



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-07196
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

October 7, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 17, 2006. (Government Exhibit 1.) On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on November 15, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 28, 2010. I received the case assignment on January 4, 2011. DOHA issued a notice of hearing on February 9, 2011. I convened the hearing as scheduled on March 10, 2011. The Government offered Government Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf. Applicant

requested that the record remain open until April 1, 2011, for receipt of documents. He elected to submit no exhibits. DOHA received the transcript (Tr) of the hearing on March 22, 2011. The record closed on April 1, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 33, engaged, and has a bachelor of arts degree. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment in the defense industry. Applicant admitted all the allegations in Paragraphs 1 and 2 of the SOR except for 1.a. Those admissions are deemed findings of fact. He denied the remaining allegation.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he uses intoxicants to excess.

Applicant admits that he used alcohol between about 1995, when he was 17, and the date of the hearing. He also admits having alcohol-related incidents, but denies that he used alcohol to excess during this period. The records show, and Applicant admits, that he has been involved in four alcohol-related incidents between 2002 and 2010.

Applicant was first arrested for Driving Under the Influence (DUI) in March 2002. He pled guilty to Reckless Driving and was sentenced to a suspended jail term, a fine, and three years probation. (Tr at 50-55; Government Exhibit 2 at 19-25.)

In September 2007 Applicant was involved in a one-car accident after drinking. He was detained by police, but was not charged with DUI. His driver's license was suspended for one year in March 2008 after a hearing before his state's Department of Motor Vehicles. (Tr at 55-60, 81-82; Government Exhibit 3 at 4-5.)

Applicant's second arrest for DUI occurred in March 2009. He was also charged with Driving When Privilege Suspended for Prior DUI Conviction, because of his prior conviction within ten years. He pled no contest and was sentenced to a suspended jail sentence, three years of probation, a fine, and to attend an 18-month program for multiple offenders, which was due to end in August 2011. Applicant was still on probation as of the date of the hearing. (Tr at 62-67; Government Exhibit 2 at 11-18.)

The last alcohol-related incident involving Applicant occurred in January 2010, shortly after his father died. He was arrested for Public Intoxication and Fighting. He pled guilty to Fighting and was sentenced to pay a fine. (Tr at 71-72, 82-83; Government Exhibit 2 at 8-10.)

Applicant continues to consume alcohol, but at a pace he says is less than he used to drink. He states, "My current plan is I don't consume as much as I usually would

in the past.” (Tr at 46.) Applicant testified that his longest period of abstinence was approximately five or six months, and that occurred twice over the years. (Tr at 46, 55.) Applicant believes that he is on a good path, but further stated, “I understand that me and alcohol shouldn’t be friends.” (Tr at 62.) That being said, Applicant is “exploring” his relationship with alcohol and stated, “I have no comment for that,” when asked whether he thought he was an alcoholic. (Tr at 69-70.) Applicant is seeing a therapist to help him to understand his experiences. This therapy involves, but is not exclusively related to, his use of alcohol. (Tr at 72-74; Government Exhibit 4 at 7.) Finally, Applicant stated that he had a plan to “probably only have three more drinks between now and the end of 2011.” (Tr at 77-85.)

Paragraph 2 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

2.a. and 2.d. Applicant admits that he is indebted to a collection agent in the amounts of \$924 and \$352 for debts to his state highway patrol in connection with his 2007 and 2009 alcohol-related arrests. He has not paid these debts, in part because of continuing litigation concerning the validity of the debts. As a result of receiving the SOR, Applicant indicated he would now look into paying these debts by the end of 2011. (Tr at 28-34, 86-89, 91-93; Government Exhibit 2 at 1-7.) These debts are unresolved.

2.b. and 2.c. Applicant admits that he is indebted to a collection agent in the amounts of \$1,769 and \$11,526 for credit card debts originally owed to a bank. Concerning each of these debts Applicant states, “I don’t have a plan as of yet how to pay off this debt.” (Tr at 37.) These debts are unresolved.

With regard to his ability to pay his debts, Applicant stated that he helps his mother and brother with their bills. However, even with allowing \$300 a month in expenses for his family, Applicant by his own calculations in July 2010 had over \$600 of disposable income a month. (Tr at 38-40; Government Exhibit 4 at 4.)

Policies

Security clearance decisions are not made in a vacuum. 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 and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by the President in Section 7 of Executive Order 10865, "Any determination under this order . . . 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline G - Alcohol Consumption)

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The evidence shows that Applicant has used alcohol, occasionally to excess, from 1995 until 2011. He had four alcohol-related incidents, in 2002, 2007, 2009, and 2010. Since his last alcohol-related arrest in 2010, his drinking has been reduced. However, Applicant continues to drink and appears to have little insight into the problems that alcohol has caused him.

There are two disqualifying conditions that apply to this case. AG ¶ 22(a) states, "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." In addition, AG ¶ 22(c) states a concern is, "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."

Under the particular facts of this case, the mitigating conditions do not apply to the Applicant's situation. AG ¶ 23(a) states that it can be mitigating when, "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." Applicant's last alcohol-related incident occurred in 2010, and he continues to drink.

AG ¶ 23(b) states that is mitigating where, "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)." If anything, the evidence shows that Applicant has not acknowledged his alcoholism issues. In fact, he states that he is "exploring" the impact of alcohol on his life.

AG ¶¶ 23(c) and 23(d) do not apply under the circumstances of this case. Applicant has had, and continues to have, serious difficulties with alcohol. He has not mitigated the security significance of his alcohol use. Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant, at the time the SOR was issued, had approximately \$14,589 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Applicant's financial difficulties arose in approximately 2006, and all remain owing. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Applicant has helped his family financially for several years. However, he has ignored his own responsibilities for a considerable period of time. As he testified at the hearing, he had no current plan as to how he was going to pay his creditors.

The Applicant has not yet made a good-faith effort to pay his creditors. There is little to no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, at the present time, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Paragraph 2 is found against the Applicant.

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 relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My findings under Paragraphs 1 and 2, above, are also relevant to this discussion. The Applicant appears to be a hard-working professional who has an ongoing alcohol problem for many years that resulted in four alcohol-related incidents. In addition, he has a considerable amount of bad debt, which he cannot or will not resolve in the foreseeable future. In viewing all the facts of this case, I find that the Applicant has not mitigated the security significance of his prior conduct. As set forth above, I find that there have not been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is still potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a likelihood of recurrence (AG ¶2(a)(9)).

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his conduct as expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraphs 1.a. through 1.e.:	Against the Applicant
Paragraph 2, Guideline E:	AGAINST THE APPLICANT
Subparagraphs 2.a. through 2.d.:	Against the 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.

WILFORD H. ROSS
Administrative Judge