



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



In the matter of:

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) ISCR Case No. 10-06357
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Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: Jacob Ranish, Esq.

08/10/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On January 4, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline G (Alcohol Consumption and Guideline I (Psychological Conditions). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge.¹ A notice of hearing was sent on June 1, 2015, scheduling the hearing for July 14, 2015. The Government submitted 19 exhibits (GX 1-19), which were admitted into the record. Applicant submitted six exhibits (AX A-G), which were

¹Applicant answered the SOR in February 2013. A discussion concerning the age of the case can be found in the Tr. Pages 22-23. I received the case on April 27, 2015.

admitted into the record. Four witnesses testified on behalf of Applicant. Based on a review of the pleadings, submissions, testimony and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline G (Alcohol Consumption), with the exception of SOR 1.c. He admitted the factual allegations under Guideline I (Psychological Conditions), with the exception of SOR 2.b.

Applicant is a 39-year-old industrial security specialist working for a defense contractor. He served in the United States Navy from 1999 until 2005. (GX 1) He attended a military academy but did not graduate. He received his undergraduate degree in 2002. He is single and has no children. He has worked in the defense contracting field since 2001. He held a security clearance while in the military and from 2006 until the present time. Applicant has been employed with his current employer since April 2006. (GX 1)

The SOR 1.a alleges that Applicant began abusing alcohol from approximately age 20, and continued drinking although the alcohol abuse resulted in his termination from a military academy. He admits that he began abusing alcohol from age 20. He was feeling hung over at times when he reported to work. As to allegation 1.b, Applicant admitted he continued to abuse alcohol until 2009, habitually drinking to the point of impaired judgment, including between and after various hospitalizations and medical advice to remain abstinent from alcohol. He reported that he began drinking again in 2011. (SOR 1.c) In 2012, Dr. M evaluated Applicant and concluded that his alcohol dependence was in early full remission. (SOR 1.d)

Alcohol Consumption

Applicant is a recovering alcoholic. He confirms the record of drinking to abuse since he was about 20 years old. His drinking escalated to the point of alcoholism until about age 35, when he admits drinking a liter of scotch per day and more on the weekends. In 2007, he voluntarily admitted himself to a hospital for toxic effects of alcohol. His early diagnosis revealed he was a dual diagnosis patient. He received a diagnosis of alcoholism and major depression.

Applicant stopped drinking in 2010. However, he did not have the tools necessary for recovery. He drank again, but in November 2011, he stopped drinking, and was successful with abstinence. He attributes this to AA. He was not physically well in 2011. He was encouraged to attend AA. He was surrounded by people who cared. He knew that he was dying of his addiction.(Tr. 61) He has gone to AA daily since 2011. He has a sponsor. He often goes to AA multiple times a day.(Tr. 62) He knows that he cannot drink in moderation. He remains abstinent from alcohol. He knows this is a disease which could kill him. He reports that he does not engage in negative

compulsive thinking. (Tr. 64) He credibly stated that sobriety is the center of his life. He acknowledged that without sobriety, his life will be severely damaged. He now has coping strategies to deal with stress that may have contributed to his poor decisions to drink excessively. (Tr. 95)

Applicant was evaluated in 2012 by Dr. M, who is a duly qualified psychologist, at the request of the Government. Dr. M diagnosed Applicant with Major Depressive Disorder, Recurrent, Severe, Without Psychotic Features, and a substance related disorder of alcohol dependence, early full remission. He noted that these conditions may impair Applicant's judgment, reliability or trustworthiness due to the episodic nature of the psychiatric conditions, and personality traits that may make maintenance of these conditions vulnerable to destabilizing factors in his environment. (GX) At this point in time, Applicant was sober for only one year.

Dr. M noted that Applicant admitted that his pattern of drinking had been on and off during the years, and that he continued to drink after the hospitalizations. He drank every night until he passed out and went to bed.

Applicant's current licensed therapist, who is also a licensed substance abuse specialist, testified that he evaluated Applicant in January 2014. Mr. S. reviewed Applicant's past medical history records. He has seen Applicant weekly over a period of eleven months. (Tr. 31) The therapist testified that Applicant is not drinking. He has not consumed alcohol in three and a half years. Applicant has been active in the therapy sessions. He is emotionally stable and open to looking at his issues. He has daily AA meetings and has a sponsor. He readily admits that he is a recovering alcoholic. Applicant has appeared honest and reliable. His therapist recommends Applicant for a security clearance. Applicant's therapist diagnosed him with major depressive disorder, in partial remission when he first started treating him. (Tr. 35) At this juncture, the diagnosis is minimally depressed with alcohol abuse disorder, severe, in sustained remission. Mr. S. stated that Applicant's prognosis is good due to continued treatment and participation in AA. Applicant is not on any medications. Applicant's therapist also confirms that Applicant sees a psychiatrist on a regular basis. In summary, Applicant presents as consistent with treatment, reduction in anxiety, and strong commitment to AA.

Applicant has been under the medical care of a psychiatrist since October 2007. He was treated for mood disorder and borderline personality disorder. He noted that Applicant has been consistent in following his treatment plan. He stated that Applicant has a history of alcohol dependence which has been in full remission since 2011. (AX A) Applicant's psychiatrist had prescribed lithium for Applicant, but determined that Applicant did not have bipolar disorder and stopped the medication.

Psychological Conditions

Applicant was hospitalized in 2007 and 2008 based on his severe depression. He was diagnosed with many disorders by several mental health institutions. During this period he was evaluated by mental health professionals with a number of different

diagnoses. He suffered a major trauma in May 2006 when his brother committed suicide at home. Applicant found his brother dead. Applicant was very close to his younger brother and states that this has been the most traumatic event in his life. He admits that he did not cope well and had negative coping strategies, such as drinking. He also began to experience symptoms of PTSD such as intrusive thoughts, flashbacks to the incident, numbing and detachment. He avoided people by locking himself into his room and drinking to numb the pain. (GX 1)

In addition to his brother's suicide, Applicant reported a history of growing up with emotional and physical abuse by his mother. Applicant and his family lived around the world due to his father's work. (Tr.)

Applicant voluntarily admitted himself to the hospital in 2007. At that time he was not able to process the grief of his brother's untimely death. He experienced suicidal ideation. He left the hospital and continued drinking. He does not recall the hospitalization in 2008, but a report notes a 2008 hospitalization and outpatient treatment. Notably, all the diagnoses were part of a dual-diagnosis condition, meaning that he suffered from alcohol dependence in addition to the mental health conditions.

Applicant started seeing a psychiatrist in 2007. He has continued to see him. He lives with his parents and has reconciled with them. He helps care for his elderly, ill father. (Tr. 76)

Applicant was evaluated in 2015 by another psychologist. The psychologist gave Applicant the MMPI-2RF. This is a detailed instrument which is the most widely used and well-researched psychological test. It is composed of 33 true/false questions. (Tr. 43) Dr. W. testified that Applicant approached the test accurately and fairly. He made no effort to either exaggerate mental problems or no effort to under report problems. He was honest and cooperative during the interview. Dr. W. Found no evidence of current mental illness, especially no thinking problems, no thought disorder and no psychosis. He was not concerned that Applicant would act inappropriately in any way. (Tr. 45) They discussed the past suicidal ideation. Dr. W. opined that Applicant's problematic mental history began with the alcohol problem. Dr. W. maintained that Applicant is a dual-diagnosis patient. In other words, he has a substance abuse problem and a mental health disorder. If the substance abuse clears up, the primary mental health diagnosis can go away. (AX E) Dr. W. stated that looking at Applicant's functioning over the past four years since he has been sober, he no longer shows signs of debilitating mental illness. (Tr. 47) As long as Applicant remains sober, it is not likely that he would have a psychiatric problem. Dr. W. believes that the 2012 report from Dr. M is no longer relevant in 2015. (Tr. 50)

In 2012, Applicant's evaluation by Dr. M, with respect to his major depressive condition, was that the prognosis was fair. The report notes that Applicant was not receiving psychiatric care at the time and thus he is vulnerable to destabilizing events in his life. Dr. M recognized that Applicant was in AA and had been sober since November 2011. He also noted that Applicant had a sponsor. He commended him for his recent progress with his alcohol recovery.

Dr. M. Also noted that Applicant was cooperative during the session in 2012 and though his affect was anxious, his mood was good. He did not display paranoid ideation during the interview nor thoughts of self harm, nor of wanting to harm others. His thought process was grossly intact. (GX 1)

The latest evaluation, dated July 6, 2015, given by a licensed social worker and clinical substance abuse counselor, stated that due to the traumatic event of Applicant's brother's suicide in 2006, Applicant's drinking was exacerbated. He went to AA in 2011 and stopped drinking. He has embraced the program. He is engaged in weekly therapy sessions. The social worker opined that in her professional opinion, Applicant's recovery is genuine and long lasting. He has a high probability of enjoying long term sobriety, which will alleviate a mental illness. (AX B) Applicant does not pose any threat to public safety or to national security. According to the social worker, Applicant is sincerely penitent of the damage rendered by his drinking until 2011. He is engaged in a meaningful process of recovery and has every assurance of success for long term sobriety. He is trustworthy and she recommends him for his security clearance. (AX B)

Character References

Applicant submitted nine letters of recommendation. His senior manager, who has known him since 2010, knows the challenges that Applicant has faced in the past with alcohol and depression. He states that Applicant is a man of integrity, honesty, and professionalism. Applicant can be relied on to complete tasks in a timely manner and with quality. Applicant's manager has spoken to Applicant about the support groups and counseling that Applicant engages in. Applicant's manager trusts him to continue his sobriety and maintain his reliability with his work duties. He recommends Applicant for a continuation of his security clearance without hesitation. (AX A)

Applicant's facility security officer (FSO) has known Applicant for almost seven years. He works with Applicant on a daily basis, and states that Applicant is a consistent high-performer and dedicated professional. He noted that Applicant has received numerous awards for his outstanding service skills. The FSO stressed that Applicant self-reported his alcohol and mental health issues years ago. Since that time Applicant has regularly attended AA meetings, therapy, and has remained sober for almost four years. He strongly recommends Applicant for the retention of his security clearance.

A contractor special security officer (CSSO) wrote on Applicant's behalf stating that she interacts with him on a weekly basis. She understands the issues at hand regarding security concerns and has never seen anything that questions his honesty and reliability. She describes Applicant as honest and forthcoming about his struggles. He has demonstrated maturity and strength in seeking appropriate help and support for his situation. Applicant displays hard work and commitment in his position.

Applicant's AA sponsor has known him for the last four years. Applicant's sponsor has seen Applicant change and grow in terms of his willingness to remain sober. Applicant attends many meetings and calls his sponsor regularly. Applicant has

matured, embraced the AA program, and is honest with his issues. He recommends him highly for the retention of a security clearance.

The president of a substance abuse treatment facility, who has known Applicant for about three years, describes Applicant as a very intelligent, kind and compassionate person who has taken his recovery from alcohol abuse seriously. He has seen significant positive changes in Applicant. He attests to the fact that Applicant attends AA meetings consistently.

Several friends commented on Applicant's unwavering commitment to his recovery from alcohol abuse. Applicant's friends who see him at AA meetings comment that he demonstrates recovery principles of honesty, openness and willingness to face his issues with candor and tenacity. Applicant has befriended people in the AA community and proven to be a support for others. The friends who wrote on his behalf also hold security clearances and have never seen Applicant engage in any questionable behavior.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or

proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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:

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

- (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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (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;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant admits he is an alcoholic. He drank to excess from about the age of 20 until age 34. He consumed alcohol away from work on a daily basis. He disclosed his alcoholism and self-referred to a hospital in 2007. He was given a diagnosis of alcohol abuse and alcohol dependence. He stopped drinking for a time in 2010, but it was not until November 2011, that he became completely abstinent. AG ¶¶ 22 (a),(c), (d), (e) and (f) 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.

While there is no bright line rule for determining when conduct is recent or sufficient time has passed since incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

The mitigating conditions apply. Applicant used alcohol as way to deal with stress. After his brother's suicide in 2006, he drank every day and to the point of intoxication. However, he tried to stop drinking. In 2010, he temporarily stopped drinking. It was not until November 2011, that with the help of AA, he stopped drinking. He has been sober since then. He admits that he is a recovering alcoholic. He attend AA meetings multiple times a day. He has a sponsor. He has a support group. He has taken responsibility for his actions. He has a 2015 evaluation that states that he is in remission. His prognosis is favorable. He continues to see a psychiatrist and a therapist. After considering the mitigating conditions, I find that, given the information in this record, he has mitigated the alcohol concern.

Guideline I, Psychological Conditions

AG ¶ 27 expresses the security concern pertaining to psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

AG ¶ 28 describes conditions that could raise a security concern and may be disqualifying:

- (a) behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness; and
- (c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Applicant's medical record shows that he has a history of depression and other diagnosed mental illness. He admitted the allegations under Guideline I with the exception of SOR 1.b. He voluntarily admitted himself to a hospital in 2007. He has had a dual-diagnosis throughout the years with depression, bipolar condition and alcohol. These conditions impair judgment, reliability, and trustworthiness under 28(b). He acknowledges suicide ideation. He has been prescribed lithium, but he is no longer on the drug or needs the drug according to his psychiatrist. He had an earlier diagnosis that stated he did not have consistent therapy to deal with his issues. AG ¶¶ 28(a), and (b), apply.

AG ¶ 29 provides conditions that could mitigate security concerns:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant sought therapy and continues to engage in therapy weekly. He sees a psychiatrist who notes that he is compliant with his treatment plan. His physician notes that he is reliable and that his history of alcohol dependence is in full remission since 2011. He has embraced AA. He has a sponsor. He has a support network. His recent psychological evaluation states that Applicant has no problem with cognition or judgment. He is neither a danger to himself or others. He is free from defensive behaviors that impair his judgment. He received a current diagnosis that he does not suffer from any mental health conditions that impair his judgment. He has been sober for four years which has allowed him to function without the assistance of medication. He has submitted evidence that mitigates the concerns under Guideline I.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 39 years old. He has worked for his current employer since 2006. He has held a security clearance since that time without incident. He was honest about his history of alcohol and mental health issues. He discussed his hospitalizations and his symptoms. He has been cooperative and has been evaluated in 2015. He is not on any medication. His current diagnosis is good. He has been sober since 2011. He sees his therapist and psychiatrist consistently.

Applicant takes full responsibility for his actions. He knows he is a recovering alcoholic. He attends AA daily and has a sponsor. He recognizes that sobriety is the center of his life. He has changed his behaviors. He has a support network. His

depression is not what it was given the fact that he is now sober. He has mitigated the alcohol and psychological security concerns.

Applicant's references describe him as a cooperative, genuine, trustworthy man. He has not had any incidents with the holding of a security clearance for the past years. He is an extremely dedicated professional and a high performer. He has received numerous work awards. He has been candid about his alcohol issues. He remains dedicated to his sobriety and uses his therapy and a wide network of support to guide him.

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-1.d:	For Applicant
Paragraph 2, Guideline I:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

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

NOREEN A. LYNCH.
Administrative Judge