



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-04926
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Department Counsel
For Applicant: *Pro se*

August 8, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 17, 2010. (Government Exhibit 5.) On a date uncertain, the Department of Defense (DoD) 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), effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant responded to the SOR in writing on February 11, 2014, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on March 6, 2014. The Applicant received the FORM on March 21, 2014. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on July 21, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 50 years old and divorced. He is employed by a defense contractor as a Principal Engineer and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Applicant admitted to the single allegation set forth in the SOR under this guideline, but states that the concern is mitigated. (Applicant's Answer to SOR.) Applicant has a thirty-one year history of alcohol abuse that includes a diagnosis of alcohol dependence, a number of detox sessions and treatments, followed by relapses, which began in 1980, and continued off and on until at least 2011. In December 1998, Applicant began working for his current employer.

In 1980, while in high school, at the age of sixteen, Applicant starting drinking alcohol. He consumed between six and twelve, 12 ounce cans of beer. By the age of eighteen, he was drinking about a 12 pack of 12 ounce cans of beer every weekend. He continued this pattern of drinking throughout college. As time passed, he started drinking beer in the evenings during the weekdays, consuming a 6 pack of 12 ounce cans of beer, one to three nights during the week. Applicant stated that this drinking had a range of effects on him, from no effect, to making him become slightly intoxicated, to having slurred speech and slow reactions. After graduating from college, he continued to consume alcohol, between six and twelve, 12 ounce cans of beer, three to four nights a week. On each occasion, Applicant became intoxicated. (Government Exhibits 6 and 8.)

Applicant's history includes three alcohol-related arrests. From 1983 to July 1998, he would consume alcohol and drive his car, except when his license was suspended. He states that he was charged with Driving Under the Influence of Alcohol in 1984, in 1991, and most recently in September 1999. On this occasion in 1999 Applicant had gone to several bars with his girlfriend to drink. He had consumed more than 12 beers and several mixed drinks that evening. He remembers his last drink of the evening to be an "Alabama Slammer," which he says consists of five hard liquors. He states that he drank so much that he could not walk straight. His girlfriend was driving them home that evening, and they got into an argument. When they got home, she went to bed, and the Applicant stayed up drinking beer and listening to music. At some point, he took out his 9mm pistol and stood on the back porch and fired one shot. He explained that he was upset and depressed with his life and his dependence on alcohol, and wanted to talk to his girlfriend. He knelt down on the floor beside the bed and laid his arm with the pistol in his hand on the pillow on her side of the bed with the barrel pointed toward the head of the bed. He stated that his trigger finger was not touching the trigger nor was it inside the trigger guard when he placed his arm on the pillow. He stated that he did not point the gun at his girlfriend's head. His girlfriend was laying in bed with her back to the Applicant and he tried to wake her up. He asked her if she wanted to die. When she woke up and rolled over toward the Applicant, her head

might have touched against the side of the barrel of the gun. When she saw the pistol, she grabbed the Applicant's arm that held the pistol. Applicant gave her the pistol and instructed her on how to unload it, which she did. She was scared and called the police. When the police arrived Applicant denied having a gun or that he had fired it. Applicant was arrested for Assault with a Dangerous Weapon, Assault to Kill, and Discharging a Firearm. (Government Exhibits 6 and 8.)

Following this arrest, Applicant was ordered by the court to enter an inpatient alcohol treatment program. During this ten day detoxification program, the Applicant was diagnosed by a psychiatrist as being alcohol dependent. From November 1999 until November 2002, Applicant was on supervised probation by the court, and was required to completely abstain from alcohol and was subject to random alcohol screening.

On March 22, 2000, several months after he started working for his current employer, Applicant executed a signed, sworn statement indicating that he had no intention of drinking alcohol in the future. (Government Exhibit 8.) In May 2003, Applicant underwent a previous clearance adjudication, and had been sober for over three years and was still regularly attending Alcoholics Anonymous (AA) meetings. Applicant maintained complete sobriety from September 1999 until 2004. He relapsed in 2004.

Following his relapse in 2004, he continued to consume alcohol, at times to the point of intoxication, until August 2011. In August 2011, Applicant voluntarily took a medical leave of absence from work to be admitted into an inpatient alcohol treatment program. He successfully completed the program in September 2011. He then participated in five weeks of an aftercare program and AA meetings. Applicant claims that he has maintained sobriety since August 2011.

Applicant admits that there were many other times that he entered alcohol detoxification programs on his own because he felt he should cut down on his consumption of alcohol. He made an effort to cut down his drinking following detoxification, from June 1997 to September 1997, by not drinking during the weekdays. He also attended AA meetings on his own volition.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline G (Alcohol Consumption)

21. *The Concern.* 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.

Conditions that could raise a security concern:

22. (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;

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;

22. (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Condition that could mitigate security concerns:

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).

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information. The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in Alcohol Abuse (Guideline G) The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline G of the SOR.

The evidence shows that the Applicant is an alcoholic who has a history of alcohol-related offenses, including three DUI’s, and one arrest for Assault With a Dangerous Weapon. In 1999, he was formally diagnosed with alcohol dependence.

Over the years he has battled his disease by entering into a detox program, followed by treatment programs, AA, abstinence, and relapse. Presently, Applicant claims that he has been sober for two years. He is commended for his effort, however, given the extensive nature of his disease, there is no guarantee that he will be able to maintain any long-term sobriety. In March 2000, he executed a signed sworn statement expressing his intent not to drink alcohol in the future. Against his desire, he returned to his old habits. Based upon his past record of relapse following treatment, there is a strong chance at this point that he will return to his old habits. Hopefully, this time will be different, and he will continue to be able to maintain sobriety, and at some point demonstrate the level of responsibility required to meet the eligibility requirements to access to classified information. At this time, however, he falls short of meeting these requirements.

Under Guideline G, Disqualifying Conditions 22.(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*; 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*; and 22.(d) *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence* apply. Mitigating Condition 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)* arguably applies. However, it is not controlling in this case. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a 50-year-old alcoholic, who has a thirty-one year period of alcohol abuse. Although it appears that Applicant wants to stop drinking, and has demonstrated that he can abstain from alcohol for a limited period of time, he ultimately relapses and returns to excessive and extreme drinking. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Applicant has not demonstrated that he is sufficiently trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline G (Alcohol Consumption).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge