



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



In the matter of:)	
)	
)	ISCR Case No. 09-06332
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

January 10, 2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant committed three alcohol-related driving offenses between March 2007 and March 2009. Those offenses all occurred while his life was in turmoil. He has not consumed any alcohol since March 2009, he admits he is an alcoholic, and he has regularly attended Alcoholic's Anonymous (AA) meetings since his last arrest. Applicant mitigated the security concern that existed due to his multiple alcohol-related arrests. Clearance is granted.

On August 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline G (alcohol consumption). Applicant submitted a response to the SOR which contains multiple date and time stamps, apparently indicating it was received by DOHA on three different days in September and

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

October 2011. Applicant admitted all SOR allegations, except the second sentence of subparagraph 1.c, and he requested a hearing.

The case was assigned to me on November 3, 2011. A notice of hearing was issued on November 9, 2011, scheduling the hearing for December 6, 2011. The hearing was conducted as scheduled. The Government submitted ten documents that were marked as Government Exhibits (GE) 1-10 and admitted into the record without objection. Applicant testified and submitted nine documents that were marked as Applicant Exhibits (AE) 1-9 and admitted into the record without objection. The transcript was received on December 20, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 49-year-old man who has been employed as a manufacturing technician by defense contractors since April 2005. Applicant graduated from high school in June 1981. He enlisted in the Navy in January 1984, and he served continuously on active duty until he retired with an honorable discharge in January 2004. Applicant was a petty officer first class at the time of his retirement. His personal awards include the Navy and Marine Corps Commendation Medal, Navy and Marine Corps Achievement Medal, and five Good Conduct Medals.

Applicant was married in April 1987. That marriage ended in divorce in August 2007. Applicant has two adult sons from this marriage.

Applicant was charged with DUI in March 2007. His Blood Alcohol Content (BAC) when he was arrested was 0.126. The charge was reduced to Reckless Driving in August 2007, and a fine and court costs in the total amount of \$709 was imposed. Applicant was again charged with DUI in September 2008. His BAC at the time of this arrest was 0.108. In March 2009, Applicant was convicted of Reckless Driving for this offense, and a fine and court costs in the total amount of \$810 was imposed.

Applicant was charged with Simple Battery in November 2008. This charge was based on a minor physical altercation between Applicant and his live-in woman friend when she decided to leave him because of his abuse of alcohol. According to the woman's version of events, Applicant grabbed her by the arms and dragged her from her vehicle. According to Applicant, he reached into her vehicle to remove the key from the ignition and she was pulled from the vehicle when she grabbed him. Applicant denies he was intoxicated when this offense occurred. The police report (GE 7) indicates Applicant had used alcohol but does not make any reference to him being intoxicated. The woman requested that Applicant not be prosecuted for this charge, and, after Applicant had completed an anger management course, the State declined to prosecute him.

Applicant was charged with DUI a third time in March 2009. His BAC at the time of this arrest was 0.207. In August 2009, Applicant was convicted of Reckless Driving and Failure to Maintain Lane, and a fine in the amount of \$1,727 was imposed.

Applicant was required to attend a DUI school after each of his DUI convictions. He voluntarily attended AA meetings after his first two convictions for a period of several months, but stopped because he found them to be boring. Following his third DUI arrest, Applicant was told that if he attended AA meetings regularly the DUI charge would be dismissed. Applicant credibly testified that he has not consumed any alcohol since he was arrested in March 2009, and that he has regularly attended AA meetings at least three times a week since that arrest. He has an AA sponsor who is a person he works with. Applicant admits he is an alcoholic.

Applicant attributes the four alcohol-related arrests to the breakup of his 20-year marriage and to the sometimes tumultuous relationship he had with his live-in woman friend. According to Applicant, the major strain in that relationship was caused by the woman's son, who eventually was confined for an extended period of time in a juvenile facility, and their disagreements about him. Applicant credibly testified that he has terminated that relationship and that he and his ex-wife have reestablished an amiable relationship that included his spending the past Thanksgiving holiday at her residence.

Applicant submitted letters of recommendation from his work supervisor and his neighbors. Those persons attest to Applicant's reputation for being honest, dependable, trustworthy, and highly respected.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

although the Government is required to present substantial evidence to meet its burden of proof.⁵ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁶ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline G, 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. (Adjudicative Guideline [AG] 21)

Applicant was charged with three DUI offenses between March 2007 and March 2009. His BAC at the time of each of those arrests was in excess of the presumptive levels for driving while impaired. Applicant was convicted of Reckless Driving based on each of his DUI arrests and fines were imposed. DC 22(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* applies.

Applicant was charged with Simple Battery in November 2008. The offense involved a minor altercation between Applicant and his live-in woman friend when she attempted to leave him. While the police report Applicant had used alcohol, there is no indication he was intoxicated or that the offense was the result of his immediate consumption of alcohol. This offense does not create an alcohol consumption security concern.

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Applicant was 44 years old when he was first charged with DUI. Up to that time there is no indication he had experienced any alcohol-related problems. To the contrary, the record establishes he had a successful and honorable military career and a 20-year marriage that produced two children. His first alcohol-related offense coincided with the dissolution of his marriage. His next two offenses occurred when he became involved with his live-in woman friend and her son that resulted in an apparently tumultuous relationship. Applicant has terminated that relationship and has reestablished an amicable relationship with his ex-wife.

Applicant credibly testified that he has not consumed any alcohol since his last DUI arrest in March 2009. He has regularly attended AA meetings since his March 2009 arrest, currently at the rate of at least three times a week. Applicant has acquired an AA sponsor, who is a person with whom he works. Applicant admits he is an alcoholic and he appears to be sincerely committed to continued sobriety. Accordingly, the following Mitigating Conditions (MC) apply: MC 23(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*; and MC 23(b): *the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the alcohol consumption security concern. He has overcome the case against him and he has satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline G is decided for Applicant.

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 12.a-d: 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 a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

