



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



In the matter of:)	
)	
)	ISCR Case No. 10-03841
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 6, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On October 15, 2010, 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), as amended (Directive); and the adjudicative guidelines (AG) implemented in 2006.

Applicant timely requested a hearing before an administrative judge. I received the case assignment on January 13, 2011. DOHA issued a notice of hearing on March 5, 2011, and I convened the hearing on May 4, 2011. The Government offered Exhibits (GE 1-6), which were received into the record without objection. Applicant testified and submitted Exhibits (AE A-C), which were admitted into the record without objection. I held the record open until May 23, 2010, so that Applicant could submit additional documents. The submission was timely received, marked as (AE D) and entered into the record. Department Counsel did not object to the documents. DOHA received the

transcript on May 13, 2011. Based upon a review of the record, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 38-year-old employee of a defense contractor. He graduated from high school in 1992 and attends college classes. Applicant is married and has two children. Applicant served in the United States Marine Corps from 1992 until 1999. (GE 1) He has held a top secret clearance since 1992. He has been with his current employer since October 2006. (GE 1)

When he was 18 years old, Applicant drank beer on weekends, averaging about six to seven beers at a sitting. (GE 2) He believes that he consumed a six-pack of beer on a Friday/Saturday once every one to two weeks with other Marines. (GE 3) His consumption was reduced when he deployed. He drank socially as permitted. He estimates that he consumed to intoxication 25% of the time. This period was from 1992 until 2009. He states that he stopped drinking in 2009. He has never been diagnosed with an alcohol problem. (GE 2)

In May 2000, Applicant held a party at his house. The music was loud and people complained. The police arrived and Applicant would not allow them into the house. (Tr. 24) The police kicked in the door. Applicant was arrested and charged with aggravated assault on a police officer. He recalls that he was intoxicated at the time. (Tr. 24) He pled guilty to a lesser charge, was fined and entered the sheriff's labor assistance program (SLAP). He spent the weekend in jail. He performed seven days community service. He was not required to seek alcohol counseling. (Tr. 25)

In July 2003, Applicant was visiting a friend. They went to a bar and consumed alcohol without eating. When he left the bar, the police stopped him for speeding on the highway. He does not recall how much he had to drink that evening. He took a Breathalyzer and was charged with DUI and speeding. He pled guilty to DUI. Applicant was sentenced to 24 hours in the intoxicated driver resource center (IDRC), fined and his license was revoked for six months.

Applicant changed his drinking habits from 2005 until 2009. He estimates that he consumed alcohol once every three months with friends at a restaurant. He would drink about four or five beers. He never thought he had an alcohol problem until his second DUI. (GE 3)

In August 2009, Applicant was out with cousins watching a fight at a local bar. He consumed about four or five beers. When it was time to leave, Applicant went to another bar and had a drink. He did not stop at the light and was pulled over by the police. (Tr.

29) He was charged with DUI, refusal to take the Breathalyzer test, and resisting arrest. Applicant pled guilty to the DUI. He was sentenced to 30 days community service, received two years suspension of his license and ordered to attend the IDRC. He still does not have a driver's license. He completed his classes at the IDRC last July. (Tr. 36)

Applicant sought help from a psychologist in October 2010. (AE A) He received outpatient counseling after his 2009 DUI. A screening result indicated that the impact of alcohol on Applicant was minimal or none. It has not affected his work. He does not meet the criteria for substance abuse or dependence. (AE D) Applicant has acknowledged that alcohol does not help him in his life. He realizes the hardship it creates for his family. He is aware of the danger of drinking and driving. He has learned that alcohol wreaks havoc in his life and serves no purpose. (Tr. 16)

Applicant has not had any alcohol since his November 2009 DUI. He intends to abstain from drinking even though it was not advised due to any alcohol dependence. He and his wife do not have alcohol at home. His wife does not drink. His wife supports him in his goals.

A May 2011 report from Applicant's psychologist confirms that Applicant utilizes a social support group of family and friends when feeling an urge to consume alcohol. Applicant's therapist reports that Applicant now possesses the strength to abstain from alcohol by utilizing techniques learned in therapy. Applicant completed all goals set in his therapy. As part of his treatment, Applicant compiled a detailed history of his alcohol abuse. Applicant learned interventions and has a written plan to assist him to be free of alcohol. He has learned to share his problems with someone who can assist him so that social pressure or interpersonal conflicts are not resolved through the use of alcohol. Applicant's therapist emphasized that Applicant has acknowledged the hardship that was created for his family. He has been successful in abstaining from alcohol and is aware of the danger of drinking and driving. (AE D)

Applicant wants to re-enlist in the Marine Corps (Reserve). He keeps busy with his two children. He attends church. He continues to see his psychologist. He has a support group with his wife and family.

Applicant noted at the hearing that his parents had problems with drugs and alcohol. He never realized the possible impact that had on his behavior. He is now addressing those issues with his counselor. (Tr. 47) He has not completed his community service because he does not have his license. He receives the license in November 2011. His plan is to help with church projects. (Tr. 49) As soon as he has a driver's license, he plans to attend AA meetings. He lives in a remote area and needs transportation to attend meetings on a regular basis. He cannot risk losing his driver's license and going to prison, nor does he want to jeopardize his family and his job.

Applicant submitted a letter from his wife who was unable to attend the hearing. (AE B) She has known Applicant for six years. They have been married for four years and have two young children. She is aware of the DUI charges and implications for

Applicant's security clearance. Applicant's wife describes him as a good man, who has raised himself against all odds, and has become a loving, caring, dedicated father and husband. He cares for the children and helps with household duties. She knows he is taking steps to make changes in his life. He wants to join the Marine Reserve. He is apologetic and realizes the burden his behavior has created for his family. He admits his mistakes and continues to talk to his counselor and has abstained from drinking. When Applicant receives his driver's license, he is required to install a ignition interlock in his vehicle in order to drive and maintain his license.

Applicant submitted several letters of reference from other colleagues and friends. He is described as an extremely talented and capable person. He is dedicated to his family. Applicant completes his work in a professional manner. (AE D)

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 required 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, 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

AG ¶ 21 expresses the security concern pertaining to 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.”

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying, “(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,” and “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.”

In this case, Applicant acknowledges his three alcohol-related incidents and DUIs. His last alcohol conviction was August 2009. He admitted drinking to intoxication from 1992 until 2009. AG ¶¶ 22 (a) and (c) apply.

AG ¶ 23 provides conditions that could 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);

(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.

After his 2009 arrest, Applicant acknowledged he had a problem with alcohol. He sought counseling. Applicant has not been diagnosed with an alcohol problem. He has had alcohol counseling. In those classes, the counselor did not believe that Applicant had a problem with alcohol. He underwent and successfully completed his treatment without any need for a structured aftercare. Applicant stopped drinking in 2009. Applicant has taken full responsibility for his past excessive alcohol consumption. Now with his family as support, he has a network in place to help him. He understands the dire consequences of abusing alcohol. He continues to see his therapist. He will attend AA meetings when he receives his license. Applicant is exceptionally motivated to abstain from alcohol and achieve his goal to join the Marine Reserve. Applicant has mitigated the alcohol consumption concerns under AG ¶¶ 23(a), (b), and (d).

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. Applicant is a highly credible and forthright 38-year-old employee of a contractor. He is a respected employee. He has submitted several letters of recommendation. He lives at home and is married with two children. He attends church. He is motivated to succeed. He receives counseling from his psychologist. He abstains from alcohol. He wants to re-enlist in the Marine Reserve. He excels at work and is highly valued. Applicant will not risk losing his career, marriage, or driving privilege by repeating past behavior with alcohol. He has shown insight into his previous behavior. Given these facts, and in light of a thorough consideration of the whole-person factors, I have no concern that Applicant will again abuse alcohol.

In sum, Applicant is not the same as he was in 2009. He has become a mature, resolute, and responsible man who cares for his family, excels at work, and contributes to society. Applicant has made great strides and has maintained since 2009.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge