



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06834

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

May 2, 2011

Decision

HOWE, Philip S., Administrative Judge:

On June 3, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 19, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On January 7, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on January 12, 2011. He received it on February 1, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a Response to the FORM on February 28, 2011, within the 30-day time allowed that would have expired on March 3, 2011. Department Counsel had no objection to the documents. They are marked as the FORM Response. I received the case assignment on March 13, 2011. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant denied the allegations in Subparagraph 1.a and admitted the other three allegations with explanations. His admissions are incorporated into these Findings. (Items 2)

Applicant is 62 years old. He married in 1970 and divorced in 1992. He had four children, two of whom are deceased. He worked as a physicist for the federal government until his retirement in 2003. He started his federal employment in 1977. Applicant has a Ph.D. in physics from a major university. He now works as a research associate for a university. (Items 4 and 5)

Applicant consumed alcohol from 1965 to at least April 2009. At times he drank to excess resulting in intoxication. Applicant admitted the starting date was 1968, not 1965 as contained in his personal subject interview with the government investigator on June 26, 2009. He informed the investigator he did not drink alcohol from 1966 to 1970. He also denied drinking to excess and intoxication. Applicant started drinking only beer every two weeks with friends. When employed by the government he drank once or twice a month with co-workers, having two or three glasses of beer each time. His drinking increased to four pints of beer four times a week in 1999. The consumption of that quantity of beer would intoxicate Applicant, by his own admission. After that year Applicant realized he had a drinking problem and on several occasions ceased consuming alcohol "on many occasions." He would do things while intoxicated that he would not normally do, such as smoking cigarettes and slurring his speech. (Items 4 and 6)

Applicant was arrested in October 1996 for driving under the influence of liquor and driving when his blood alcohol content was more than .10% (DUI). Applicant denied consuming alcohol for three years after that arrest. He asserted he did not use alcohol from June to November 2010 in his Answer. (Items 4 and 6)

From December 2000 until at least December 2009 Applicant received treatment for alcohol abuse from a medical professional, a psychiatrist. Applicant's son died in January 2003 and he experienced anxiety and sleeplessness. At that time he consulted with the psychiatrist, not in 2000, which was an estimated date Applicant put on his SF-

86. During that treatment he took the medication Antabuse concurrent with his treatment program. Applicant ceased using Antabuse and resumed drinking alcohol, sometimes to excess, from March 2004 to at least April 2009. Applicant's SOR Answer stated "my present complete adherence to Antabuse is evidence of my abstinence from alcohol." Applicant also stated in his Answer that, "I am resolved to continue my abstinence from alcohol throughout the future." He also stated, "I seldom consumed alcohol and very rarely to the point of intoxication." Applicant claimed he does not need Antabuse to refrain from consuming alcohol. He asserted his pattern of abstinence is "beyond the requirement of responsible use as required of an alcohol abuser." This statement admitted Applicant is an alcohol abuser. (Items 4, 6, and 7)

Applicant submitted a 30-page curriculum vitae (CV) showing his numerous professional publications and presentations. His work history is delineated in the CV. He seeks a security clearance to allow him access to classified materials for a project with a federal department research team located at his university. Applicant submitted in his FORM Response his college transcripts that documented high grades in almost all his subjects. Applicant is an intelligent and educated person with a lengthy work history and many publications in the field of physics. (Items 4 and 7, FORM Response)

Applicant submitted a December 21, 2009 alcohol evaluation prepared by his psychiatrist. He has treated Applicant since March 12, 2004. The doctor reports that when Applicant stops taking Antabuse and tries to drink moderately, within a few weeks he begins drinking excessively. Those drinking periods last from a few days to a several weeks. Then Applicant renews his commitment to sobriety and resumes taking Antabuse. The doctor reported he is aware of only one DUI incident in 1996. He diagnosed Applicant with alcohol abuse (intermittent). The prognosis is unclear, though the doctor cited the best-known study showing 70% of persons diagnosed with alcohol abuse were stable or improved four years later. The remaining 30% worsened and met criteria for alcohol dependence. The doctor stated Applicant acknowledged he cannot drink moderately and excessive alcohol consumption adversely affects his life. Applicant's openness and awareness of his problem shows progress in treatment and "connotes a more favorable prognosis than denial." Applicant can use Antabuse successfully and this is a positive prognostic factor also. (Item 7)

Applicant submitted an updated alcohol evaluation by the same psychiatrist dated February 27, 2010. Applicant's cover sheet referring to this evaluation stated the date is February 27, 2011, which would be accurate when compared to the contents of the report. The psychiatrist reported Applicant has been completely abstinent from alcohol since June 18, 2010, based on Applicant's statements to him. Applicant has taken Antabuse in the amount of 125 mg since then. The psychiatrist examined pharmacy records that show Applicant obtained Antabuse regularly in the proper quantities. The psychiatrist met with Applicant three times since June 18, 2010. During those sessions Applicant stated he intended to remain abstinent for a long term. Applicant's self-reporting is regarded credibly by the psychiatrist based on the honesty

demonstrated over the seven years of their consultations. The psychiatrist is “very optimistic regarding his prognosis.” (Response to FORM)

Applicant did not submit any documentation from his psychiatrist for the period from February 2010 until October 29, 2010, when the SOR was issued discussing his use of Antabuse and his current consumption of alcohol. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating the applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating the applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 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. 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 seven conditions that could raise a security concern and may be disqualifying. Four conditions apply:

(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 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 has one driving under the influence of alcohol which occurred in 1996. AG ¶ 22 (a) applies.

Applicant has a history of habitual excessive alcohol consumption dating from at least 1965. His use varied over the years. After 2000 it became more frequent and the amount of beer consumed was four pints each night during the week. Applicant admitted to the government investigator during his background investigation that when intoxicated he would do things he would not normally do. AG ¶ 22 (c) applies.

Applicant submitted a diagnosis by his own physician/psychiatrist that he is an intermittent alcohol abuser. AG ¶ 22 (d) applies.

Applicant uses Antabuse to help him stop drinking alcohol. He has used it since at least 2000. Applicant has used Antabuse periodically over the past decade as he tries to drink moderately. His psychiatrist reports in 2009 that Applicant is unsuccessful in those endeavors and returns to excessive drinking within a short period of time. Applicant is diagnosed as an alcohol abuser. Therefore, AG ¶ 22 (f) applies.

AG ¶ 23 provides four conditions that could mitigate security concerns. Three conditions apply:

(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.

The only and last driving incident involving alcohol was 14 years ago. That is not a factor here and the mitigating condition AG ¶ 23 (a) would apply to alcohol-related incidents away from work. Applicant's drinking is ongoing, so this same mitigating condition would not apply to the overall alcohol consumption security concern. Applicant's sobriety periods are not "so infrequent" to elude concern, so again the mitigating condition would not apply to them. Applicant's repeated relapses and returns to alcohol consumption cast doubt on his judgment. His psychiatrist now reports Applicant has been abstinent since June 2010. This period of time is short compared to his long history of alcohol abuse. His work reliability does not seem to be a problem based on the evidence in the file. In summary, this mitigating condition has partial applicability to specific components of Applicant's continuing relationship with alcohol.

Applicant admits he has an alcohol abuse problem, as does his psychiatrist. He presented evidence his use of Antabuse is an attempt to overcome and control the

situation. Applicant's pattern of responsible use is unclear before 2009. After June 2010 his psychiatrist reports Applicant has been abstinent from alcohol consumption, and he believes Applicant based on their seven-year history of consultations. Applicant periodically stopped his Antabuse program on his own volition and attempted to drink moderately, only to return to drinking excessively followed by a resumption of Antabuse. This pattern makes it clear Applicant has limited control over his need for alcohol. His current abstinence is a positive step but of short duration and suspect based on his past history. This changing pattern is one likely to continue for the remainder of Applicant's life based on his past practice. His current abstinence is more than the responsible use contemplated by the guideline for alcohol abusers and is a favorable sign that Applicant is trying to control his alcohol consumption based on the recognition he cannot control his alcohol intake except through the use of Antabuse and abstinence. Therefore, AG ¶ 23 (b) is applicable.

Applicant continues with his self-initiated medical consultations, dating from 2004. His outpatient counseling is not complete but must be ongoing based on his psychiatrist's 2009 and 2010 reports. Applicant's past voluntary discontinuances from Antabuse and return to the medication periodically shows there was no successful completion of the out-patient counseling until his June 2010 abstinence and return to consistent use of Antabuse. These actions were taken before the SOR was issued in October 2010. Applicant's relationship with alcohol for the foreseeable future is abstinence and Antabuse use. AG ¶ 23 (d) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate the 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 facts and circumstances surrounding this case. Applicant was an adult when he started

drinking to excess after 2000. The factors in his favor are that Applicant sought professional assistance when he recognized he had an alcohol problem. Applicant continues to consult with that psychiatrist to the present about his alcohol problem. The potential for pressure, coercion, exploitation, or duress is minimal because Applicant consults a psychiatrist about his problem and his drinking is obvious to his family and friends. Other than one DUI in 1996 there have not been any other alcohol incidents in Applicant's history to indicate he violates the state and local driving laws. The psychiatrist's prognosis is generally good based on the positive factors stated in his 2009 and 2010 evaluations. Applicant is working on his alcohol problem with professional assistance and has it under control.

Detrimental factors are that Applicant has an alcohol problem. Applicant's consumption of alcohol is ongoing over the years, interrupted by his attempts to stop the consumption through the use of Antabuse. There have been no permanent behavioral changes regarding alcohol consumption by Applicant until June 2010 when he claims abstinence and regular Antabuse use. He has some control over his alcohol use, evidenced by his on-again, off-again drinking and Antabuse use. Based on his past drinking pattern, Applicant will continue to drink alcohol periodically, starting with moderate consumption and proceeding quickly to drinking excessively, if his commitment to abstinence and Antabuse use falters.

Overall, the record evidence shows Applicant is working on his alcohol problem. His evidence, particularly the psychiatrist's statements, leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Alcohol Consumption. I conclude the "whole-person" concept 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge