



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



In the matter of:)
)
) ISCR Case No. 10-09524
)
Applicant for Security Clearance)

Appearances

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

10/31/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. During his 34 months of sobriety, Applicant has demonstrated a commitment to rehabilitation and reform as well as remorse for his past criminal conduct. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on May 4, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and criminal conduct guidelines. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 19, 2012. At the hearing convened on August 16, 2012, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A and B, without objection. In addition to the exhibits, Applicant testified and presented the testimony of three witnesses: two coworkers and his Alcoholics Anonymous (AA) sponsor. After the hearing, I received AE C without objection. I received the transcript (Tr.) on August 27, 2012.

Procedural Rulings

At hearing, Department Counsel moved to amend the SOR to include the following allegation under the criminal conduct guideline:

1.k. You are on supervised probation until April 17, 2013; after which, you will be on unsupervised probation until October 2015.

Without objection, I granted the motion and noted Applicant's admission for the record.²

Findings of Fact

Applicant, 33, is an electronics maintenance technician employed by a federal contractor. He is engaged and has three children, ages 14, 7, and 5 from previous relationships. He has been arrested ten times between 1997 and 2010. Two of the arrests, misdemeanor charges for destruction of property in 1997 and possession of marijuana in 1998, occurred while Applicant was still in high school. Following the suspension of his license in 1999 for his refusal to pay what he considered a wrongly issued parking ticket, Applicant was convicted of driving on a suspended license in 2002 and 2004. Applicant's six other arrests were alcohol related.³

A self-described "third-generation alcoholic," Applicant's social activities and friendships revolved around alcohol during his 20s and into his early 30s. The 2001 and 2005 domestic violence charges involved alcohol-fueled arguments with his then girlfriend. The former charge was *nolle prossed*, the latter resulted in a conviction for petty larceny. Applicant took his girlfriend's cell phone and their cat in retaliation for the damage she caused to his surfboard. In 2007, he was convicted of felony hit-and-run and driving on a suspended license. Intoxicated and fearing arrest, he fled the scene of a traffic accident he caused. He was sentenced to five years in prison, with all but three months suspended, and five years of probation.⁴

By January 2010, Applicant began feeling the financial consequences of his criminal history. Unable to drive because of a suspended license, Applicant could not

² Tr. 9-11.

³ Tr. 55-57, 59-60, 64; Answer; GE 1.

⁴ Tr. 42-49; Answer; GE 2, 4.

maintain steady employment. Because of his erratic work history, he could not pay his child support. Although he continued to drink to excess, Applicant decided to act more responsibly. He paid his fines, had his license reinstated, and began working his current job. At the end of his first week on the job, Applicant went to a bar with friends after work. After leaving the bar, he was arrested for driving under the influence of alcohol (DUI). This arrest also prompted a probation violation charge. As a result of his conviction on both charges, he is on supervised probation until April 2013. He will then transition to unsupervised probation, which will be in effect until October 2015. Applicant credits the DUI arrest for causing him to hit rock bottom and seek help for his alcohol problem.⁵

Denied bond after the January 2010 arrest, Applicant remained in jail for five days. The phone calls he made to his mother and to his oldest son affected him profoundly. At hearing, he recalled his heart break at having to tell his son that he would be unable to pick him up the next day because he was in jail. Applicant realized that he had broken the promise he made to his son after the 2007 arrest that he would never go to jail again. Applicant's mother confronted him about his drinking problem and forced him to admit that he had a problem. Remembering this conversation, Applicant recalls:⁶

I am on the phone, in jail, and in the pod with . . . 100 other guys. And I am breaking down on the phone, trying to get upstairs, and get to my cell . . . before I am beat up for being that little cry baby punk in jail. Right then that is when I started to take my first step [towards sobriety]."⁷

Upon his release from jail, he reported his arrest to his employer, he attended his first AA meeting, and within a week he had a sponsor.⁸

His spiritual awakening came six months later when he learned that his oldest son, who attends a religious school, had been praying with his class for Applicant to stop drinking. Learning of his son's prayers Applicant realized:

[E]verything came together. . . . In order for my son's prayers to be answered I had to take the hit, because I was going to keep drinking and [engaging in] this self-destructive behavior that I was predisposed to . . . I thought [because] I am a third generation alcoholic . . . this is how it has to be [and . . . I can't do anything about it. After, you know, having the spiritual, you know, enlightenment, I have done everything I can to, you know, every step, to chair the meetings, to clean up afterwards, to make coffee. AA is a way of life for me.⁹

⁵Tr. 9-11, 39-40, 58, 60-61.

⁶ Tr. 40.

⁷ Tr. 40-41.

⁸ Tr. 33, 35, 41, 52-53.

⁹ Tr. 41-42.

Applicant has been actively involved in AA since January 2010. He attends at least two meetings each week and talks with his sponsor at least three times a week. With the support of his sponsor, Applicant has completed the 12-step program. As part of the process, Applicant listed all of his wrongs, which included the acts listed in the SOR, and discussed them with his sponsor, taking full responsibility for his past behavior. Over the past 34 months, Applicant has increased his responsibility within the AA community. He currently serves as the treasurer for his home group, serves as the intergroup representative, and has been recently nominated for group chairperson. Applicant has also made significant changes to his social circle. He no longer spends time with his former drinking friends. Applicant's sponsor lauds Applicant's progress in the program and his hard work to maintain sobriety.¹⁰

He is open with his friends and coworkers about being in recovery. He has the full support of his employer who considers Applicant a stable, dependable, and hard-working employee. The company supports Applicant's application for a security clearance. His improved performance at work has led to increased responsibility and his selection for more high profile jobs working alongside his supervisor. His probation officer considers him an above-average probationer. He has satisfied all of the other components of his sentences on the DUI and probation violation convictions, and has earned a reduction in his level of supervision. Applicant's fiancée and his oldest son's mother, both of whom have known Applicant since high school, have also noticed a vast improvement in Applicant since he stopped drinking. Sober 34 months, Applicant offered these thoughts on his rehabilitation, his sobriety, and his fitness for a security clearance:¹¹

[I] used to think of it as the roaring 20s. . . . In my mind's eye I was going to rage, and have this great time like all 20 year olds did. And then when I turned 30 I was going to slow down and try and grow up. Well, it took me a little bit longer than 30, but here we are.¹²

You know, me getting into [AA] . . . [and] getting sober is the best thing that I have ever done with my life. And, you know, I used to think that there was no way that I could live without drinking. And now I know there is no way I could live with drinking. It would completely unravel everything I have done, and worked so hard for, in these last two years. . . . [I]t took me a long time to realize that I need to grow up. And now that I am finally doing what I should have been doing the whole time, I just want to keep on keeping on.¹³

¹⁰ Tr. 32-38, 42.

¹¹ Tr. 22-31, 53-54, 62-63; AE A-C.

¹² Tr. 44-45.

¹³ Tr. 61-62.

I do not deny, at all . . . what you all have brought in front of me, as far as my charges and everything. That was just a reckless youth, under the influence, that didn't care. I have since grown and do not wish to engage in those of actions or behaviors, at all, whatsoever. I just respectfully disagree that I am unfit to hold a security clearance.¹⁴

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 used 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(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.

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 to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁴ Tr. 42-43.

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

Excessive alcohol consumption is a security concern because it “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.”¹⁵ Although Applicant has not been diagnosed as being an alcohol abuser or being alcohol dependent, he admittedly “habitually consumed or binged on alcohol to the point of impaired judgment” during his 20s and into his early 30s.¹⁶ His excessive drinking resulted in at least six alcohol-related criminal incidents away from work.¹⁷

After his last arrest, Applicant acknowledged his alcoholism. In the past 34 months he has demonstrated a sustained period of abstinence without relapse. He has also shown a commitment to rehabilitation through participation in AA. Furthermore, he has made changes to his life to support sobriety by fostering relationships that encourage his sobriety. In doing so he has eschewed his primary alcohol consumption trigger—the party-boy lifestyle. He is able to articulate the financial and emotional costs of the immature “roaring 20s” ideology to which he formerly ascribed and contrast them against the benefits he has reaped from sobriety. Accordingly, he has demonstrated, as required under AG ¶23(b),¹⁸ a strong record of sobriety and rehabilitation, thus mitigating the concerns raised by his history of alcoholism.

Criminal Conduct

Applicant’s “criminal activity creates doubt about [his] judgment, reliability, and trustworthiness [because] it calls into question his ability or willingness to comply with laws, rules and regulations.” In total, Applicant has been arrested ten times between 1997 and 2010 for multiple misdemeanor and felony offenses.¹⁹ He is currently on a low level of supervised probation for his 2010 convictions.²⁰

¹⁵ AG ¶ 21.

¹⁶ AG ¶ 22(c).

¹⁷ AG ¶22(a).

¹⁸ The individual acknowledges his . . . alcoholism . . . , provides evidence of actions to overcome the problem, and has established a pattern of abstinence.

¹⁹ See AG ¶ 31(a).

²⁰ AG ¶ 32(d).

Since his last arrest in 2010, he has not had any additional criminal charges. Now 34 months sober and more mature, it is unlikely he will engage in criminal conduct in the future. Because Applicant's sobriety has caused a marked shift in his personal ideology and behavior, his past criminal behavior is not an indicator of his current security worthiness. Although Applicant will remain on some level of court-ordered supervision until at least October 2015, this is not an indication that he cannot be trusted with classified information. On the contrary, his favorable probation record shows his ability and willingness to comply with rules and regulations. Furthermore, Applicant has demonstrated a positive work history since his last arrest as well as a solid record of rehabilitation. Accordingly AG ¶¶ 32(a)²¹ and (c)²² apply, mitigating the criminal conduct concerns raised in this case.

Whole-Person Concept

I have no reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. Applicant's history of alcoholism and his associated criminal record is extensive. He does not minimize the seriousness or extent of either. Applicant's outlook on life since becoming sober shows a much-needed increase in his level of maturity. He values the positive changes in his life since he stopped drinking and is keenly aware of everything he stands to lose if he reverts to his former lifestyle. Because of his candor about his alcoholism and recovery, Applicant has maintained the support of his employer, is performing well in his job, and is considered a valuable employee. It is impossible to predict whether or not an individual will relapse, but in this case Applicant has made significant changes to his lifestyle to support his sobriety, which decreases the likelihood.

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 J:	FOR APPLICANT
Subparagraphs 1.a - 1.k.:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

²¹ So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

²² There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

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 access to classified information. Clearance is granted.

Nichole L. Noel
Administrative Judge