



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-03709
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

June 26, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On October 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On October 31, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a decision based on the written record. Department Counsel then requested that the decision be based on a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on December 29, 2011, and set for hearing on January 13, 2011. The hearing for that date was cancelled. The case was then assigned to this Administrative Judge on April 13, 2012. DOHA issued a notice of hearing on April 30, 2012, and I convened the hearing as scheduled on May 22, 2012. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted no documents into evidence. DOHA

received the transcript of the hearing (Tr) on June 1, 2012. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations 1.a. through 1.d., and 1.f. He denied 1.e. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 50 years old. He is currently separated from his wife, and he has two children. He received a Master's degree in Electrical Engineering. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

(Guideline G - Alcohol Consumption)

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption. The following are allegations 1.a. through 1.f. as they are cited in the SOR:

1.a. The SOR alleged that Applicant consumed alcohol with varying frequency, up to 1 litre per day, and at times to the point of intoxication, from approximately 1974 to at least January 2010. As reviewed above, this allegation was admitted by Applicant in his RSOR.

Applicant testified that there was a period from 2002 to September 2009 when he had abstained from alcohol consumption. He confirmed during his testimony that after he began consuming alcohol again, he continued until he stopped 38 days before the date of the hearing, May 22, 2012. The reason he began drinking again was because he learned his wife was having an affair, and he used alcohol to help him cope with the stressors in his life.

At that time he referred himself into a 28 day inpatient alcohol treatment program in which he was enrolled from approximately April 11, 2012, to May 8, 2012. He began the program because someone from the human resources department of his employer informed him that there had been a complaint against him at work because he smelled like he had beer on his breath, and he was ordered to take a taxi home on that day. (Tr at 26-33.) Applicant conceded that at that time, he would consume alcohol before he went to work. (Tr at 34.) As a result of his attending work with the smell of alcohol on his breath he received a letter of reprimand. (Tr at 48-49.)

1.b. The SOR alleged that Applicant was diagnosed by a duly qualified medical professional with alcoholism in September 1997. This allegation was admitted by Applicant in his RSOR.

1.c. The SOR alleged that Applicant was diagnosed by a duly qualified medical professional with alcoholism in May 2001. This allegation was admitted by Applicant in his RSOR.

1.d. The SOR alleged that Applicant was diagnosed by a duly qualified medical professional with alcohol dependence in September 2009. This allegation was admitted by Applicant in his RSOR.

1.e. The SOR alleged that Applicant was diagnosed by a duly qualified medical professional with alcohol dependence in January 2010. This allegation was denied by Applicant in his RSOR. During his testimony, Applicant explained that he had denied this allegation in his RSOR because he did not think he was drinking during the time frame of the allegation. He did make it clear that he had no disagreement with any health care professional who diagnosed him as an alcoholic or alcohol dependent. (Tr at 38-40.)

1.f. In the SOR is alleged that Applicant has operated a vehicle while intoxicated on multiple occasions. This allegation was admitted by Applicant in his RSOR. During his testimony he estimated the amount of times he drove while intoxicated as, "many," although he never received a DUI. (Tr at 40-41.)

Department Counsel made a motion to amend the SOR to add an additional allegation after becoming aware of Applicant's latest stay at an alcohol treatment center. The proposed allegation, which was not objected to by Applicant states:

1.g. You were diagnosed during your stay at an alcohol rehabilitation center from early April 2012 until May 8, 2012, as being alcohol dependent. Applicant admitted this allegation during his testimony.

Applicant agreed that he has struggled with alcohol for approximately 30 years, and that although he has had some periods of sobriety, he has had considerable periods of time when he could not control his alcohol consumption. He testified that he has gone to 28-day inpatient programs on two occasions and been to detoxification programs at least four times during the years he has struggled with alcohol. (Tr at 44-45.) Applicant summed up his position when he testified, "I think my record is pretty clear that I've got a serious alcohol problem." (Tr at 52.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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)

By Applicant's own admission, his alcohol consumption resulted in many instances of him driving a vehicle while he was intoxicated. The Government

established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” He also received at least one letter of reprimand for being at work while smelling strongly of alcohol. Disqualifying conditions AG ¶ 22(a), (b), and (c) apply to this case. Also AG ¶ 22(d) applies because of the “diagnosis by a duly qualified professional of alcohol abuse or alcohol dependence.” Finally, AG ¶ 22(e) applies because Applicant has had a “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.”

Based on Applicant’s long history of alcohol abuse and his most recent history of alcohol abuse and treatment I do not find that any of the mitigating conditions are applicable. I find Guideline G against Applicant.

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 the 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. Based on all of the reasons cited above as to why the disqualifying conditions apply and why the mitigating conditions do not apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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

Martin H. Mogul
Administrative Judge