



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



In the matter of:)	
)	
)	ISCR Case No. 09-05486
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2012

Decision

WHITE, David M., Administrative Judge:

Applicant had alcohol-related driving offenses in 1987 and 1990. He successfully completed court-ordered alcohol treatment in 1990. He tested positive for marijuana in May 2007, while holding a security clearance, after being injured in an accident at work. He successfully completed outpatient treatment for diagnosed alcohol and marijuana dependence in October 2007. He deliberately falsified his 2005 and 2008 security clearance applications, and 2009 security interview answers, concerning his drug- and alcohol-related criminal history. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on November 11, 2008. On October 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), H (Drug Involvement), E (Personal Conduct), and 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on November 4, 2011, and requested a hearing before an administrative judge. Department Counsel issued an amendment to the SOR and was prepared to proceed on November 17, 2011. The case was assigned to me on November 22, 2011. DOHA issued a Notice of Hearing on December 19, 2011, and I convened the hearing, as rescheduled due to inclement weather, on January 23, 2012. The Government offered exhibits (GE) 1 through 8, which were admitted without objection, and Hearing Exhibit (HE) I to support a request for administrative notice. Applicant offered no documentary evidence beyond the items submitted with his answer to the SOR, and testified on his own behalf. Without objection from Applicant, I granted Department Counsel's requests to amend the dates in SOR ¶¶ 1.b and 1.c from 1994 to 1990, and to withdraw SOR ¶ 1.d. DOHA received the transcript of the hearing (Tr.) on January 31, 2012.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor, where he has worked as a mechanic since June 2008. He is married, for the second time, with two children ages 20 and 10. He is a high school graduate, and has never served in the military. He was first granted a security clearance in May 2006 while working for another defense contractor.¹ In his response to the SOR, Applicant admitted SOR ¶¶ 1.c, 1.g, 2.b, 2.e, 2.g, 2.h, and (in part) 4.b. During the hearing, he admitted SOR ¶¶ 1.b (as amended), 2.d, 2.f, and (in part) 4.a, as well as 1.a and 2.a with modified dates.² He denied the remaining allegations. Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Applicant started to consume alcohol at age 18, after graduating from high school. In 1987 he was arrested and convicted for driving under the influence (DUI) of alcohol. In 1990 he was arrested for another DUI and entered into a five-year deferred prosecution agreement. Starting in September 1990, he successfully completed a court-ordered outpatient alcohol treatment program. He was found to be alcohol dependent and told that he should abstain from alcohol consumption. He remained abstinent for the remainder of his five-year probation period, but resumed drinking during the following year or so. He discontinued attendance at Alcoholics Anonymous (AA) after a couple years because he "didn't like hearing people whine about their stories."⁴

¹GE 1; GE 2; GE 3; Tr. 5-7, 32.

²Tr. 14-16, 33-34, 40-41, 52-59, 62-63, 65-66.

³GE 4 through GE 8.

⁴AR; GE 4; GE 8; Tr. 33-46.

Applicant first used marijuana around 1973, at age 18. After a four-year period of voluntary abstinence from drug use around the time of his DUI probation, he resumed smoking marijuana in the late 1990s. On one occasion in either 1990 or 1997, Applicant was arrested for possession of drug paraphernalia for attempting to hide a friend's marijuana pipe under the seat of his car when a police officer approached them. By 2006 and early 2007, Applicant regularly used marijuana a couple times per week with friends, and purchased about \$80 worth of that drug from an acquaintance about once per month from at least 2004. During April 2007, Applicant suffered an accidental injury to his hand at work. After returning from the emergency room, he smoked marijuana to help deal with the pain. On May 1, 2007, under a company policy requiring a urinalysis test after a job-related injury, Applicant submitted a urine sample that tested positive for marijuana. His company then referred him for a substance abuse assessment. Another urine sample was collected for testing in connection with that assessment on May 9, 2007. It also tested positive for marijuana. The treatment program counselor, who performed the assessment, diagnosed Applicant with alcohol dependence and cannabis dependence, and recommended that he undergo a six-month outpatient relapse prevention program. When asked during the hearing why he used marijuana after being granted a security clearance he responded, "It was something I did on the weekend." He acknowledged being aware that alcohol-related incidents and drug abuse while holding a security clearance were grounds for security concerns.⁵

Applicant successfully completed the six-month outpatient program in 2007, and abstained from both alcohol and drug use during that time. He said that he has not used marijuana since April 2007, but resumed moderate alcohol consumption about a year after leaving this treatment program. He testified that he felt that he could control his alcohol consumption, no longer drank to intoxication, and consumes one or two beers once or twice on weekends. He does not participate in AA.⁶

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on May 22, 2009. He told the investigator that he first smoked marijuana in approximately the winter of 2004, and last used it on the day that he injured his hand in April 2006. He said that, except for the last time, he only used it with friends, and did so one or two times per month. Based on all of Applicant's various statements in the record, I conclude that he honestly believed that his accident occurred in April 2006, vice April 2007, and was not intentionally deceitful about that approximate date of his last use. However, he admitted that he deliberately failed to disclose his pre-2004 marijuana use starting in 1973.⁷

In response to § 23d on Applicant's security clearance application dated November 11, 2008, and to § 24 on his prior application dated September 20, 2005, he answered "No" to the question that asked if he had ever been charged with or convicted

⁵AR; GE 4; GE 5; GE 6; GE 7; GE 8; Tr. 46-66.

⁶GE 6; GE 8; Tr. 33-36, 46-52.

⁷GE 5; Tr. 72-73.

of any offense(s) related to alcohol or drugs. He was asked to reveal any illegal drug use in the previous seven years in response to § 24a of his 2008 application and § 27 of his 2005 application. He answered “No,” denying any such use on the 2005 application, and said “Yes,” on his 2008 application, but stated only that he used marijuana three times during April 2007. His 2008 application also included a “Yes” response to § 24b that inquired whether he had ever illegally used a controlled substance while holding a security clearance, but admitted only three uses in April 2007. Finally, in response to the question in § 25 of his 2008 application that inquired about alcohol-related treatment or counseling in the past seven years, Applicant responded, “No.”⁸

Applicant denied deliberately falsifying these answers in his response to the SOR. During his hearing, however, he admitted several times to minimizing and denying the extent of his alcohol-related and drug-related criminal history because he did not want to lose his job. Some of the SOR-alleged dates of such conduct were incorrect, but some were accurate and his intent was manifest. Applicant did, however, testify credibly that he did not believe that his 2007 outpatient treatment was alcohol-related, since it resulted solely from his positive urinalysis tests for marijuana and subsequent diagnosis of cannabis dependence. This testimony is corroborated by the fact that his last alcohol-related misconduct was in 1990. Applicant signed his 2005 and 2008 security clearance applications immediately following his certification that his answers were true, complete, and correct to the best of his knowledge and belief, and were made in good faith. He then acknowledged his understanding, on both applications, that a knowing and willful false statement therein was a crime under section 1001 of title 18, United States Code.⁹

Applicant submitted a 2005-2006 annual performance evaluation, an undated weekly excellence award, and several letters of recommendation from the employer who fired him in November 2007 for defective work quality and not following the approved work plan.¹⁰ He did not provide any evidence concerning the quality or nature of his recent work performance, or of his reputation for good character or trustworthiness among his personal or professional acquaintances.

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 (DCs) and mitigating conditions (MCs), which are to be 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

⁸GE 1; GE 2.

⁹AR; Tr. 47-51, 67-73.

¹⁰GE 4; GE 5; Tr. 73-74.

factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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. The DCs asserted by Department Counsel¹¹ are:

(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 or duty 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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant was arrested for two DUI offenses in 1987 and 1990. These incidents establish some security concerns under AG ¶ 22(a). There are neither SOR allegations nor evidence of any alcohol-related incidents at work, so concerns under AG ¶ 22(b) were not raised. The Government's evidence failed to establish that a "duly qualified medical professional" ever diagnosed Applicant with alcohol dependence, as required by AG ¶ 22(d). However, two licensed clinical social workers who were staff members of recognized alcohol treatment programs evaluated him as alcohol dependent in 1990 and 2007, so AG ¶ 22(e) was properly raised by the evidence. The AG ¶ 22(f) term, "relapse" is not clearly defined. Applicant admitted resumption of moderate alcohol consumption after both substance abuse rehabilitation programs, but has not been involved in any alcohol-related misconduct since 1990. To the extent this is considered relapse, it will be addressed under the mitigating conditions below.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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

¹¹Tr. 75.

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 had an alcohol-related DUI offense in 1987 and another in 1990. He underwent treatment after the second offense. Although he was evaluated to be alcohol dependent after the second DUI, and again in 2007, there is no evidence of anything beyond moderate and responsible alcohol consumption since 1990. This continuing consumption is contrary to treatment recommendations, so Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), and (d). However, I find that he did establish mitigation under AG ¶ 20(a) due to the absence of any alcohol-related incidents for more than twenty years, and his honest admission of moderate use.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs asserted by Department Counsel and supported by the evidence are:

(a) any drug abuse;

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program; and

(g) any illegal drug use after being granted a security clearance.

Applicant admitted to use of marijuana from 1973 through April 2007, resulting in two positive urinalysis tests in May 2007. He was arrested for possession of a friend's drug paraphernalia during the 1990s, and admitted monthly purchases of marijuana from at least 2004 to April 2007. A licensed social worker on the staff of a state-recognized drug treatment program evaluated him to be cannabis dependent in May 2007. Applicant had been granted a Secret security clearance in May 2006, and used marijuana thereafter, knowing that it was both illegal and contrary to security guidelines.

AG ¶ 26 provides conditions that could mitigate security concerns:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's last known drug use was in April 2007. He successfully completed his subsequent outpatient treatment program, and says that he has not resumed drug abuse since then and will not do so in the future. He admitted resumption of moderate alcohol consumption, so his veracity on this point is not in question. The passage of five years without resumed marijuana use establishes mitigation under AG ¶¶ 26(a) and (b), and in part under AG ¶ 26(d) for security concerns under AG ¶¶ 25(a), (b), (c), and (e).

However, Applicant failed to establish either remorse for, or mitigation of, his disregard for the security implications of regular drug abuse after being granted a clearance, and the demonstrated unwillingness to comply with laws, rules, and regulations inherent in those choices.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. The DCs alleged by Department Counsel and supported by the evidence are:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant admitted false denials of his past drug and alcohol abuse on his 2005 security clearance application, and false omission of the extent of his prior drug abuse on his 2008 application. He also concealed some of his marijuana use during his OPM interview in 2009. He admitted having done so in order to avoid losing his job, establishing that the omissions and falsifications were intentional. Security concerns under AG ¶¶ 16(a) and (b) were raised by these facts.

Applicant offered insufficient evidence to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "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."

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The DCs alleged by Department Counsel and supported by the evidence are:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant admitted to commission of one of the DUI offenses alleged in SOR ¶ 4.a, and one offense of possessing drug paraphernalia alleged in SOR ¶ 4.b. Further, I find that he violated 18 U.S.C. § 1001 by falsifying information on his security clearance applications and during his OPM interview, as alleged in SOR § 4, albeit with some incorrect dates.

AG ¶ 32 provides conditions that could mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (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.

As discussed above under guidelines G and H, Applicant's DUI offenses and drug use occurred in the past and he has demonstrated rehabilitation to the extent that they are judged to be unlikely to recur. AG ¶ 32(a) therefore mitigates security concerns raised by those incidents, except to the extent that Applicant's trustworthiness and good judgment remain in doubt due to his regular drug use while holding a security clearance. None of the potential MCs were established with respect to Applicant's violations of 18 U.S.C. § 1001.

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 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 pertinent facts and circumstances surrounding this case. Applicant's alcohol abuse and drug abuse are mitigated by the passage of time without recurrence and his apparent rehabilitation. However, his knowing and voluntary drug abuse while holding a security clearance, and his falsifications concerning his past drug and alcohol abuse in connection with multiple security clearance eligibility proceedings are serious and recent matters that go to the heart of evaluating his reliability, trustworthiness, and integrity.

Applicant is a mature individual who is accountable for his choices and actions. His susceptibility to pressure or duress in the face of potentially unpleasant consequences is demonstrated by his attempts to conceal his past problems. He provided insufficient evidence of good work performance or good character to overcome the resulting security concerns. Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his drug involvement, personal conduct, and criminal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.g:	For Applicant
Subparagraph 2.h:	Against Applicant

Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.d:	Against Applicant
Subparagraph 3.e:	For Applicant
Subparagraphs 3.f and 3.g:	Against Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraphs 4.a and 4.b:	For Applicant
Subparagraph 4.c:	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.

DAVID M. WHITE
Administrative Judge