



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



In the matter of:)
)
) ISCR Case No. 10-09767
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, alcohol consumption, but he did mitigate the concerns under Guideline H, drug involvement. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption and Guideline H, drug involvement. DOHA acted 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 after September 1, 2006.

Applicant answered the SOR on May 14, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 29, 2012. The FORM was mailed to Applicant and he received it on July 24, 2012. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a reply. The case was assigned to me on September 24, 2012.

Findings of Fact

In Applicant's answer to the SOR, he admitted allegations ¶¶ 1.c - 1.d and 2.a – 2.d. He denied ¶¶ 1.a, 1.b, and 1.e of the SOR. The admissions will be treated as findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is 44 years old. He has been divorced once and either is separated or divorced a second time (the record is unclear). He has two children from his first marriage. He has worked as a software engineer for a defense contractor since October 2009. He has a master's degree. He has no prior military service and has not previously held a security clearance. He was the subject of a favorable public trust determination by another government agency (AGA) in 2006.¹

Applicant's conduct raised in the SOR includes: (1) consuming alcohol to the point of intoxication from his high school years to the present; (2) receiving substance abuse counseling from March 2009 through August 2011, where he was diagnosed with alcohol dependence; (3) receiving inpatient substance abuse treatment from May through June 2009, where he was diagnosed with alcohol and cannabis dependence; (4) receiving outpatient substance abuse treatment from June through August 2009, where he was diagnosed with alcohol dependence; (5) continuing to consume alcohol despite his alcohol dependence diagnosis (SOR ¶¶ 1.a – 1.e.); (6) using marijuana from January 2003 through June 2009; (7) using cocaine from January 2003 through May 2009; (8) being diagnosed as cannabis dependent (see (3) above); and (9) purchasing marijuana and cocaine (SOR ¶¶ 2.a – 2.d).²

Applicant first started drinking alcohol when he was in high school. Prior to last year, he became intoxicated at least once a week. He usually drank in social settings with family and friends. He drank both beer and wine. He did not know how much alcohol it took for him to become intoxicated, but at some point he was drinking up to 12 beers on an almost daily basis. At a certain point, the drinking was depressing him to the extent that he sought out treatment in March 2009.³

¹ Items 4, 5, 7.

² Item 1.

³ Items 5, 6.

Applicant was seen on an outpatient basis by a licensed clinical psychologist from a recognized substance abuse program starting in March 2009. He was given an initial diagnosis of, among other things, alcohol dependence. During the course of this outpatient treatment program, he was admitted to an inpatient program from May through June 2009. He was given a discharge diagnosis by a physician of alcohol and cannabis dependence. Additionally, his prognosis was described as “guarded”. He followed his inpatient treatment with an outpatient program from June to August 2009. No records were made available from this treatment program, but Applicant admitted to attending this program in a statement to a DoD investigator and in his answer to the SOR. In August 2009, he resumed counseling session with the clinical psychologist he first saw in March 2009. Those counseling sessions were on a regular basis (sometimes weekly, sometimes longer) and lasted until he moved out of the area because of a job move in August 2011. At his last session before the move, his psychologist recommended that he get involved with Alcoholic Anonymous (AA) meetings upon arrival and find a therapist in a timely manner. There is no evidence of continued counseling at his new location.⁴

Applicant admitted that after his relocation in August 2011, he began drinking alcohol again. He drank on a number of occasions in the evenings before he went to bed. He claims to have stopped drinking again and resumed attending AA meetings beginning in November 2011. He described his resumption of drinking as, “a brief relapse between August 18, 2011 and November 29, 2011.” He claims a desire to “pursue continuous sobriety the remainder of my life.”⁵

Applicant used marijuana in college during the 1980s. He also admitted to distributing marijuana to his friends at that time. He was a habitual marijuana user from January 2003 until May 2009. He used on weekends at home and for recreational purposes. He either rolled joints or smoked from a pipe. His last use of marijuana was in May 2009 before he entered the inpatient substance abuse program. He has not used marijuana since then. He also used cocaine between five and ten times between January 2003 and May 2009. He used it recreationally at parties or while camping. He also contributed to buying the cocaine. He has not used cocaine since he entered the inpatient substance abuse program in May 2009.⁶

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

⁴ Items 3, 5, 7, 8.

⁵ Items 3, 5.

⁶ Item 5.

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, 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, and 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 that an applicant may deliberately or inadvertently fail to 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 and considered the following relevant:

(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 dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's pattern of drinking, his diagnosis of alcohol dependence in March and June 2009, and his resumption of alcohol consumption beginning in August or September 2011, after he received alcohol treatment, support the application of all the above disqualifying conditions.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and considered the following relevant:

(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); 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.

Applicant has a demonstrated pattern of alcohol abuse related back many years. These incidents were not infrequent, nor did they happen under unusual circumstances. Applicant recently used alcohol despite receiving alcohol treatment, thus he has not established that similar incidents are unlikely to recur. AG ¶ 23(a) does not apply.

Applicant was diagnosed as alcohol dependent in March and August 2009 by two different medical providers. Applicant resumed drinking again from September 2011 to November 2011 and has not resumed counseling. He claims to have resumed AA participation, but provided no supporting evidence of such participation. With his resumption of alcohol consumption less than one year ago, and with an alcohol dependence diagnosis, he has not established a pattern of abstinence. AG ¶ 23(b) does not apply.

Although Applicant completed an alcohol treatment program, he has not continued his abstinence and there is a lack of evidence of AA participation. He also did not provide evidence of a favorable diagnosis by a medical professional. AG ¶ 23(d) does not apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and considered the following relevant:

- (a) any drug abuse;
- (b) illegal drug possession, including...purchase, sale, or distribution; and
- (d) diagnosis by a duly authorized medical professional (e.g., physician, clinical psychologist or psychiatrist) of drug abuse or drug dependence.

Applicant used marijuana and cocaine on a number of occasions. He also purchased cocaine and marijuana for his own use. In August 2009, he was diagnosed as cannabis dependent. I find the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and considered the following relevant:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's use of drugs was frequent, particularly marijuana, and fairly recent (last use May 2009). His period of abstinence is sufficient to demonstrate Applicant's intent not to use in the future. He completed his substance abuse program in May 2009 and has remained abstinent from marijuana and cocaine use since then. AG ¶ 26(a) does not apply, and AG ¶¶ 26(b) and 26(c) both apply.

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. I considered Applicant's age,

education, his 2009 diagnosis as being alcohol dependent, and his recent resumption of drinking after treatment and two years of sobriety. I also considered Applicant's total abstention from marijuana and cocaine since his treatment in 2009. Although Applicant mitigated the drug involvement concerns, he has not presented sufficient mitigating evidence to overcome the alcohol concerns stated in the SOR.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement, but failed to mitigate the security concerns arising under Guideline G, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge