



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



In the matter of:)
)
) ISCR Case No. 10-03469
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline G, Alcohol Consumption. Applicant’s eligibility for a security clearance is denied.

Statement of Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 14, 2009. On March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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.

On April 13, 2011, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. On June 8, 2011, the Government compiled its File of Relevant Material (FORM). The FORM contained

documents identified as Items 1 through 7. By letter dated June 9, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on June 20, 2011. His response was due on July 20, 2011. On August 3, 2011, the case was assigned to me for a decision.

Applicant filed an eight-page document in response to the FORM within the required time period. Department Counsel did not object to the admission of Applicant's additional information. Accordingly, I marked Applicant's document as Item A and admitted it to the record.

Findings of Fact

The SOR contains five allegations of disqualifying conduct under Guideline G, Alcohol Consumption (SOR ¶¶ 1.a. through 1.e.). In his Answer to the SOR, Applicant admitted two Guideline G allegations (SOR ¶¶ 1.b. and 1.c.). He denied three allegations (SOR ¶¶ 1.a., 1.d., and 1.e.). Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's December 14, 2009 e-QIP; his statement to an authorized investigator from the U.S Office of Personnel Management (OPM); official agency records; Applicant's Answer to the SOR and responses to the FORM; and Applicant's medical treatment record, certified as a true and complete copy on September 7, 2010. (Item 4; Item 5; Item 6; Item 7; Item A.)

Applicant is 34 years old, never married, and without children. In 2006, he earned a master's degree. He is employed as an engineering manager by a federal contractor, and he has worked for his current employer since April 2008. Applicant describes himself as a "very bright and talented individual" who has "excelled and advanced quickly within the company." He seeks a security clearance for the first time. (Item 4; Item 5.)

Applicant was interviewed by an OPM investigator on January 22, 2010, about his arrest history, use of alcohol, and alcohol counseling.¹ He provided the investigator with information about his history of alcohol consumption. (Item 6.)

Applicant began drinking alcohol in 1995, when he was 19 years old. He attended a university from 1996 to 2000, and he continued consuming alcohol during

¹On August 26, 2010, Applicant certified, under penalty of perjury, that the information contained in the OPM investigator's five-page report was a true and accurate summary of the information he provided to the investigator during his January 22, 2010, interview. (Item 6.)

his university years. Before he was 21, Applicant drank alcohol purchased by others. As a university student, Applicant's maximum consumption of alcohol on any one occasion was 10-15 beers over a whole day and night. He normally consumed six to eight beers over a period of several hours, and he estimated that he was intoxicated about 60 percent of the time that he chose to drink. He also consumed alcohol to the point of blackouts during this time. (Item 6.)

After graduating from university, Applicant obtained work in April 2001 as a senior product design engineer, a position he held until April 2008, when he joined his current employer. During this time, Applicant consumed alcohol with his friends at bars once a weekend or once every other weekend. If there was a designated driver among his party, Applicant would consume six to eight beers over a span of five or six hours. Sometimes, he would substitute shots of liquor for some of the beers. If he consumed mixed drinks at these events, Applicant would consume three to five mixed drinks over five or six hours. When he drank at this level, Applicant became intoxicated about 30 percent of the time. (Item 5; Item 6.)

In December 2001, Applicant was arrested and charged with Operating While Intoxicated (OWI). When he was arrested, Applicant's blood alcohol level was 0.16%. Applicant pled guilty to the OWI charge. He was sentenced to six months probation and three days of community service. He was also directed to attend a one-day alcohol education class. Applicant completed all provisions of his sentence. Applicant's December 2001 arrest and charge of OWI is alleged at SOR ¶ 1.b. (Item 1; Item 5; Item 6.)

In November 2008, Applicant was arrested and charged with OWI/Impaired/Controlled Substance, second offense. His blood alcohol level was .17%. Applicant pled guilty to the charge. He was fined, sentenced to one day in jail, 80 hours of community service, and two years of reporting probation.² He was also ordered to attend alcohol counseling.³ Applicant's November 2008 arrest and charge is alleged at SOR ¶ 1.c. (Item 1; Item 5; Item 6.)

The attorney who represented Applicant in the adjudication of his November 2008 OWI arrest and charge suggested that Applicant seek alcohol counseling. Applicant agreed to do so because he was interested in learning more about his drinking habits. Applicant participated in an alcohol treatment program from December 2008 through August 2009. In December 2008, Applicant was evaluated for substance abuse by a licensed clinical social worker who was a staff member of a recognized alcohol treatment program. The licensed clinical social worker provided the following diagnosis:

² Applicant was discharged from probation on November 6, 2009. (Item 5 at 32.)

³ Applicant's second OWI was not adjudicated until March 2009. At that time, Applicant was in voluntary alcohol treatment suggested by his attorney. The court ordered Applicant to continue his alcohol treatment, which he did. (Item 6 at 3.)

Based on information obtained, I would diagnose [Applicant] as alcohol dependence, 303.9. Although his SASSI-3 [Substance Abuse Subtle Screening Inventory] does not indicate chemical dependence, his self-described history of two drunk driving tickets, heavy drinking during college with blackouts, and binge drinking at other times accompanied with blackouts indicate a pattern of poor judgment and impulse control, and an inability to control his drinking once he starts to drink.

(Item A at 5; Item 4; Item 6.)

The SOR alleges at ¶ 1.d. that Applicant was diagnosed with alcohol dependence and received treatment for that condition from December 2008 until August 2009. In his answer to the SOR, Applicant denied he had been diagnosed as alcohol dependent. To support his denial, he relied upon his counselor's observation that his SASSI-3 indicated that he had a low probability of having a substance abuse disorder. (Item 1; Item 4; Item A.)

Applicant told the OPM investigator that he did not consume alcohol after his November 2008 arrest. However, he admitted consuming alcohol in late December 2008 when visiting a friend for the holidays. Thereafter, he abstained from alcohol use from January 2009 until November 2009, in order to comply with the terms of his probation. In November 2009, Applicant resumed his consumption of alcohol. He claimed to be consuming alcohol at a moderate rate when he was interviewed by the investigator in January 2010. He provided no documentation in support of his claim of moderate consumption. (Item 6.)

The SOR alleges at ¶ 1.e. that Applicant continues to consume alcohol notwithstanding his treatment for alcohol dependence. In his answer to the SOR, Applicant acknowledged that, since his alcohol treatment, he has consumed alcohol and he intends to consume alcohol in the future in social situations. He denied that he was advised by his therapist to abstain from alcohol use after his diagnosis of alcohol dependence. (Item 4.)

The SOR alleges at ¶ 1.a. that Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1995 to January 2010. Applicant denied the allegation and stated that he did not consume alcohol while participating in his alcohol treatment program (December 2008 until August 2009) and while he was on probation following the adjudication of his second OWI (March to November 2009). Applicant provided a record showing he attended 17 Alcoholics Anonymous (AA) meetings between December 8, 2008 and May 30, 2009. He did not deny that he has resumed consuming alcohol. While he claimed his current alcohol consumption is moderate, he provided no documentation to corroborate his claim. (Item 1; Item 4; Item A.)

The discharge summary from the alcohol treatment center identified alcohol dependence as Applicant's discharge diagnosis. The discharge summary noted that

Applicant's alcohol dependence was in remission, and he had satisfactorily completed all treatment goals. The therapist proposed that Applicant follow an aftercare plan that would include more AA involvement. (Item 7.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines 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.

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. Decisions include, by necessity, consideration of the possible risk 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.

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

Guideline G, Alcohol Consumption, applies in this case to a determination of eligibility for access to classified information. Under Guideline G, “[e]xcessive 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.”

I have considered all of the Alcohol Consumption Disqualifying Conditions. I conclude that Guideline G disqualifying conditions at ¶¶ 22(a), 22(c), 22(e), and 22(f) apply in Applicant’s case. AG ¶ 22(a) reads: “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.” AG ¶ 22(c) reads: “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.” AG ¶ 22(e) reads: “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment center.” AG ¶ 22(f) reads: “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.”

In 2001 and 2008, Applicant was arrested for OWI. Beginning in 1995, Applicant habitually consumed alcohol to the point of impaired judgment. He was diagnosed in December 2008 as alcohol dependent by a licensed clinical social worker who was a staff member at a recognized alcohol treatment program. After successfully completing an alcohol rehabilitation program and abstaining from alcohol use for approximately one year to comply with his probation and treatment, Applicant began to consume alcohol again. He asserts that he intends to consume alcohol in the future. While he claims his alcohol consumption is now moderate, he failed to provide corroboration of his claim. These facts raise security concerns under AG ¶¶ 22(a), 22(c), 22(e), and 22(f).

The Guideline G disqualifying conduct could be mitigated under AG ¶ 23(a) if “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.” The disqualifying conduct could also be mitigated under AG ¶ 23(b) if “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 “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,” then AG ¶ 23(c) might apply. Finally, mitigation might be possible under AG ¶ 23 (d) if “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 is now 34 years old. He denied consuming alcohol at times to excess and to the point of intoxication from 1995 to January 2010. He admitted consuming alcohol in December 2008, after his diagnosis of alcohol dependence and after commencing participation in AA, but he asserts that he did not consume alcohol while on probation from his second OWI and during his alcohol treatment program. He continues to consume alcohol after a diagnosis of alcohol dependence. He has failed to establish a pattern of abstinence. Moreover, Applicant’s denials of SOR ¶¶ 1.a., 1.d., and 1.e. lack credibility. The record establishes the facts asserted in the allegations, and Applicant has failed to provide documentation to rebut or mitigate the allegations. Accordingly, I conclude that none of the Guideline G mitigating conditions fully applies to the facts of Applicant’s case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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. Applicant is a well-educated mature adult who considers himself to be highly intelligent. He has worked for his present employer for three years.

At the same time, since 2001, Applicant has been arrested twice for operating a vehicle while under the influence of alcohol. After his arrest in 2008, he entered an alcohol rehabilitation program, where he was diagnosed as alcohol dependent. After completing alcohol rehabilitation, he continues to drink alcohol. Applicant's conduct raises questions about his current judgment, trustworthiness, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his alcohol consumption.

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. - 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge