



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-00564
)
)
Applicant for Security Clearance)

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

03/23/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On August 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Appellant 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 16, 2011, and requested a hearing before an administrative judge. On November 7, 2011, DOHA assigned the case to me. DOHA issued a Notice of Hearing on December 14, 2011.

The case was heard on January 12, 2012, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through E into evidence without objection. The record remained open until January 30, 2012, to give Applicant an opportunity to submit additional documents. Applicant timely submitted two exhibits that I marked as AE F and G and admitted into evidence without objection. DOHA received the hearing transcript on January 25, 2012.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations contained in Paragraph 1 of the SOR. His admissions are incorporated into the following findings of facts:

Applicant is 31 years old and engaged to be married. He anticipates completing an associate's degree in May 2012. He served in the Navy from June 14, 1999 until November 20, 2007, when he was honorably discharged. Immediately after his discharge, he began a position as an engineering technician with his current employer. (Tr. 15-16.)

Applicant began consuming alcohol at the age of 15 or 16 while in high school. (Tr. 19.) He and friends drank beer at parties. He admitted that at times he consumed alcohol to the point of intoxication from 1996 to at least April 2010. (AR.)

Applicant has a history of alcohol-related incidents. In November 1999 he was arrested and charged with Minor-Consumption of Alcoholic Beverage, Operating a Vehicle with a BAC of .08% or more, and Operating a Vehicle while Intoxicated. He pled guilty to Operating a Vehicle with a BAC of .08% or more. The court sentenced him to one year of jail, suspended, placed him on probation for one year, and fined him \$250, plus court costs and fees. The other charges were dismissed. This incident occurred after he completed boot camp and was home at Thanksgiving. (Tr. 21.) He and his friends were consuming alcohol at a party. At some point he decided to leave the party and drive to a former girlfriend's house. He was subsequently stopped and arrested by the police. (Tr. 22.)

In January 2000, Applicant was arrested and charged with Illegal Consumption of Alcoholic Beverage, a misdemeanor. He pled guilty to the charge. The court sentenced him to 60 days of jail, suspended, placed him on probation for one year, and fined him \$300, plus court costs and fees. He subsequently attended a Navy Level II treatment program at Great Lakes, Illinois, where he was diagnosed as Alcohol Dependent. (Tr. 31; GE 6.) He was abstinent for four months after completing the program. (*Id.*)

On August 19, 2004, Applicant was arrested and charged with Driving or Operating a Motor Vehicle while Having a Blood Alcohol Concentration of 0.08. He pled guilty. The court sentenced him to jail for 60 days, with 55 days suspended and fined him \$300 plus costs. The court suspended his driver's license for 12 months and

ordered him to attend an alcohol treatment program. This incident occurred after Applicant and a friend were consuming pitchers of beer at a bar and he decided to drive home. (Tr. 32; GE 2 at 2.)

On November 22, 2004, Applicant entered the Navy's alcohol inpatient treatment program. On December 17, 2004, his physician discharged him with a diagnosis of Alcohol Dependence. (GE 6 at 3.) The treatment summary noted that Applicant "appeared compliant, but not sincere about his desire for recovery." (*Id.*) His physician indicated that his "prognosis for continued recovery was fair, provided he adheres to the recommended continuing care plan." (*Id.*) Applicant acknowledged that at the time he was irresponsible and "resistant to treatment" because he did not believe he needed to be in the program. (Tr. 35.) He participated in recommended aftercare program for about six months. He does not think he remained abstinent for very long after he left the treatment facility. (Tr. 36.)

On October 12, 2005, Applicant was arrested and charged with Appearing in Public While Intoxicated, a misdemeanor. He pled guilty and was fined \$50 and ordered to pay court costs. This arrest occurred after he and his friends were consuming alcohol at a local bar and he decided to walk home intoxicated. The police stopped him in a parking lot. (Tr. 37.)

In April 2009 Applicant was arrested and charged with (1) Operating a Vehicle While Intoxicated/Endangering a Person, and (2) Operating a Vehicle with a BAC of 08% or more. He pled guilty to Count 2, and Count 1 was dismissed. The court sentenced him to jail for 60 days, suspended except for two days with good time and credit for one day served. The court placed him on probation for one year and suspended his driver's license for 90 days. He was fined \$300, plus court costs. The court ordered him to undergo a drug and alcohol evaluation, and complete any recommended treatment.¹ Applicant was working for his current employer at this time.

Applicant was visiting his family on the night of the incident. After he and his brother had dinner with their family they returned to his brother's home. Applicant went to bed, but was later awakened by his intoxicated brother who wanted him to pick up his girlfriend. Applicant initially refused because he had consumed eight to nine beers that night. (GE 2 at 2.) However, the brother prevailed in his "nagging" and Applicant consented. (Tr. 41.) He was subsequently stopped by the police and arrested. Applicant stated that his brother did not have a driver's license because he had received too many tickets in the past and did not have a car. (Tr. 42.) Applicant acknowledged he made a serious mistake that night.

A social worker assessed Applicant for substance abuse on October 6, 2009, and recommended that he participate in the county's relapse prevention program. He

¹ During the hearing, Department Counsel noted that on the Case Summary for the 2009 Criminal Docket Sheet recorded that on 2/3/10 a warrant was issued for Applicant's arrest because of a probation violation. (GE 8 at 3.) Applicant submitted a corrected Docket Sheet indicating that the above notation was entered in error. (AE G.)

completed it on December 4, 2009. (Tr. 48; AE D.) Applicant thinks he was assessed as being alcohol dependent. (Tr. 47.) The last time he participated in any form of aftercare treatment program or 12-Step meetings was sometime after he completed this program. (Tr. 63.)

In June 2009 Applicant met a government investigator to discuss his alcohol use. He told the investigator that he consumed six beers every Friday night with friends to relax and end his boredom. At that time he tried to restrict his alcohol consumption to weekly use and not daily use. (GE 2 at 3.)

While testifying Applicant stated that he currently consumes alcohol. He had two glasses of wine the night before this hearing. He normally drinks two or three times a week, generally consuming wine or beer. (Tr. 20, 59.) The longest period of time that he remained sober was during deployments, six or seven months. (Tr. 56.) He admitted that health care professionals have told him to stop consuming alcohol because he is alcohol dependent and may find himself "in trouble." (Tr. 59.) He continues to drink alcohol nonetheless. (*Id.*) He does not believe that he needs to cease consuming alcohol because he no longer drinks to intoxication and does not place himself into situations that can potentially create problems. (Tr. 64.) He stated he knows how to control his drinking. (Tr. 65.)

Applicant now lives a more mature life. He purchased a house in April 2011. He is enrolled in college and obtains good grades. (Tr. 66; AE E.) Applicant's senior department manager wrote that since September 2008 Applicant has "consistently demonstrated the high level of honesty and integrity required by our technical staff In addition, he has expressed clear remorse for his actions that led up to the DUI." (AE A.) Applicant's supervisor for the past three years found Applicant "to be dependable, honest, and hard-working." (AE B.) Applicant submitted his Performance Evaluation for the 2008 to 2009 period. He was rated as slightly above the "At Standard" level. (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 (AG) list potentially disqualifying conditions and mitigating conditions, which are useful 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.

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 an applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.” 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.”

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.

Analysis

Guideline G, Alcohol Consumption

The security concern pertaining 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.

AG ¶ 22 describes conditions that could raise a security concern and maybe disqualifying. The potentially disqualifying conditions established by the evidence in this case are:

(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 was arrested and found guilty of four criminal incidents and one ordinance violation involving alcohol in 1999, 2000, 2004, 2005, and 2009. AG ¶ 22(a) is established. Applicant consumed alcohol to the point of impaired judgment from 1996 up to April 2010, raising a concern under AG ¶ 22(c). Applicant has been diagnosed as Alcohol Dependent three times, the most recent being in 2004 when a physician at an alcohol treatment center evaluated him and made that diagnosis. Security concerns under AG ¶ 22(d) are supported by the record. Subsequent to that diagnosis, Applicant relapsed, establishing a concern under AG ¶ 22(f).

Potentially mitigating conditions are set forth in AG ¶ 23. The conditions that could apply to mitigate the security concerns arising from Applicant's alcohol consumption are:

(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's background includes five alcohol-related incidents that occurred between 1999 and 2009. Given the ten-year span of time in which those incidents occurred, the passage of three years since the last incident is insufficient to trigger the application of AG ¶ 23(a) to those allegations.

Applicant admitted that in the past he used poor judgment while consuming alcohol, but he does not comprehend that he has a significant alcohol problem, despite his diagnosis of Alcohol Dependence. He continues consuming alcohol. AG ¶ 23(b) has no application. The evidence does not support the application of AG ¶ 23(c).

Applicant completed three alcohol treatment programs but has not consistently participated in aftercare programs. He has not demonstrated a clear and established pattern of sobriety. His evaluating physician in the 2004 treatment program gave him a fair prognosis if he continued to consume alcohol. AG ¶ 23(c) does not apply to the security concerns.

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). They include the following:

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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 is a 31-year-old man, who honorably served this country from 1999 to 2007. During that time he was arrested and charged four times with alcohol-related incidents. After leaving the Navy, he was arrested again in 2009 for driving while intoxicated. His license has been suspended three times, and he has been placed on probation four times. He attended alcohol treatment programs three times. He acknowledges his Alcohol Dependence diagnosis, yet he chooses to continue consuming alcohol. The last conviction occurred in April 2009 after he had consumed alcohol and allowed his brother to persuade him to get into

his car and drive. That is a significant fact in this case and indicates the seriousness of his alcohol problem and its potential for impairing his judgment.

Although Applicant submitted evidence of his successful work history, academic achievement, and financial accomplishments, and he testified honestly about his past, those facts do not outweigh his decision to continue to consume alcohol. Until he recognizes his alcohol issues, establishes a pattern of sobriety and behavioral changes, confirmed by a health care provider with a specialty in substance abuse, the likelihood that similar incidents will recur is high.

Overall, the record evidence leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance at this time. For these reasons, I conclude Applicant did not mitigate the security concerns arising under the Alcohol Consumption guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge