



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



In the matter of:)
)
) ISCR Case No. 10-01315
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Deputy Chief Department Counsel

For Applicant: *Pro se*

February 11, 2011

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 October 28, 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 August 25, 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 Answer to the SOR dated September 7, 2010, in which he admitted all the SOR allegations. Applicant requested a decision before an administrative judge. Department Counsel was prepared to proceed on October 1, 2010, and the case was assigned to me on October 7, 2010. DOHA issued a Notice of Hearing on October 18, 2010, and I convened the hearing as scheduled on November 4, 2010.

During the hearing, I admitted eight exhibits offered by Department Counsel and identified as Government Exhibits (GE) 1 through 8. I also admitted ten exhibits offered by Applicant, identified as Applicant Exhibits (AE) A through J. I held the record open to allow Applicant to submit further documentation. He timely submitted one document, which I admitted as AE K. DOHA received the transcript (Tr.) on November 15, 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, received a bachelor's degree in 1999. He has been married since 2004 and has a four-month-old son and a 23-month-old daughter. He has worked for his current employer, a defense contractor, since 2000. His position is business development coordinator. He has held a secret security clearance since 2002. (GE 1, 6; AE G; Tr. 32-33, 37)

Applicant started consuming alcohol in approximately 1994, when he was 17 years of age. He drank beer with friends every few months. In college, he began to drink two or three times per week, two to four beers at a time. After college, he often went to "happy hours" with his friends or his wife. About once per month, he drank by himself; sometimes he drove after drinking. In his January 2008 security interview, Applicant said he intended not to drive after drinking, and not to drink in the future. He also noted that

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.

he planned to stop drinking before starting his family, but he had no immediate need to stop drinking. (GE 2)

On a weeknight in January 2007, when he was 30 years old, Applicant went drinking with friends and co-workers. He drank five or six beers during a three-hour period. While driving home, he was stopped for speeding. The police detected an odor of alcohol, and Applicant failed the subsequent sobriety test. He was arrested by police on a charge of Driving While under the Influence of alcohol (DWI). His blood alcohol content (BAC) was approximately 0.17. In March 2007, he was given probation before judgment. He was required to abstain from alcohol for one year, March 2007 to March 2008, which he did. He served six months of supervised probation, followed by six months of unsupervised probation, which ended in March 2008. Applicant was ordered to attend a Victim Impact Panel, and to complete 26 sessions of alcohol counseling. He was also required to have an ignition interlock system installed on his car for one year. Applicant met the conditions of his probation. (GE 1, 2, 6, 7; Tr. 38-41)

Applicant was evaluated at an addictions center in January 2007. He testified that his alcohol counseling showed him that he should be more responsible in his alcohol use, and that he should not drive after drinking. He also realized he had a problem with binge drinking. He felt he did not drink often, but when he did, he would drink "far too much." He decided to change his habits to eliminate attending happy hours. He tried to arrange his life to avoid having to drive after drinking, but as he lives in a non-metro area, "that was only somewhat successful." He had been married about three years at that time, and he decided to focus more on his family. A licensed clinical social worker submitted a letter indicating that Applicant successfully completed the individual and group sessions in April 2007. Applicant completed a security clearance application in August 2007, in which he disclosed his arrest. (GE 5, 6; AE D, E; Tr. 40-41)

During the 20 months between the end of his probation in March 2008 and his second arrest in November 2009, Applicant drank alcohol to the point of intoxication three or four times. He did not drink for approximately 16 months, which included the twelve months of abstinence ordered by the court. He stated in his security interview of January 2008 that he intended not to drink again, but if he did, he definitely would not drive after drinking. He testified that that was definitely his intent at the time. Two of Applicant's friends, who have known him for more than four years, submitted letters noting that after his first DWI, they did not see him drink alcohol on social occasions. After his period of abstention, he decided that he could drink responsibly on occasion. In his security interview of December 2009, Applicant stated he believed he should have attended Alcoholics Anonymous (AA) after his first arrest, but was too proud to do so. (GE 2; AE H; Tr. 43-46)

Applicant's probation ended in March 2008. His first child was born in March 2009. He had been seeing a psychiatrist a few times per year since 2002 for a mood disorder, and was taking medication. In July 2009, Applicant increased the frequency of

his visits to his doctor because of work-related stress.³ In October 2009, Applicant completed another security clearance application. (GE 2; AE C; Tr. 34-37)

On November 14, 2009, Applicant went out with several friends to a bar. He told his wife that he did not plan to drink much. He had made arrangements with his friend, M, to spend the night at M's home so that he, Applicant, would not need to drive home after drinking. M was aware of Applicant's prior DWI. After drinking beer for four to five hours, Applicant and M argued on the way to M's house at the end of the evening. M refused to let Applicant spend the night. M submitted a letter confirming Applicant's description of events. Applicant did not have money for a cab, and did not think of calling his wife or family for help. He went to a bar, but was refused entry because he was intoxicated. When he left in his car, a bar employee alerted the police. Applicant was arrested and charged with DWI. His BAC was 0.17. Applicant reported the charge to his security officer and his manager. (GE 2, 8; AE H; Tr. 48-57, 62, 80)

After the November 2009 arrest, Applicant was evaluated at the same addiction treatment center he attended after his first arrest. A licensed clinical alcohol and drug counselor (LCADC) recommended that he resume treatment. He attended 26 weeks of group and individual counseling, starting November 16, 2009. He successfully completed the program on May 12, 2010. The LCADC noted in a 2010 letter that Applicant's attendance and participation were excellent, that he reported "ongoing abstinence," and had "re-evaluated his relationship with alcohol." Applicant also began attending AA in December 2009, shortly before his security interview. He testified that he attended until just before his son was born in September 2009. He provided evidence of attendance from December 2009 to June 2010. As of the hearing date, he no longer attended AA. He "technically" had a sponsor, and had contacted him the week before the hearing. Applicant had not decided how he will incorporate it into his life in the future. He has mixed feelings about AA, but considers it a "good reminder" of what could happen if he does not "stay on the straight and narrow." He sometimes felt out of place at AA. He noted that his wife does not believe in its efficacy. (AE D, J; Tr. 58-68)

Applicant had a security interview in December 2009, before his court date. He told the interviewer that he believes he is an alcoholic and a binge drinker. His father, who is now deceased, was alcohol dependent. His brother is now sober, after having been alcohol dependent. Because of this history, maintaining a sober home for his children is very important. He plans not to drink alcohol in the future. He explained that after the second DWI, he voluntarily returned to the addiction center he previously attended. He also attended AA for the first time in December 2009. Applicant attended approximately weekly from December 2009 to June 2010. (GE 2; AE J; Tr. 46-47)

In June 2010, Applicant pled "Not Guilty" to the November 2009 charge. He was found guilty of Driving/Attempting to Drive While Impaired by Alcohol, and was fined. He was sentenced to 60 days incarceration, suspended, and placed on one-year probation. His probation is supervised, and Applicant sees his probation officer monthly. His probation will end on June 28, 2011. He attended a Victim Impact Panel. Applicant also

³ His doctor noted that Applicant has responded well to treatment. (AE C)

attended the compulsory Motor Vehicle Administration (MVA) hearing in March 2010 and was ordered to have an ignition interlock system installed on his car for 12 months. At his court hearing in June 2010, an additional six months was added to his ignition interlock requirement, so that he was required to have it attached for a total of 18 months. It was installed on April 1, 2010 and will be removed in approximately October 2011. (AE A, B, F; Tr. 57-60)

Applicant's wife testified that Applicant's problem drinking occurs usually when he is with his friends. She testified, ". . . what I call a college mindset and goes and gets drunk kind of kicks in, and he consumes just too much at that time." She also said he no longer drinks alcohol. In the period between the two DWIs, he drank occasionally, but not often. She drinks occasionally, usually on holidays. However, she drank wine several times per week during the period when her son was a newborn and she was stressed with caring for two babies, in about October 2010. As of the hearing date, she intended to reduce her intake because her baby was two months old and she was not as stressed. (Tr. 82-86)

Applicant's co-worker testified that they have known each other for about one-and-one-half years, and they see each other several times per week. On the one business trip they took together, he saw Applicant drink only iced tea. He has never seen Applicant drink alcohol. Applicant's third witness has known him for 18 years. He knows Applicant reduced his alcohol use considerably after the first DWI, and did not drive after drinking. He has not seen Applicant drink alcohol since the first DWI. They did not associate often after Applicant's second DWI because of work commitments. (Tr. 86-97)

Two of Applicant's co-workers submitted character letters. One, who had known him for two years, describes him as conscientious worker who is a significant company asset. He is aware of Applicant's history with alcohol, but believes it will not be a recurring problem. Another co-worker opined that Applicant pays close attention to security procedures, and is reliable. He is aware of Applicant's history and believes he has resolved his alcohol issues. (AE H)

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

⁴ Directive. 6.3.

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." I have considered the disqualifying conditions under Guideline G, AG ¶ 22, especially the following:

(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;

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).

(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 DWI in 2007 and Driving While Impaired in 2009. He participated in an alcohol treatment program following both arrests. AG ¶ 22(d) and (f) are not relevant because, although Applicant submitted a statement from his treatment center, it did not indicate that Applicant had received a diagnosis as to his use of alcohol. These facts support application of AG ¶¶ 22 (a) and (c).

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 several times per week in college. Once he started working full time, he continued to drink alcohol, not under unusual circumstances, but in common situations such as happy hours, with his wife and friends, and sometimes by himself. At times, Applicant became intoxicated. He admitted that he sometimes drove while intoxicated. On two of those instances, he was arrested. Applicant demonstrated extremely poor judgment by driving after becoming intoxicated. His negative alcohol-related conduct was both frequent and recent. The fact that it occurred in common situations that he enjoyed raises the possibility that it might

recur. His two DWIs in three years reflect poorly on his judgment. AG ¶ 23(a) does not apply.

The record does not contain evidence that Applicant received a diagnosis of alcohol abuse or alcohol dependence. However, because he acknowledges that he engaged in binge drinking and that he is unable to limit himself when he drinks with his friends, he has been abstinent for about one year. AG ¶ 23(b) applies.

Applicant completed 26 sessions of an alcohol treatment program in 2007. Applicant abstained from alcohol for more than one year after his first DWI, as required by the terms of his probation. The counseling did not achieve the desired effect, as he returned to drinking, and had a second DWI. He completed another 26-week series in 2009-2010, as recommended by an alcohol counselor. His counselor gave him a positive evaluation in May 2010. Applicant is abstinent and attended AA. However, he no longer attends AA, and has mixed feelings about it. AG ¶ 23 (d) applies in part.

Taking all the facts and circumstances together, including the short duration of Applicant's abstinence, 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.

Applicant provided evidence of positive factors in his life: he has maintained steady employment with a federal contractor for ten years; he is in a stable marriage, with two children; and his friends and co-workers attest to his reliable and conscientious job performance. Also, Applicant had abstained from alcohol for about one year, as of

the date of the hearing. However, Applicant abstained from alcohol in the past, during his first probationary period. At that time, he told a security investigator that his intention was never to drink alcohol again. But he returned to excessive drinking. Moreover, his drinking and arrests occurred while he held a security clearance. His current short period of sobriety also must be compared to the long time period that he abused alcohol. In the past, he continued to drink alcohol despite the negative effects it caused. Applicant's decisions to drink and drive posed a danger to himself and others. Applicant is still on probation, and will be until June 2011. He is still required to have an ignition interlock device on his car, which will remain until October 2011. At this point in time, I cannot conclude that Applicant's relatively short period of abstinence will continue after his probation and ignition interlock period are complete.

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.e. | 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