



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



In the matter of:)
)
) ISCR Case No. 10-10782
)
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: Heather James, Esq.

02/24/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s maturation in tandem with the amount of time that has elapsed since he last abused drugs or alcohol is sufficient to mitigate the security concerns. Clearance is granted.

Statement of the Case

On September 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement, and Guideline E, personal conduct. 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 as of December 1, 2006.

DOHA received Applicant's answer on September 21, 2011, admitting all of the allegations and requesting a hearing. On November 4, 2011, the case was assigned to me. On December 16, 2011, a notice of hearing was issued scheduling the case for January 12, 2012. At the hearing, I received into evidence three Government exhibits marked as Government Exhibits (GE) 1 through 3, and four Applicant Exhibits, marked as AE A through D. Also, I considered the testimony of Applicant, one expert witness, and three character witnesses. The transcript was received on January 22, 2012.

Findings of Fact

Applicant is a 30-year-old man. He earned a bachelor's degree in 2007, majoring in computer science and minoring in math, and a master's degree in software engineering in 2009. (Tr. 117) Since October 2008, he has been working as a software engineer for a defense subcontractor. (Tr. 76)

Applicant is highly respected on the job. According to his second-line supervisor, the company president, Applicant has an excellent work ethic and is "one of [his] top young engineers." (AE C at 1) Applicant is a mentor to the other junior employees, and "in some cases even [mentors] more senior people." (Tr. 78) Since Applicant has been on the job, he has received annual performance bonuses double the company average. (Tr. 77) Applicant finished his master's degree while he was working.

Applicant has a history of abusing drugs and alcohol. From 1998, at age 16, to 2006, Applicant abused multiple drugs, including, but not limited to marijuana, cocaine, LSD, and hashish. (Answer at 1) The drug he used the most was marijuana, using it ten times in 1998, and numerous times between 1999 and 2003. Although his marijuana use gradually decreased by 2004, he began using cocaine in 2005, using it nine times in the course of a year. Applicant's drug involvement also included an attempt to distribute marijuana in 2001, and the abuse of legal prescription drugs between 1999 and 2001.

Applicant's drug abuse was so troubling to his parents that they withdrew him from college in 1999 and enrolled him in an intensive, three-month outpatient substance abuse program. (Answer at 2; Tr. 100) The program included group sessions three times per week. Applicant finished the program, but continued using illegal drugs. (GE 3 at 1) Applicant stopped using illegal drugs in 2006. (GE 2 at 9)

Applicant began using alcohol about the same time he started abusing drugs. In high school, he drank approximately six beers per sitting approximately twice per week. His use gradually increased to approximately ten beers consumed, three days per week. (Answer at 2)

Applicant had 15 to 20 alcohol-related blackouts between 1998 and 2005. Although he has never been arrested and charged with driving under the influence of alcohol, he admits to driving while intoxicated between 10 and 15 times over the years. On one of these occasions, he hit a friend with his car while driving in a parking lot, resulting in ligament damage to his friend's knee. (AE 3 at 2)

Applicant drank to intoxication approximately 20 times between 2008 and 2009. In 2009, Applicant applied with another agency for a top secret security clearance with access to sensitive compartmented information (SCI). He was then drinking about six beers per sitting three to four times a month. (AE B at 6) After disclosing his history of drug and alcohol abuse, Applicant was required to undergo a psychological evaluation. (AE B) In June 2009, a psychologist concluded Applicant had “minimal insight into the risk of continuing to drink alcohol despite having a diagnosis of Dependence and a history of (failed) intensive treatment.” (AE B at 6)

The psychologist diagnosed Applicant with polysubstance dependence. (AE B at 6) He characterized Applicant’s dependence to be in partial remission because “full criteria for dependence ha[d] been met in the past, but [were] not currently met.” (AE B at 6) The psychologist recommended that Applicant begin attending therapy. (Tr. 97) Based on the psychologist’s evaluation and Applicant’s history of drug and alcohol abuse, his application for a security clearance was denied. (GE 3)

After Applicant’s security clearance denial, he began undergoing therapy, as the psychologist recommended. (Tr. 97) Also, after the denial, Applicant stopped drinking alcohol because he “wanted to prove to [him]self and to the Government that [he] didn’t have a problem.” (Tr. 108)

Applicant was abstinent from alcohol for eight months. Since then, he has limited his alcohol consumption to approximately one or two beers every other month. (Tr. 111) He does not keep alcohol in his house. (Tr. 68)

Applicant got married in September 2011. He and his wife recently put a contract on a house. He spends his spare time either with his wife or engaged in athletic activities. (Tr. 95) Applicant continues to meet with his therapist approximately once every three months.

