



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



In the matter of:)	
)	
)	ISCR Case No. 09-07652
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel

For Applicant: *Pro se*

August 31, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has failed to mitigate the security concerns raised under the guideline for alcohol consumption. Accordingly, his request for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) dated March 13, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were

unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On April 9, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines (AG).² Applicant submitted an undated Answer to the SOR, in which he admitted to all the SOR allegations. Applicant requested a decision before an administrative judge. Department Counsel was prepared to proceed on June 25, 2010, and the case was assigned to me on July 2, 2010. DOHA issued a Notice of Hearing on July 13, 2010, and I convened the hearing as scheduled on July 28, 2010.

During the hearing, I admitted six exhibits offered by Department Counsel and identified as Government Exhibits (GE) 1 through 6. I also admitted three exhibits offered by Applicant, identified as Applicant Exhibits (AE) A through C. I held the record open to allow Applicant to submit further documentation. He timely submitted one document, admitted as AE D. DOHA received the transcript (Tr.) on August 5, 2010.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 34 years old, is a high school graduate. He has been married since 1994 and has three children who are 4, 12, and 16 years old. He has worked for his current employer, a defense contractor, since 2007. His position is network engineer. This is his first application for a security clearance. (GE 1, 2; Tr. 46-48)

Applicant started consuming alcohol in approximately 1990, when he was 14 years of age. In 2004, when he was 28 years old, he consumed alcohol once per week, usually on a weekend, and usually beer. His pattern was to drink six to eight 12-ounce bottles of beer. He testified that he did not engage in binge drinking, never experienced blackouts, and was never in a situation where drinking affected his work performance. (Tr. 49-53)

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

In February 2004, when he was 28 years old, Applicant went drinking with his father and cousin. Afterward, when he parked in front of his house, police arrested him on a charge of Driving Under the Influence. At the station, he registered 0.14 blood alcohol content (BAC). He had consumed six 12-ounce beers over a period of two to four hours. In April 2004, he pled guilty. He was fined and sentenced to 10 days incarceration (suspended); six weekly sessions of Alcohol Safety and Prevention Program (ASAP); and his driver's license was suspended for 12 months. Applicant met the requirements of his sentence. (GE 2, 3; Tr. 54-57, 60)

In September 2008, Applicant attended a fund raiser at a golf course. Over a period of 10 hours, he consumed about 12 small cups of beer. He told his wife he would stay at the hotel overnight, but then drove home. He was stopped by police for speeding. Applicant failed the field sobriety test and was arrested on charges of Driving Under the Influence of Alcohol. At the station, he registered a 0.12 BAC. In January 2009, he pled guilty and was fined \$720. He was sentenced to 75 days incarceration (65 suspended); he served 10 days. His license was suspended for three months, and restricted for three years. The restriction limits his driving to going to and from work or a court-ordered facility; and installation of an ignition interlock. The restriction started on September 25, 2009 and is scheduled to end on January 30, 2012. Applicant was ordered to attend either ASAP or an alcohol behavior program. He chose the latter, and was required to attend 20 sessions. (GE 2, 5, 6; Tr. 58-61)

Applicant began attending outpatient individual alcohol behavior counseling in April 2009. He attended once or twice per week. He had not attended Alcoholics Anonymous (AA) since 2004, but began attending meetings again as part of his 2009 counseling program. As of the hearing date, he had last attended in March 2010. He does not have a sponsor, and has not participated in the 12-Step program. (Tr. 86) His therapist noted that Applicant's wife was aggravated about his drinking, having to drive him because of his license restrictions, the money spent on fines, and the time he spent in jail. The therapist also noted Applicant had periods when he stopped drinking: in 1995, he stopped for two years; in 2008, he stopped for two to three months, but then relapsed and soon after, received his second DUI. She also noted that he had stopped drinking during the previous ASAP program. Her notes indicate that Applicant reported he drank a wine cooler on June 4, 2009, his anniversary. According to the therapist's notes, Applicant's wife reported that in late June, Applicant "stayed out all night drinking after being asked not to and coming home still smelling of ETOH [alcohol] the next day." Applicant's wife confirmed at the hearing that this was true. (Tr. 37) The therapist diagnosed Applicant with alcohol dependence.³ Applicant's goal was to remain abstinent during the program and after discharge because of the positive effects it had on his family and marriage. In November 2009, his diagnosis was changed to Alcohol Dependence (Early Partial Remission). After he completed the program in January 2010, he asked the counselor if he could return intermittently, if he needed to talk. (GE 6; AE B; Tr. 37, 62-64, 67)

³ The therapist's credentials include master of science degree, Licensed Professional Counselor (LPC), and Certified Clinical Addiction Counselor (CCAC). (AE D)

Applicant informed his counselor that he relapsed on December 24, 2009. (Tr. 69) He drank three beers at a friend's house, stayed the night, and drove home the next morning. His license restriction, which is in effect until 2012 permits him to drive only to work, day-care, counseling sessions, and AA meetings. In early 2010, Applicant asked the counselor if he could be prescribed the medication Antabuse to prevent him from drinking. He testified that he wished to do whatever he could to demonstrate that he was serious about ending his drinking. However, in May 2010, he had a seizure as a result of the drug, and has discontinued it. When asked if he believes he is an alcoholic, he said, "To an extent, yes." (AE C; Tr. 33, 68, 70, 73-74, 76-77)

Applicant was questioned at the hearing about his relapses since starting the counseling program in April 2009. He testified that he had only the one relapse on December 24, 2009, and that he intends to remain abstinent in the future. However, the report of Applicant's security interview of May 2009 indicates that Applicant consumed eight to ten beers per week, usually on weekends with family or friends. This interview occurred after Applicant had started his counseling in April 2009. At the hearing, he stated that the report was inaccurate, because he had stopped drinking when he started counseling. However, when Applicant received a copy of the report in December 2009, he signed a notarized statement that he had read the report and found it accurate. The report also indicated that Applicant had not stopped or reduced his drinking, and that he had never had alcohol treatment. Applicant testified that this portion of the report was also inaccurate. When asked if he had a wine cooler on his anniversary, he said, "That could be accurate." However, he denied he had stayed out all night drinking in late June, as his wife reported to the therapist. (GE 2; Tr. 70, 76-80, 82-84)

Applicant's therapist at the alcohol program he attended in 2009 – 2010 submitted a letter dated July 28, 2010. She stated that during Applicant's 20-session treatment, he relapsed twice. His attendance was "somewhat" regular, and his AA attendance was not as consistent as it had been earlier. He had not followed the recommendation to find a sponsor. He had not put the relapse-prevention plan he had developed into action. She also noted that Applicant's wife told her Applicant continues to put himself in positions where drinking is an issue. The therapist "has serious concerns about [Applicant's] ability to maintain abstinence from alcohol" and recommends him for a higher level of care. (AE D)

Applicant's manager has known him for eight years, and supervised him for three years. He submitted a letter describing Applicant as an outstanding person who is responsible, trustworthy, and dependable, and has a strong work ethic. He is aware of Applicant's past and opined that Applicant has "taken many steps to resolve this issue and is moving forward to ensure this never happens again." (AE A)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the cited guideline.

A security clearance decision resolves only the question of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to an applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline G, Alcohol Consumption

The security concern about alcohol consumption is that “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 includes the following disqualifying conditions that are relevant to the facts of the case:

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(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 consumed alcohol to the point of intoxication on numerous occasions over the past 20 years. He drove after becoming intoxicated and was subsequently arrested and convicted of DUI in 2004 and in 2008. He participated in outpatient treatment for alcohol dependence following the 2008 DUI. He was diagnosed by a licensed alcohol counselor with alcohol dependence in 2009. Applicant consumed alcohol twice in June 2009, and once in December 2009, all while attending counseling. These facts support application of AG ¶¶ 22 (a), (c), (d) and (f).

AG ¶ 23 provides the following relevant factors that can 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); 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's alcohol-related behavior was frequent: he drank alcohol, sometimes to the point of intoxication, over two decades. He not only became intoxicated, but demonstrated poor judgment by driving after becoming intoxicated. Although almost two years have passed since his last DUI in 2008, Applicant has not remained abstinent, which raises the question of whether or not he will be able to avoid alcohol use in the future. As of the date of the hearing, he had been abstinent only seven months, since December 2009. Although his efforts to abstain reflect well on his current judgment, his negative alcohol-related conduct was both frequent and recent. Only partial mitigation is available under AG ¶ 23(a).

Applicant was diagnosed as alcohol-dependent, and subsequently completed an alcohol treatment program. To his credit, he has tried to maintain abstinence. However, he relapsed three times during treatment. His acknowledgement of his alcohol problem at the hearing was unconvincing: He responded to the question of whether he was an alcoholic, "To an extent, yes." He has not maintained consistent attendance at AA, procured a sponsor, or participated in the 12-Step program. Applicant has abstained from alcohol during periods in the past, only to return to drinking. Although he was diagnosed as being in "early partial remission" in November 2009, his therapist's more recent evaluation in July 2010 did not provide a good prognosis. In fact, she recommended him for a higher level of care. AG ¶ 23 (b) and (d) do not apply. These factors raise questions as to whether Applicant will maintain sobriety or repeat his past pattern. Taking all the facts and circumstances together, including the short duration of his abstinence compared to the length of his negative alcohol history, the mitigation available is insufficient to overcome the disqualifying conditions.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration

of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

The record contains mitigating evidence, specifically that Applicant has demonstrated a wish to abstain from alcohol, as shown by his request for Antabuse, and his abstinence from alcohol for seven months as of the date of the hearing. However, Applicant has abstained from alcohol in the past, only to relapse. His short period of sobriety must be compared to the length of time that he abused alcohol. He continued to drink despite the negative effects on himself and his family. Applicant's decisions to drink and drive posed a danger to others and to himself. Applicant does not appear fully committed to abstinence, as shown by his fitful attendance at AA, lack of a sponsor or 12-step program participation, and minimization of his relapses. At this point in time, I cannot conclude that Applicant's short period of abstinence will overcome his history of alcohol dependence, and his pattern of returning to alcohol use after abstaining.

Applicant has not mitigated the security concerns arising from the alcohol consumption guideline. Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance.

Formal Findings

Paragraph 1, Guideline G	AGAINST Applicant
Subparagraphs 1.a. - 1.f.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge