



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



In the matter of:)
)
) ISCR Case No. 10-11084
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

02/28/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On May 26, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD adjudicators could not make the affirmative findings required to issue a security clearance. On August 20, 2012, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG) effective in DOD on September 1, 2006.

Applicant answered the SOR on August 31, 2012. He admitted the six allegations under Guideline G with explanations. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 5, 2012, and the case was assigned to me on December 7, 2012. DOD issued a Notice of Hearing on December 14, 2012, for a hearing on January 15, 2013. I convened the hearing as scheduled. The Government offered seven exhibits, which I marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 7. Applicant and one witness testified. Applicant offered one exhibit which I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. I received the transcript of the hearing (Tr.) on January 23, 2013.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is a 32-year-old high school graduate. He served six years on active duty in the Marine Corps from 2000 to 2006 as a light armored reconnaissance specialist. He served in combat in Iraq and was awarded the combat action medal. He received an honorable discharge. He is married with two children. He is on suspension from his position as a security officer with a defense contractor pending the outcome of his request for a security clearance. He also has an offer of employment from another defense contractor for a position as an electronics engineer, which also requires access to classified information. (Tr. 11-13, 42-44; Gov. Ex. 1, e-QIP, dated May 26, 2010)

The SOR alleges that Applicant was apprehended for driving while intoxicated in 2002 (SOR 1.a); was admitted for treatment to an alcohol treatment facility and diagnosed as alcohol dependent in 2004 (SOR 1.b); was treated at a Veterans Affairs hospital in 2010 and advised to abstain from alcohol consumption (SOR 1.c); received a recommendation from a psychiatrist in August 2011 to seek treatment for addictive behaviors and advised to abstain from alcohol use (SOR 1.d); was advised in November 2011 to maintain abstinence from alcohol since social drinking placed him at risk for relapsing into alcohol dependence (SOR 1.e); and that he continues to drink alcohol socially, sometimes to excess (SOR 1.f).

In December 2002, Appellant attended a party with friends and drank a number of alcoholic beverages. After leaving the party, he got lost and became frustrated. He continued to drink some alcoholic beverages he had in the car with him, and was stopped by police. He failed a blood alcohol test with a blood alcohol content (BAC) reading of .19, and was arrested for driving while intoxicated. Before being sentenced for the offense, he voluntarily attended and completed an alcohol counseling program. He was sentenced to probation before judgment. He completed his probation. There is

no information concerning any other alcohol-related offense. (Tr. 20-21; Gov. Ex. 3, Interrogatory, at 9)

Applicant was diagnosed as alcohol dependent by alcohol counselors at the alcohol counseling program he attended after his driving while intoxicated offense. He initially attended five counseling sessions a week for approximately two months. He received antabuse to help with alcohol dependence. He then attended approximately 70 aftercare sessions. He completed his rehabilitation. However, based on his personal experience and knowledge of himself, Applicant continued to drink alcohol occasionally since he did not consider himself as alcohol dependent. (Tr. 21-25; Gov. Ex. 5, Discharge Summary, dated August 10, 2010)

Applicant last drank to the point of intoxication in 2009. He consumed alcohol and used cocaine after arguing with his wife. This was the only time that he used cocaine. He was having problems maintaining his alcohol abstinence, so he voluntarily entered an inpatient treatment program from April 27 to May 5, 2009. He completed the inpatient program with a discharge prognosis of "guarded but optimistic." He voluntarily returned for more inpatient treatment from July 21 to July 26, 2009. He then attended and completed about six sessions of an aftercare treatment program. He stopped the aftercare program when he no longer had insurance coverage to pay for care. The discharge diagnosis was substance abuse and post-traumatic stress disorder (PTSD). Applicant has continued to see and receive treatment from the medical doctor who treated him in the program. He plans to continue this treatment in the future. (Tr. 25-38; Gov. Ex. 6, Discharge Summary, dated July 27, 2009)

In 2010, Applicant was diagnosed at a VA hospital with PTSD based on his combat service in Iraq. As part of his treatment, he was advised not to consume alcohol since it was contrary to his PTSD condition. He continued his treatment at the VA hospital until he moved from the location of the VA hospital to his present location. His pending job offer is located near the VA hospital, and he intends to return to the aftercare programs for PTSD and alcohol use. (Tr. 38-39)

He volunteered for evaluation by substance abuse counselors at his present location. This location is near where he was raised and where his parents and extended family are located. The counselor noted that he reports his drinking as only social. He was reminded that with a diagnosis of alcohol dependent and PTSD, he should remain abstinent from alcohol. The counselor opined that his condition is stable, but he is at risk of relapse without preventive work. She noted that he has a strong support network and is connected to his mental health provider, and that he maintains his mental health treatment. (Tr. 27-31; Gov. Ex. 4, Assessment, dated November 28, 2011)

Applicant understands from his counseling and treatment programs that he should not use alcohol. He has not been in trouble based on alcohol use since his DUI in 2002. His last consumption of alcohol was two beers in December 2012 with his brother while they watch a football game. Before that he had one beer in August 2012 after playing golf. He did not consume alcohol for a long period while in the VA inpatient

and aftercare treatment programs. He continues to try to limit his alcohol use to zero. He is constantly trying not to consume any alcohol even though he may on occasion have a beer or two. He no longer has contact with his former alcohol drinking friends. He has a support group that is mainly the other veterans in his PTSD support group at the VA hospital. They go fishing and attend church functions together. He continues to work with his church volunteer group. He continues to see his treating psychiatrist and counselor. He is on medication for PTSD. His future plans are to continue to stay around people that do not drink alcohol, stay with his church and VA support groups, and be "plugged into" VA treatment programs for substance abuse and PTSD. The psychiatrist that has been treating Applicant since 2009 determined that Applicant is fit for duty and does not have a condition that could impair his judgment, reliability, or ability to properly safeguard classified national security information. (Tr. 25-27, 39-50; Gov. Ex. 7, Evaluation, dated July 21, 2012)

Applicant's uncle testified that he has known Applicant all of his life. Applicant's family lived across the street from his family and the families interacted continuously. Applicant has been living back in this area while he waits the outcome of his request for access to classified information. As a youth, Applicant loved to play all sports. He was always good-hearted, trustworthy, and reliable. When Applicant returned from serving in combat with the Marines, he was more reclusive and introverted. He did not interact as much with people as he did in the past. He had a difficult time readjusting. But the witness has seen Applicant turn his life around. He has never seen Applicant intoxicated and has not seen him drink alcohol. The witness had been a bartender at one time so he understands excess alcohol consumption. (Tr. 51-64)

The owner of the company where Applicant previously was employed, a former Navy officer, wrote that he hired Applicant for a position with his company knowing that he suffered from PTSD. He teamed Applicant with another individual who suffered from combat-related PTSD so that he had leadership and mentoring. The arrangement worked, and Applicant was a successful employee who exhibited a high degree of productivity and motivation. Applicant is trustworthy and has proven that he is ready for increased responsibility. (App. Ex. A, Letter, dated January 14, 2013)

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 must be considered 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, the 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 for obtaining 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 or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

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. (AG ¶ 21)

Applicant has been diagnosed by medical professionals and alcohol counselors as alcohol dependent and admits he consumed alcohol after receiving the diagnosis of alcohol dependence. He had a driving while intoxicated offense and has received both inpatient and aftercare treatment after excess consumption of alcohol. Applicant’s admissions and his diagnosis are sufficient to raise Alcohol Consumption Disqualifying Conditions 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); 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); AG ¶ 22(d) (diagnosis by a duly qualified medical

profession (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence); AG ¶ 22(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); and AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).

Applicant was involved in combat operations as a Marine in Iraq and has been diagnosed with post-traumatic stress disorder (PTSD) as a result of that combat. He voluntarily admitted himself twice for PTSD and alcohol-related inpatient and aftercare treatment programs. He completed all programs after being diagnosed as alcohol dependent by both a medical professional and clinical social worker. He relapsed into alcohol abuse after being diagnosed but he voluntarily reentered treatment. While Applicant's excessive alcohol consumption may lead to questionable judgment or failure to control impulses and raises questions about his reliability and judgment, the fact that he voluntarily sought rehabilitation treatment and counseling and received advice from counselors not to consume alcohol does not in itself indicate questionable judgment or failure to control impulses. The fact that he received guidance on alcohol consumption does not question Applicant's reliability and trustworthiness. In fact, his voluntarily seeking treatment and his readmission to treatment programs show that he is working to change his habits and lifestyle. The advice he received as a result of rehabilitation and counseling as alleged in SOR allegations 1.c, 1.d, and 1.e were the results of his voluntary actions to address his alcohol consumption issues and do not rise to the level of security concerns. I find for Applicant as to SOR allegations 1.c, 1.d, and 1.e.

I considered Alcohol Consumption Mitigating Conditions 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); AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)); AG ¶ 23(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 AG ¶ 23 (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 licensed 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 the 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.

Applicant has been diagnosed with PTSD, and admits to being diagnosed as alcohol dependent in 2003. He has consumed alcohol on at least three occasions after the diagnosis. He was last intoxicated in 2009, and consumed some alcohol in August 2012 and December 2012. He refrained from using alcohol since 2009 except for these two occasions. He entered and completed two inpatient and aftercare alcohol treatment programs, one of which was after the intoxication in 2009. He continues to see his treating medical professional for his PTSD and alcohol issues. He has strong support groups in the VA PTSD program.

Applicant has established a pattern of abstinence and has shown sufficient evidence of action taken to overcome his alcohol consumption problems. The low-level of alcohol consumption since 2009, his continued efforts to seek treatment when he needs counseling, his efforts to be treated for and to deal with his PTSD, his work with his PTSD support group, and his continued medical and professional counseling show that Applicant has changed the circumstances in his life. His almost total abstinence from alcohol consumption indicates that he can control his alcohol consumption impulses, and establishes a favorable opinion of his reliability and trustworthiness. The evidence shows that Applicant has been reformed or rehabilitated, and his history shows that he will continue to not consume alcohol to excess. I find that Applicant has mitigated security concern for alcohol consumption and that he will not present a security concern based on his alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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 six years of honorable service on active duty in the Marine Corps and his combat service in Iraq. I considered that Applicant is a good employee and his job performance is excellent. Applicant's admits to having PTSD as a result of combat action and is alcohol dependent. He attended inpatient rehabilitation and aftercare programs, but he continued to drink alcohol. He was last intoxicated in 2009 and has had only two incidents of limited alcohol consumption since then. He followed treatment plans to control his excessive alcohol consumption. Applicant's history shows that he is reliable and trustworthy and has the ability to protect classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated alcohol consumption 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 G: FOR APPLICANT

Subparagraphs 1.a - 1.f: 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.

THOMAS M. CREAN
Administrative Judge