



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08255
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 25, 2010

Decision

LYNCH, Noreen, Administrative Judge:

Applicant submitted a Security Clearance Application (SF 86) on August 13, 2009. On June 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) for Applicant. 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).

Applicant timely requested a hearing before an administrative judge. I received the case assignment on July 19, 2010. DOHA issued a notice of hearing on September 5, 2010, and I convened the hearing on September 14, 2009. The Government offered Exhibits (GE 1-4), which were received without objection. Applicant testified and offered Exhibits (AE A-C) which were admitted into the record without objection. DOHA received the transcript on September 22, 2010. Based upon a review of the record,

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.e of the SOR. He also admitted the allegations in ¶ 2.a with explanation.

Applicant is a 22-year-old employee of a defense contractor. He graduated from high school in May 2006. He is single and has no children. He has been with his current employer since August 2009 (GE 1).

Applicant admits consuming alcohol, at times to excess and to the point of intoxication from approximately 2002 or 2003 until at least September 2009. He acknowledged at the hearing that he “partied” a lot and made poor judgments when he was younger. (Tr. 14)

Applicant was arrested in 2003, when he was 15 or 16-years-old, and charged with theft of beer. He pled guilty and his case was diverted pending no other incidents.

In 2004, Applicant was cited for underage consumption. He was placed on probation for seven weeks and ordered to attend alcohol counseling. He completed the counseling, but continued to drink. (Tr. 15)

In May 2007, Applicant was arrested and charged with liquor-to-minor by licensee (underage consumption). He pled guilty and was fined \$250. (Tr. 16) He remembers the event because he was drinking while spending time at a river with friends. His parents picked him up after he was arrested. (Tr. 17)

In November 2007, Applicant was charged with driving under the influence of alcohol or drugs, driving while having a 0.08% or higher blood alcohol, and driving with blood alcohol of 0.05% as a person under the age of 21 years. He pled guilty to driving while having a 0.08% or higher blood alcohol, and was sentenced to three years probation. He was also fined in the amount of \$1,500. Applicant explained that he was at sand dunes with friends and had a “couple of beers.” The police later pulled him over in his truck. He does not have a driver’s license now due to the probation. (Tr. 18)

When Applicant completed his security clearance application on August 13, 2009, he failed to completely disclose his police record in Section 22 by disclosing the May 2007 and November 2007 arrests but failing to disclose the 2003 and 2004 arrests. He also failed to disclose that he was on a three year probation for the November 2007 offense. However, he did list the alcohol counseling that he received in 2004.

At the hearing, Applicant was very contrite. He knows that he “screwed up a lot” when he was younger. He learned a lesson from the incidents. He takes his job seriously and understands the importance of a security clearance. He was credible in

his testimony that he tried to put all the information needed on his security clearance application. He put what he could remember and some of the events were many years ago when he was a teenager. (Tr. 19) He only blames himself for the oversight about the probation. He explained that he had a lot of paperwork and had a short amount of time to complete it. This is his first security clearance application. He fully disclosed everything to the OPM investigator.

His current alcohol use is minimal at best. He has a drink at dinner with his family. He does not want to drink or party very much at this time in his life. (Tr. 20) Applicant drinks beer maybe once or twice a month. (Tr. 32) He does not drink alone. With his current work schedule, he does not have time to drink or party frequently.

Applicant also testified credibly that in 2008, he attended alcohol counseling as part of a program with his employer. (Tr. 22) He was required to complete the counseling in order to keep his job. He has not had any problems with alcohol since the counseling in 2008. (Tr. 23) He does not drink and drive. The alcohol incidents have cost him financially and he does not want to repeat the errors. Applicant has never been diagnosed with an alcohol problem or alcohol addiction. He owns a home now and wants to be a responsible person.

Applicant's field engineer describes him one of, if not the, hardest working, most dependable employees on the team. He found his judgment and decisions to be honest and with integrity. Applicant shows a work ethic and loyalty second to none. He recommends Applicant for a security clearance. (AE A)

Applicant's team lead describes him as honest, respectful, and flexible with changes in his work schedule. He is always on time for work and is a good employee. (AE B)

Applicant's colleague describes him as very thorough, punctual, and willing to go above and beyond in order to help with the mission. He is a valuable asset to his section. (AE C)

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 required 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 ¶ 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. 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”

Applicant has four alcohol-related incidents. Three of them were when he was underage. He was found guilty of driving under the influence of alcohol in November 2007. These incidents are disqualifying under AG ¶ 22(a).

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.

Applicant pled guilty to a DUI in November 2007. Although he has not had any other alcohol-related incidents since then, he admitted drinking at times to excess and to the point of intoxication until at least September 2009. He completed court-mandated counseling in 2003-4 and also in 2008. However, he is still on three-years probation from the November 2007 DUI. He has not met his burden at this time. Any doubt must be resolved in favor of the government. Applicant has not mitigated the alcohol consumption concerns under AG ¶ 23(a).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying condition exists when there is “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities.” Applicant noted his most recent alcohol related incidents in his SF 86. He listed counseling from 2003-4 for alcohol. He did not note that he was on probation from the 2007 DUI. He was not on probation for the May 2007 incident. He believes he just got confused. He put the Government on notice about his alcohol issues. His failure to disclose did not materially affect the Government investigation, and he had no intent to mislead. He did not falsify any material facts regarding treatment or counseling. AG ¶ 16(a) 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 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 the facts and circumstances surrounding this case and conclude that they are not sufficient to overcome the government’s case. Applicant has had various incidents of underage alcohol-related charges from 2002. He completed mandated counseling in 2004 but continued to drink and drive. He had two incidents in 2007. Applicant pled guilty to a November 2007 DUI. He was under 21 years of age. He was placed on three-years probation. In his answer to the SOR, Applicant admitted drinking to excess or intoxication as late as September 2009. Applicant still drinks but reported limited drinking when he was questioned at the hearing. His three-year probation has not yet

ended. This will end later in 2010. Applicant is contrite for his immature behavior with alcohol. However, he has not mitigated the concern under alcohol consumption.

Applicant completed his security clearance application in August 2009. He responded in the affirmative to Section 22 about his police record. He noted his 2007 alcohol charges and convictions. He listed his alcohol counseling in 2004 but not the actual incident for underage consumption. He was credible in his explanation that he tried to put all the necessary information down on the form. This is his first security clearance application. He did not deliberately falsify his SF 86 in 2009. .

Applicant presented as sincere at the hearing. He owns a home and likes his job. He wants to be responsible. He believes that his young and immature behavior is behind him. He admits poor judgment. However, he is still completing probation and was drinking to excess as late as 2009. At this time, he has not eligible for access to classified information.

After weighing the disqualifying and mitigating conditions, and all the fact and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to alcohol consumption at this time. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility, judgment, and suitability for a security clearance.

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-e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge