



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



In the matter of:)	
)	
)	ISCR Case No. 09-06757
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

November 4, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on October 24, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 14, 2011, detailing security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct, that provided the basis for its preliminary decision to deny him a security clearance. 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* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 21, 2011. He submitted a notarized, written response to the SOR allegations dated July 8, 2011, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on September 6, 2011. Applicant received the FORM on September 12, 2011. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on October 31, 2011. The Government submitted 11 exhibits, which have been marked as Items 1-11 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1h. of the SOR. His admissions are incorporated herein as findings of fact. He did not admit or deny the factual allegations in ¶ 2.a of the SOR, which is deemed a denial.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 29 years old, works for a Department of Defense contractor. He began his current employment in April 2008. He also served in the United States Army for four years and received an honorable discharge in 2004.²

Applicant married in 2007. He has three children, ages 8, 5, and 3. His wife works part time. He had financial problems, which he resolved through bankruptcy. His finances are not an issue in this case.³

Applicant began drinking beer in 1995 or 1996 at age 13 or 14. Until he enlisted in the Army in 2000, he drank 6 to 12 beers every other weekend with friends at their homes, while camping, or in the canyon. While in the Army, he drank 8 to 18 beers every other weekend with his buddies. After leaving the Army, Applicant continued to drink 6 to 12 beers every other weekend from July 2004 to October 2007. During this

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 4.

³*Id.*; Item 5.

time period, he stopped consuming beer for four to five months. Since October 2007, he has continued to consume from 1 to 12 beers a week and indicates an intention to continue drinking alcoholic beverages, after telling the security clearance investigator in December 2008 that he did not intend to drink alcohol in the future.⁴

Applicant's alcohol consumption lead to numerous alcohol-related arrests between 1998 and 2008. The police first arrested Applicant for driving under the influence of alcohol (DUI) in 1998. The police arrested him for DUI in 2001, 2002, 2004, and 2008. The police also arrested him for public intoxication in 1999, 2005, 2006, and 2008. He pled guilty to the charges, and the court fined him, placed him on probation, suspended his driver's license, and sometimes sentenced him to jail for a short time.⁵

After his arrests and convictions in 2001 and 2004, Applicant attended alcohol counseling classes as required by the courts. He completed both programs. Following his DUI arrest in November 2008, Applicant enrolled in a substance abuse counseling program. He attended the program as required. As part of the program requirements, he underwent seven breathalyzer tests and six drug tests between March 2009 and August 2009. All tests had negative results. At the conclusion of the program, the counselor, whose qualifications are unknown, diagnosed him as alcohol dependent and noted spousal issues. The counselor also opined that Applicant had the necessary tools to maintain sobriety, if he chose, but he lacked a support system and other outlets to help him cope with stress and other problems.⁶

The record contains no evidence of work-related alcohol problems, and Applicant denies any alcohol problems at work. He does not attend alcoholics anonymous, and he does not take antabuse to help him abstain from drinking alcohol.⁷

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 ¶¶

⁴Item 5; Item 6.

⁵Item 5; Items 7-10.

⁶Item 5; Item 11.

⁷Item 6.

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. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

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:

(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;

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

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

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has an extensive history of alcohol-related incidents, including DUI and public intoxication arrests, away from work. He is a habitual consumer of beer, and at times, he consumed beer to the point of intoxication, as shown by his arrests. He has been diagnosed as alcohol dependent by a counselor at a court-designated counseling program. The Government has established its *prima facie* case under AG ¶¶ 22(a), 22(c), and 22(d).

AG ¶ 23 provides conditions that could mitigate 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 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.

I have reviewed the evidence of record under these mitigating conditions. Applicant has not abstained from alcohol consumption and plans to continue consuming alcohol each week. Although he has attended alcohol counseling and education courses, he does not acknowledge a problem with alcohol despite his level of alcohol consumption, which has increased over the years. He continues to consume alcohol despite a diagnosis of alcohol dependency in 2009. He has not mitigated the Government's security concerns under Guideline H.

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:

(a) a single serious crime or multiple lesser offenses;

(b) discharge or dismissal from the Armed Forces under dishonorable conditions;

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) individual is currently on parole or probation;

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and,

(f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

Applicant has been charged with DUI on five separate occasions and with public intoxication on four occasions between 1998 and 2008. The Government has established its *prima facie* case under AG ¶¶ 31(a) and 31(c).

AG ¶ 32 provides conditions that could mitigate security concerns. I have considered all the mitigating conditions, and especially the following:

(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.

I have consider all the evidence of record under the above mitigating conditions. It has been less than three years since Applicant's last arrest and two years since he completed his last alcohol treatment program. He continues to consume alcohol, which could lead to another arrest for intoxication. His arrests are recent, and the record lacks evidence of a successful rehabilitation. He has not mitigated the Government's security concerns under Guideline J.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant began consuming beer as a teenager and in significant quantities. He continues to consume significant amounts of beer, even though he has been arrested at least nine times for incidents directly related to his alcohol consumption. He has had financial problems and marital problems, which are related in part to his alcohol use. Even though he has attended alcohol counseling programs on three occasions, he continues to drink beer to excess and plans to move forward with his drinking patterns. He does not acknowledge an alcohol problem and lacks a support system to help him cease his drinking. His drinking patterns remain a concern.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his alcohol consumption and criminal conduct under Guidelines G and J.

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.h:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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.

MARY E. HENRY
Administrative Judge