



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



In the matter of:)
)
) ISCR Case No. 10-03718
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant has not consumed alcohol since November 2011. He successfully completed an intensive outpatient alcohol program in April 2011 and he continues to attend an aftercare program. Applicant attends Alcoholic Anonymous (AA) meetings, has obtained a sponsor, and regularly communicates with his sponsor. Clearance is granted.

On June 15, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline G (alcohol consumption). Applicant's response to the SOR was received by DOHA on August 7, 2012. He admitted all allegations and requested a hearing.

The case was assigned to me on October 22, 2012. A notice of hearing was issued on November 7, 2012, scheduling the hearing for November 28, 2012. The

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

hearing was conducted as scheduled. The Government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1-4 were admitted into the record without objection. Applicant objected to GE 5, after which Department Counsel withdrew that exhibit. Applicant testified and called four witnesses to testify on his behalf. He offered five documentary exhibits that were marked as Applicant Exhibits (AE) 1-5. AE 1-3 were admitted into the record without objection. Department Counsel's objections to AE 4 and AE 5 were overruled and they were admitted into the record. The transcript was received on December 5, 2012.

Findings of Fact

Applicant's admission to the SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 49-year-old man who has been employed by a defense contractor as a senior engineer since November 2009. He previously was employed by the same defense contractor as a senior software engineer from February 1996 until September 2006. Applicant was employed outside the defense industry as a senior software engineer from September 2006 until October 2009. He was rehired by his current employer after he was laid off in October 2009 due to the closing of the facility where he had been employed.

Except for the three-year period when he was employed outside the defense industry, Applicant has continuously possessed a security clearance since 1988. No previous adverse action has been taken to revoke or downgrade his security clearance, and no complaint has ever been made alleging that he has mishandled or otherwise risked the compromise of classified information.

Applicant was awarded a bachelor's degree in electrical and computer engagement technology in March 1988. He has been married since May 1988. He does not have any children.

Applicant submitted numerous letters of recommendation from supervisors, co-workers, and relatives. He offered the testimony of his wife, employer, facility security officer, and a co-worker. Many of Applicant's references are fully aware of the allegations concerning his abuse of alcohol. Many of his references are security clearance holders who are also senior engineers and employees engaged in highly sensitive and technical defense programs. They uniformly aver that Applicant is an exceptionally trustworthy individual and skilled engineer who has made significant contributions to the national defense. None of them, excluding Applicant's wife, have ever seen any indication that Applicant has abused alcohol. Applicant's references opine that he can be entrusted with access to classified information.

Applicant's wife testified she disapproves of the use of alcohol. Since about

2001, she has expressed her displeasure to Applicant on numerous occasions of his use of alcohol. She has also expressed her displeasure of Applicant's use of alcohol to her father, who then spoke to Applicant about his daughter's concerns. Applicant's wife is not aware of Applicant's alcohol use ever having caused any adverse consequences, although she does believe it sets a bad example for their 24-year-old nephew who lives near them and to whom they are very close.

The only adverse incident Applicant is aware of that resulted from his use of alcohol was when he was stopped for speeding in about 2001 after he consumed beer at a bowling alley. Although he was not intoxicated or even asked to perform a field sobriety test after he was stopped by a police officer, Applicant was concerned about the incident because his nephew who was about 12 years old was in the vehicle with him. Applicant felt this was inappropriate conduct to display to his nephew.

Applicant became concerned about his use of alcohol in about 2001. He felt stress from his job and would consume liquor after work to calm himself and relax. He consulted a psychologist in May 2001 to seek assistance with his concern about work stress, depression, and alcohol use. He consulted his primary care physician in June 2003 to seek assistance with his depression and alcohol use. Applicant's physician prescribed Wellbutrin for Applicant's depression and Antabuse for his alcohol abuse. Applicant continued to take Antabuse periodically until late-2011 or early-2012.

Applicant consumed as much as 12 ounces of alcohol daily between 2001 and 2005. He reduced his consumption of alcohol to four to five ounces a day from 2005 until he completely abstained beginning on November 6, 2011. Applicant was concerned about his reliance on alcohol to relieve stress from 2001 through 2011, and he attempted on many occasions to abstain. However, until November 6, 2011, he would always return to alcohol consumption, with the longest period of abstinence being about three months. He considers himself to be an alcoholic.

Applicant fully disclosed his use of alcohol in a security clearance application he submitted in December 2009. Although he never experienced any adverse consequences from his alcohol use, other than family disapproval, Applicant realized the potential negative effect continued alcohol use could have on his employment as the investigation of his security clearance application progressed. Accordingly, and as requested through issuance of interrogatories, he obtained an evaluation from a licensed professional counselor who is employed by a recognized alcohol treatment program in January 2012. She diagnosed Applicant as alcohol dependent episodic and as having a major depressive disorder. She recommended he immediately enter an intensive outpatient program with follow-up as recommended.

Applicant participated in an intensive outpatient program from February 23, 2012 until April 11, 2012. The licensed addictions counselor who treated Applicant, and who has 25 years experience in providing counseling to individuals suffering from substance addictions, wrote as follows:

(Applicant) engaged well in treatment, making steady progress as he gained insight regarding the impact of his alcohol use. As his level of understanding of his addiction progressed, he began to articulate a desire for change in all areas of his life. This was the first and most important sign of a true desire to live a recovering lifestyle. Over time everyone noticed the change in (Applicant's) attitude and motivation. Not only was he a participant in the group, but he also became an encourager that was born out of his new found understanding of the freedom that he now experienced as he embraces recovery.

(Applicant) is now a regular member of our continuing care program, which is our support arm for patients who have completed the intensive outpatient program. He continues to show a high level of commitment to his recovery by his regular attendance and active participation in all events associated with the group. He also attends AA 12 step meetings on a weekly basis. The continuing care group meets on Wednesdays from 5:30pm to 7pm. It is my belief that based on the recovery progress that (Applicant) has made; [sic] his prognosis for continued sobriety is excellent. (AE 2)

Applicant's physician, the same medical doctor under whose treatment he has been since at least June 2003, wrote that Applicant "is optimistic about his future and his mood has improved significantly." (AE 1) That physician also indicated he is encouraged about Applicant's progress and he believes Applicant's prognosis for long-term sobriety is excellent. (AE 1)

Applicant acquired an AA sponsor in June 2012. Although he no longer has cravings for alcohol, Applicant consults with his sponsor one or more times each week.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular

condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) with its disqualifying and mitigating conditions is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline G, 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. (Adjudicative Guideline [AG] ¶ 21)

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Applicant consumed excessive amounts of alcohol against his wife's wishes from at least 2001 until November 6, 2011. Applicant clearly felt guilty about his continued use of alcohol and on numerous occasions he unsuccessfully attempted to discontinue his use of alcohol. Applicant's physician prescribed Antabuse due to Applicant's abuse of alcohol in June 2003, and Applicant used antabuse to curb his craving for alcohol until late-2011 or early-2012. Applicant was diagnosed as alcohol dependent episodic by a licensed professional counselor who is employed by a recognized alcohol treatment program in January 2012.

The following alcohol consumption Disqualifying Conditions (DC) apply: *DC 22(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; DC 22(d): diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and DC 22(e): evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.*

Applicant submitted the testimony and written recommendation of numerous responsible people. Many of those people are aware of the allegations of the misuse of alcohol by Applicant. They all attest to his trustworthiness and ability to hold a security clearance without incident.

Applicant admits he is an alcoholic. He has abstained from the use of alcohol for more than a year. He successfully completed an intensive outpatient program and he continues in aftercare. He attends AA meetings weekly, and he has an AA sponsor with whom he regularly communicates. Applicant has obtained very favorable prognoses from the experienced counselor with whom he has dealt with for almost a year and from the physician who has treated him for at least the past nine years.

Applicant sincerely expressed concern about the impact alcohol use has had on his marriage. He also expressed sincere concern about the negative impression his use of alcohol can have on his nephew, to whom he is closely attached. Applicant is committed to continued sobriety and fully cognizant of the effect a relapse would have on his security clearance eligibility and continued employment.

Accordingly, I find the following alcohol consumption Mitigating Conditions (MC) apply: MC 23(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 MC 23(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 is an intelligent individual who has made an extremely favorable impression on many people who know him well and have committed their professional lives to the defense industry. While abusing alcohol, he has not allowed that abuse to carry over and have a negative impact on his professional or social life. He has acknowledged his abuse of alcohol for over a decade while he attempted to overcome what he recognized as a problem in his life. Through his participation in an intensive outpatient program, an aftercare program, Alcoholics Anonymous, and by his acquisition of and ongoing communication with his AA sponsor; and with his admission to his wife and co-workers that he has an alcohol problem, Applicant has demonstrated he is serious about remaining alcohol abstinent. He has availed himself of all the tools necessary to maintain that abstinence and, in so doing, he has mitigated the security concern that arose from his abuse of and dependence on alcohol.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the security concern caused by his alcohol consumption. He has overcome the case against him and satisfied his burden of persuasion. Guideline G is decided for Applicant. It is clearly consistent with the national interest to grant Applicant 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: For Applicant

Subparagraphs 1.a-c: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

