



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-10679
)	
Applicant for Security Clearance)	

Appearances

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

06/07/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Alcohol Consumption and Criminal Conduct concerns. He had 12 alcohol-related criminal incidents from 1989 to 2009. He has gone through alcohol treatment in the past and afterwards continued to drink. He has been diagnosed as alcohol dependent. Although he has been sober now for over two years, this period of abstinence is insufficient to mitigate the concern raised by his long history of alcohol dependency and alcohol-related criminal conduct. Clearance is denied.

Statement of the Case

On January 30, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct).¹ On February 21, 2012, Applicant submitted his Answer and requested a hearing.

¹ DOHA took this action under Executive Order (EO) 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 implemented by the Department of Defense on September 1, 2006.

On April 10, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on April 19, 2012 and, after coordinating with the parties, scheduled the hearing for May 22, 2012. At hearing, Department Counsel offered Applicant's security clearance application (SCA) and interrogatory responses, which were admitted as Government Exhibits (GE) 1 and 2, respectively. Applicant appeared at the hearing, testified, and called several witnesses. He also offered two documents noting his compliance with the terms of his court-mandated alcohol safety program, which were admitted as Applicant's Exhibits (AE) A and B. The transcript (Tr.) was received on June 4, 2012.

Findings of Fact

Applicant is in his late forties. Since 2009, he has been employed by a federal contractor as a quality assurance inspector. His supervisor and manager both testified to Applicant's stellar performance and dependability. During the hiring process, Applicant was upfront and candid about his alcohol-related issues.²

Applicant recently married for the third time. He has two adult children from a previous marriage, and is close to his stepchildren. His wife emotionally testified regarding the pain their family went through following Applicant's last DUI in 2009. She also testified to the changes she has seen in Applicant since his latest conviction, not the least of which has been Applicant's dedication to his sobriety and overall recovery.³

Applicant started drinking alcohol when he was twelve. His excessive alcohol use has led to twelve separate alcohol-related criminal incidents since 1989, including seven DUIs. His excessive alcohol use also was the basis for his discharge from the military and contributed to his use of illegal drugs. Applicant has attended both inpatient and outpatient treatment programs, but continued to drink afterwards.⁴

Applicant's last DUI arrest took place in 2009. After the arrest, Applicant completed a 30-day inpatient treatment program, where he was diagnosed as alcohol dependent. He was subsequently convicted of DUI and his sentence included probation that is scheduled to end in September 2012.⁵

Applicant last consumed alcohol in about January 2010. He had argued with his wife earlier in the day and the stress led him to drink. He had two beers before calling his sponsor from Alcoholics Anonymous (AA). His wife caught him drinking and warned him that she would leave him if he were to start drinking again. Since this last drink of alcohol, Applicant has used his AA support system to avoid drinking. He regularly

² Tr. at 32-46.

³ Tr. at 46-56, 96-97.

⁴ Tr. at 75-85, 91-94.

⁵ Tr. at 68-72, 85-90; GE 1; GE 2; AE A; AE B.

attends AA meetings and is active in AA. He was unable to stop drinking in the past because he was chasing the “dream” of being able to drink like a “normal individual.” He now recognizes that he cannot consume any alcohol due to his alcoholism.⁶

Applicant has held a security clearance in the past. He has never mishandled or otherwise compromised classified information. He disclosed his alcohol-related criminal incidents on his SCA. During the ensuing background investigation, Applicant fully discussed his history of substance abuse.⁷

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 to be 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, administrative judges apply the guidelines 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15.⁸ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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

⁶ Tr. at 50-52, 57-68, 72-75, 86-87, 94.

⁷ Tr. at 96; GE 1; GE 2.

⁸ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) (“Once an applicant’s SOR admissions and/or the Government’s evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.”).

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline G, Alcohol Consumption

The concern regarding excessive alcohol consumption is articulated at AG ¶ 21:

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.

Applicant's twenty-plus year history of alcohol dependency, which has resulted in seven DUI convictions and five other criminal charges, directly implicates this concern. The evidence also establishes the following disqualifying conditions under AG ¶ 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;

(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

(d) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program.⁹

An applicant may mitigate the excessive alcohol consumption concern by establishing one or more of the following mitigating conditions under AG ¶ 23:

(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

⁹ ISCR Case No. 07-00558 (App. Bd. Apr. 7, 2008) (Application of AG ¶¶ 22(d) and (e) not limited to enumerated professionals).

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.

Applicant successfully completed the inpatient treatment program following his last DUI arrest in 2009. He actively participates in AA and has been abstinent since 2010. He candidly testified about his battle with alcoholism and appears to be on the right track to recovery. However, in light of Applicant's long history of excessive alcohol use and repeated relapses following treatment, he failed to establish that alcohol will not be a security concern going forward. Accordingly, although AG ¶¶ 23(b) and (d) apply, they are insufficient to mitigate the significant security concerns raised by Applicant's long history of excessive alcohol consumption.¹⁰

Guideline J, Criminal Conduct

Applicant's long battle with alcoholism has led to twelve alcohol-related criminal incidents. This history of criminal conduct itself raises a concern about Applicant's "judgment, reliability and trustworthiness."¹¹ Although Applicant's last criminal incident was three years ago, it is too soon to conclude that a similar incident will not recur due to Applicant's history of alcohol dependency and repeated relapses.¹² Accordingly, at this point, Applicant's alcohol-related criminal conduct remains a concern.¹³

¹⁰ See e.g., ISCR Case No. 06-08708 (App. Bd. Dec. 17, 2007) (Applicant failed to mitigate concern raised by his diagnosis of alcohol dependency and abuse of alcohol from 1980s to 2006).

¹¹ AG ¶ 30. Specifically, I find the evidence establishes AG ¶¶ 31(a), (c), and (d).

¹² AG ¶ 32(d).

¹³ Applicant's arrests in 1995 and 1996 were not alcohol related and are mitigated by the passage of time. AG ¶ 32(a) applies to these offenses. I resolve SOR ¶¶ 2.c and 2.d in Applicant's favor.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁴ I gave due consideration to Applicant's history of properly handling classified information and his honesty throughout the security clearance process. However, security clearance adjudications are by their very nature "predictive judgments," where an applicant's past history is the best indicator of future conduct, and the protection of national security is always the paramount concern.¹⁵ Applicant's past history of problems with alcohol continues to raise doubts about his security suitability. Hopefully, he will continue on his current path of recovery and be able to establish his security worthiness in the near future.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline G (Alcohol Consumption)	AGAINST APPLICANT
Subparagraphs 1.a through 1.p:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Subparagraphs 2.c and 2.d:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

¹⁴ (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.

¹⁵ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988)].