



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



In the matter of:)	
)	
)	ISCR Case No. 09-06701
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 14, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. 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 on April 14, 2012. He requested a hearing before an administrative judge. The case was assigned to me on June 22, 2012. DOHA issued a notice of hearing on July 19, 2012, with a hearing date of August 16, 2012. The

hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objections, although Applicant did question the accuracy of some of the factual information in GE 6. I informed him those questions would go to the weight of the document.¹ Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified, but did not offer documentary evidence. DOHA received the hearing transcript (Tr.) on August 31, 2012.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, except for SOR ¶ 1.d. These admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 53 years old. He is married and has two adult children. He currently works for a defense contractor as a systems engineer. He began working for his current employer in 2009. He previously worked for the private sector for 23 years until he was laid off in 2001. After this layoff, he worked for a government agency for over six years. He was laid off from this job in 2008. He held a security clearance in that position. He holds a bachelor's degree in computer science. He has no military service.²

Applicant's conduct raised in the SOR includes demonstrating excessive use of alcohol in the following manner: In 2006, being arrested, charged, and pleading *nolo contendere* to driving under the influence of alcohol (DUI); in 2007, having his security clearance revoked by another government agency because of alcohol abuse concerns; in 2008 and 2011, being diagnosed by qualified medical professionals as alcohol dependent; from age 16 years old until at least July 2011, consuming alcohol, sometimes in excess and to the point of intoxication; and his continued use of alcohol. (SOR ¶¶ 1.a-1.e)

Applicant began drinking when he was 16 years old. His drinking frequency progressed through his adult years. In 2001, after he was laid off from his job, his drinking occurred on a daily basis at the rate of three to four beers a day and three shots of whiskey. In 2006 he was arrested for DUI. He had a blood alcohol level of .12 percent. He pled *nolo contendere* to the charge. He was working for another government agency at the time of his arrest and held a security clearance. He was required by his employer to undergo alcohol counseling. As a result of the counseling, his security clearance was revoked. In 2008, he was laid off from his position.³

¹ Tr. at 28-29.

² Tr. at 33; GE 1.

³ Tr. at 34-35; GE 5, 6.

While he was unemployed, he participated in a recognized alcohol treatment program. He was admitted into the program in July 2008 and was given an initial diagnosis of alcohol dependence by a certified alcohol counselor. He continued with the program through November 2008. He discontinued the program at that time because he had taken a new job and it was inconvenient for him to continue treatment because of his work schedule and his commuting time. Upon his departure, he was given an alcohol dependence diagnosis by a licensed clinical social worker. He was abstinent while participating in this program.⁴

After leaving the alcohol treatment program, he resumed drinking alcohol on a daily basis. He would consume up to five beers a day. He began experiencing other health problems such as gout flare ups. His physician told him to cut back on his alcohol consumption. In February 2009, he claims to have voluntarily reduced his drinking to weekend consumption only. Currently, he states that he drinks alcohol on an occasional weekend. His last consumption was at a wedding three weeks ago. He was selected as the designated driver for the group. He drank four beers that evening over the course of several hours. His longest period of abstinence, since he left the alcohol treatment program in November 2008, has been three weeks. He does not agree with some of the principles of Alcoholics Anonymous (AA).⁵

In July 2011, as part of his current security clearance application, Applicant was evaluated by a medical doctor, specializing in addiction medicine, concerning his alcohol use. After a clinical interview, Applicant was diagnosed as alcohol dependent. The doctor also stated: "I do not believe a security clearance should be implemented until a satisfactory period of abstinence (6-12 months) has been demonstrated." He also recommended that Applicant attend a men's AA group. Applicant continues to consume alcohol and does not attend any AA group. He did not present any evidence concerning his work performance record or character evidence from friends, coworkers, or relatives.⁶

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

⁴ Tr. at 35-36; GE 5.

⁵ Tr. at 38-42, 45, 47, 50.

⁶ Tr. at 39, 45, 52; GE 6.

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. Four are potentially 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;

(d) diagnosis by a qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence; 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 pattern of drinking from 1974 (when he was 16 years old) to July 2011, including a DUI conviction, and his diagnosis of alcohol dependence by both a licensed clinical social worker and a medical doctor, 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.

Applicant continues to consume alcohol despite his alcohol dependence diagnosis. The reoccurrence of his alcohol use and abuse is a reality as long as he continues to consume alcohol. His past pattern of alcohol use casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 23(a) does not apply.

Although Applicant sought treatment in 2008, he failed to complete the program even though he was diagnosed as alcohol dependent. He continues to consume alcohol despite his diagnosis, and therefore refuses to acknowledge his issues of alcohol dependence. AG ¶ 23(b) does not apply.

Applicant did not successfully complete an inpatient alcohol treatment program in 2008. He discontinued treatment prior to its conclusion. He has not established a pattern of abstinence, nor does he participate in AA or any similar group. AG ¶ 23(d) does not 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 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 considered Applicant's service to his company. I also considered the seriousness of his actions. Additionally, I considered his partial completion of an alcohol treatment program. However, Applicant's alcohol dependence is longstanding. He continues to consume alcohol despite the multiple recommendations to cease this activity. It is affecting his health through his gout affliction. A little over a year ago, a medical doctor performed the latest evaluation and recommended that Applicant have between six and twelve months of abstinence before a security clearance should be considered for him. Applicant has zero months of abstinence because he continues to consume alcohol. Applicant's continued consumption of alcohol raises security concerns and he did not meet his burden to provide sufficient evidence to mitigate those concerns.

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 did not mitigate the security concerns arising under Guideline G, 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 3, Guideline G	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	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.

Robert E. Coacher
Administrative Judge