abstinence.²

From 2003 to 2006, applicant totally abstained from using alcohol. He claims the last time he was intoxicated was in 2003. Several events in his life have caused him to change his way of life from when he was abusing alcohol. He got married recently. He bought a house and he finished college. He also obtained his current job. He also moved away from the state where he experienced all of his alcohol-related arrests and he longer associates with the people from that state. He has not had any updated alcohol diagnosis since 2006. He started drinking alcohol on a very limited basis again in 2007 or 2008. Now he only drinks three to four times a year and does not drink to the point of intoxication. He participated in AA up until about 2008 when he stopped. The last time he drank was one or two months before the hearing while camping with friends. He drank 12 beers over a two day period on that camping trip. Applicant does not currently believe he has a problem with consuming alcohol.³

Applicant is supported by two character letters attesting to his honesty, trustworthiness, and integrity. Applicant is viewed as a dedicated and valued employee.⁴

² Tr. at 35-49; GE 5-8.

³ Tr. at 50, 53-57, 63; GE 6.

⁴ AE A-B.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Three are applicable in this case:

(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;

(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; and

(e) evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's three DUI or OUI arrests and his pattern of drinking through of 2003, along with his diagnosis of alcohol dependence, support the application of all the above disqualifying conditions.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and found the following relevant:

(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); 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.

Although Applicant's last alcohol-related incident involving law enforcement was in 2003, he was convicted of three intoxicated driving incidents and had several alcohol-related incidents as a minor. These incidents were not infrequent, nor did they happen under unusual circumstances. Applicant still uses alcohol despite his past track record, thus he has not established that similar future incidents are unlikely to occur. AG ¶ 23(a) does not apply.

Applicant was diagnosed as alcohol dependent in 2006. The counselor making the diagnosis also found him in remission, but that part of the diagnosis was contingent upon Applicant's abstinence and his AA participation neither of which apply to him currently. Applicant does not currently acknowledge that he has an alcohol abuse problem and since he began drinking again in 2008, he has not established a pattern of abstinence. AG ¶ 23(b) does not apply.

Although Applicant completed at least three alcohol treatment programs, he has not continued his abstinence or his AA participation as recommended by the licensed alcohol counselor who diagnosed him as being alcohol dependent. AG ¶ 23(d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the Personal Conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's alcohol related conduct is fully discussed above in the Guideline G analysis. The same allegations are crossed alleged as personal conduct that could cause a vulnerability to exploitation. Additionally, Applicant's use of marijuana and subsequent arrest for possession also could cause a vulnerability to his personal standing. AG ¶ 16(e) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress.

Although Applicant's last alcohol-related incident involving law enforcement was in 2003, he was convicted of three intoxicated driving incidents and had several alcohol-related incidents as a minor. These incidents were not infrequent, nor did they happen under unusual circumstances. Applicant still uses alcohol despite his past track record, thus he has not established that similar future incidents are unlikely to occur. AG ¶ 17(c) does not apply.

Applicant testified credibly that he has not used marijuana since 1999 and has therefore taken appropriate steps to reduce or eliminate his vulnerability to exploitation. AG ¶ 17(e) applies to SOR ¶ 2.b.

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 have considered Applicant's age, education, history of alcohol-related arrests, his 2006 diagnosis as being alcohol dependent, his discontinued commitment to AA, and his character references. I also considered that Applicant still consumes alcohol on a regular basis despite his history. Applicant has not presented sufficient mitigating evidence to overcome the alcohol concerns stated in the SOR allegations.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline G, Alcohol Consumption and Guideline E, Personal Conduct.

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
Subparagraphs 1.a-1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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.

Robert E. Coacher
Administrative Judge