Applicant received an evaluation from another psychologist over the course of two days in June 2011. (Tr. 20) The evaluation consisted of two interviews lasting between 45 minutes to one hour. The evaluation that the psychologist conducted was similar to evaluations he conducted while working for a utility company between 1989 and 2005. During this period, the psychologist performed psychological evaluations of thousands of people each year as part of a security process that the U.S. Nuclear Regulatory Commission mandated for people to obtain access to nuclear power plants. (Tr. 40)

As part of the evaluation, Applicant completed the Washton Institute’s Client Personal History Survey, the Michigan Alcohol Screening Test, and the Alcohol Use Disorders Identification Test. (AE A at 8) These tests are approved by the American Psychological Association, and they are used to gauge alcohol and drug abuse. According to the psychologist, the tests covered the following seven criteria:

One is tolerance; two is withdrawal; three, that the person has progressively taken larger amounts of . . . alcohol than was intended; four;

that there is a persistent desire and/or unsuccessful efforts to cut down; five; that . . . a great deal of time is spent in activities necessary to obtain the substance [and]; seven, the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused and/or exacerbated by the substance. (Tr. 27-28)

The result of each test indicated that Applicant does not have an alcohol problem. (Tr. 22-25)

The tests results were consistent with the psychologist's conclusion that he reached from interviewing Applicant. According to the psychologist, Applicant was "disarmingly honest." (Tr. 27) Moreover, he has taken "very specific and appropriate steps . . . to mitigate concern over the alcohol issue" such as participating in ongoing therapy with a licensed psychologist. (AE A at 2) Ultimately, the psychologist who testified concluded that Applicant is neither alcohol abusive nor dependent, and that he could drink alcohol in moderation. (Tr. 29, 39)

The psychologist who evaluated Applicant in 2011 had not seen the 2009 psychologist's report. When informed during direct examination that the psychologist whom earlier evaluated Applicant reached a different conclusion, he noted that this did not mean that the reports were conflicting, or that one was better than the other. Rather, he reasoned that sometimes people mature over the years, and "start understanding that whatever [they] are doing doesn't really bode well with [their] future." (Tr. 37)

At the hearing, Applicant executed an affidavit promising never to use illegal drugs or drink alcohol in excess in the future. (AE D)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 security clearance.

Analysis

Guideline H, Drug Involvement

Under this guideline, “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” (AG ¶ 24). Applicant was heavily involved with illegal drugs from his mid-teens to his early twenties. His involvement extended to purchasing illegal drugs with the intent to sell them.

In 2009 a psychologist diagnosed Applicant with polysubstance dependence in partial remission. AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(d) “diagnosis of drug abuse or drug dependence by a duly qualified medical profession (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence,” apply.

Applicant has neither used illegal drugs nor abused legal drugs since 2006. Since then, he has finished college, earned a master’s degree, obtained his current job, where he excels, gotten married, and purchased a home. He is now a mature, responsible young man who has memorialized his intention never to resume illegal drug use in an affidavit. The following mitigating conditions under ¶ 26 apply:

- (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; and
- (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 are used;
 - (3) an appropriate period of abstinence;
 - (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has mitigated the Guideline H security concern.

Guideline G, Alcohol Consumption

Under this guideline, “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 ¶ 21). Applicant drank alcohol excessively beginning in 1998, and did not significantly reduce his pattern consumption until after his security clearance application with another agency was denied in mid-2009. He drove while intoxicated on multiple occasions and once accidentally hit his friend with his car while driving intoxicated. AG ¶¶ 22(a), “alcohol 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,” and AG 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,” apply.

The psychologist who evaluated Applicant in 2009 diagnosed him with polysubstance abuse in partial remission, and alluded to an earlier diagnosis of alcohol dependence. This report is superseded by the 2011 psychologist evaluation concluding that Applicant is neither alcohol abusive nor dependent. AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence,” does not apply.

Much of Applicant’s alcohol abuse can be attributed to youthful immaturity. However, his consumption level was significant enough for his parents to withdraw him from college and enroll him in treatment in 1999. Also, although Applicant began decreasing his use as he matured, he was still occasionally overindulging in alcohol as recently as mid-2009.

Since mid-2009, Applicant has drastically reduced his alcohol consumption, flourished on his job, and gotten married. Also since then, he began undergoing counseling from a therapist with whom he continues to see approximately once every three months. As noted above, the psychologist who evaluated him in 2011 concluded that Applicant is neither alcohol dependent nor abusive. Under these circumstances, a significant enough period of time has elapsed to apply AG ¶¶ 23(a), “so much time has passed . . . that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” and 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).”

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information” (AG ¶ 15). Applicant’s history of drug and alcohol abuse triggers the

application of AG ¶ 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities, which, if known, may affect the person’s personal, professional, or community standing. . . .” Applicant mitigated the security concern under Guideline E for the same reasons set forth in the Guidelines H and G analyses above.

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.

From his teens to his mid-twenties, Applicant abused drugs and alcohol with impunity. As he matured over the years, he quit using illegal drugs and significantly reduced his alcohol consumption. These facts, together with the strong recommendation from his supervisor and the unequivocal conclusion from the psychologist who evaluated him in 2011 that he is neither alcohol abusive nor dependent, compel me to conclude that Applicant has mitigated the security concerns.

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 H:	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge