



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



In the matter of:)
)
) ISCR Case No. 10-11115
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant mitigated security concerns for alcohol consumption and psychological conditions.

Statement of the Case

On April 30, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his 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 preliminary affirmative findings required to issue a security clearance. On April 14, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G and psychological conditions under Guideline I. 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 May 6, 2014. He admitted the two allegations of alcohol consumption and the allegation of psychological conditions. Department Counsel was prepared to proceed on June 24, 2014, and the case was assigned to me on June 25, 2014. The DOD issued a Notice of Hearing on July 11, 2014, for a hearing on July 30, 2014. I convened the hearing as scheduled. The Government submitted nine exhibits which I marked and admitted into the record without objections as Government exhibits (GX) 1 to 9. Applicant testified and submitted four exhibits which I marked and admitted into the record without objection as Applicant Exhibits (AE) A through D. I received the transcript of the hearing (Tr.) on August 6, 2014.

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 52-year-old high school graduate who attended a technical school and received a technical engineering certificate. Applicant married in 1983 and his wife died in 1991. They had two children. He married again in 1993 and divorced in 2003. He had two children from this marriage. The children are grown except for the youngest, now 17 years old and living with Applicant. (Tr. 26-27; GX 1, e-QIP, dated April 30, 2010)

After completing technical school, Applicant worked in a Government shipyard completing an apprenticeship program. He worked for the Government as an engineer from 1981 until 1994. He had a series of medical issues with depression and left the Government in 1994 with a disability annuity. After receiving treatment for his depression, he was hired by his present employer in June 2001. He had periods of unemployment during this time for medical reasons. Applicant's government supervisor reports that he has worked as a contract employee in the government office for over a year. He manages confidential information on a daily basis. He is conscientious and motivated and gets along well with his coworkers. He has shown exemplary judgment and responsibility. (Tr. 23-26; AX D, Letter, dated July 24, 2014)

The SOR alleges Applicant consumed alcohol to the point of intoxication from age 15 until at least January 2011 (SOR 1.a), and he continued to consume alcohol to excess and intoxication until January 2011 even though diagnosed as alcohol dependent (SOR 1.b). The SOR alleges that Applicant has been diagnosed with major depression, recurrent which requires medication to manage. (SOR 2.a) Applicant admitted the three allegations. The Government presented Applicant's medical records from his primary care physician, other doctors, and psychological and substance abuse

medical clinics. Applicant's response to interrogatories on his substance abuse and depression were provided along with an affidavit from Applicant. These documents establish the alcohol consumption and psychological conditions security concern as stated in the SOR. The Government presented information from the Diagnostic and Statistical Manual of Mental Disorders that there is a connection between alcoholism and depression. (GX 2, Manual, Forth Edition, 2000; GX 3 through 9, Records, various dates)

Applicant drank alcohol when he was a teenager and was intoxicated a few times. However, he had a bad experience with alcohol so he stopped drinking until a few years after his wife died in 1991. He was a social drinker, wine or beer occasionally, when his first wife was alive. Applicant developed severe depression and anxiety in 1994, shortly after his wife died. He received medical treatment from his primary care physician for his depression. His company had less work for him and he worked part time or was laid off. He also took time from work because of the depression. During this time, he consumed alcohol sometimes to excess. He did have some long periods when he was working steadily and not depressed and not drinking alcohol. Since he was working less, he started to drinking alcohol to help him control depression. He did not start to intensely consume alcohol until 2004 when he was 42 years old. He would have periods when he could control his consumption of alcohol and then periods when his alcohol consumption was out of control. He knew he was diagnosed as alcohol dependent, but he continued to consume alcohol. (Tr. 28-32, 57-59)

In approximately 2005, he was consuming about a bottle of wine a day along with other alcoholic drinks. By the time Applicant was admitted into alcohol detoxification in January 2011, he was consuming about a fifth of vodka and eight beers a day. He was drinking alcohol almost day and night. He had given up trying to control his consumption of alcohol. At the time, he did not know why he was drinking and not conscious of what he was doing. His employer sent him home because he appeared to be under the influence of alcohol, and had an alcoholic odor on his breath. This employer rehired Applicant after he completed detoxification as noted below.

He was evaluated by a physician in March 2010 and diagnosed as alcohol dependent with major depression. He continued to consume alcohol. His primary care physician referred him to a substance abuse clinic where he was seen by a licensed substance abuse counselor. She diagnosed Applicant as alcohol dependent, with major depression, recurrent. He continued to consume alcohol. He was seen by the substance abuse counselor in November 2010. He said he was cutting back on his consumption of alcohol, but he was still consuming alcohol. (Tr. 32-34; GX 3, Evaluation, dated March 24, 2010; GX 4, Evaluation Notes, dated November 18, 2010; GX 9, Clinical Notes, dated December 12, 2011)

Applicant continued to drink alcohol. Applicant saw his primary care physician and was intoxicated in December 2010 during a doctor visit. His doctor talked to him about his alcohol consumption. Applicant did not cooperate with the doctor because he did not believe his consumption of alcohol was out of control, that he was alcohol

dependent, or that the medication he was taking for depression was working. On January 19, 2011, Applicant realized that his alcohol consumption was out of control and he needed help. He contacted his doctor and allowed him to make arrangements for him to enter an alcoholic detoxification facility the next day. Applicant entered the facility on January 20, 2011. The admissions medical examination showed deteriorating medical condition from alcohol. He was diagnosed with alcohol dependence, alcohol withdrawal syndrome, alcohol intoxication, major depression recurrent. Applicant was hospitalized for five days to undergo alcohol detoxification. He talked to the medical professionals and other about how he could recover from alcoholism. He participated in the detoxification program and was discharged on January 24, 2011. His condition at discharge was fair and his prognosis was guarded because of his poor compliance in the past with medical recommendations. He was referred to an intense substance abuse program. (GX 5, Clinical notes, dated January 24, 2011; GX 8, Affidavit, dated January 25, 2011)

While undergoing detoxification, Applicant met a person in the hospital who told him about Alcoholics Anonymous (AA). Initially he was not interested in attending AA. However, he did not want to leave the hospital without a treatment program, because he knew he needed help for his alcohol problem. After completing detoxification, Applicant attended an intense substance abuse outpatient program for approximately a month. The outpatient program consisted of at least three meetings a week. Each session took about three hours. He gained great knowledge about alcoholism from the program. His attendance and participation was good. The discharge recommendations were for Applicant to participate in an aftercare program once a week for at least six months to a year, and to participate in the AA 12-step process. (GX 6, Clinical Notes, date January 25, 2011)

Applicant attended some AA meetings while in the outpatient program. Applicant initially did not enjoy the AA meetings. He was upset and angry about attending the meetings. After a few weeks attending AA meetings, he started to feel he was not alone with a problem. He was with people with his same problem and they understood his problem because they also had the problem. He did not know if they could help him since they were sober and he believed he could not go any length of time without alcohol. He wanted to learn enough so he could keep on track and still enjoy drinking. About attending AA sessions and listening for about a week, Applicant understood he was an alcoholic and that he could never drink again. His counselor helped him find an AA group and a sponsor. He started to do the simple actions in AA and progressed in the program. (Tr. 38-41)

Applicant participated in the AA process even though he did not like the religious aspects of the program. He was a hard-working willing participant in the program. He changed sponsors until he found the right sponsor for him. He had knowledge of how the program worked and his options. He started to do the AA action plan and do take the personal inventory part of the program. His interest in being sober made a difference in his view of issues. He started to learn about himself. The AA action plan and it made a difference in his life. As he continued to do the action plan, there was a

remarkable change in his life. He had a new view on friendships, he told his story in meetings, and he heard others talk about what he was experiencing. He started attending other AA meetings and sharing his views and experiences with others. He shared his story with others undergoing detoxification. (Tr. 41-44)

There were ebbs and flows in his attitude and practice. He stopped doing some practices and daily actions, thinking that he was fine and did not need to take the action plan steps. Within a few days of stopping, he realized he could not stop doing the AA recommended practices and he needed to continue them. He found it was a fascinating way to live and he enjoyed doing it. He had always searched for a meaning in his life, but he felt that there was no meaning to his life and alcohol became so important. The doctors tried medications, and experimented with what might work for him. When they changed his medication he had terror and panic attacks. When he had anxiety, depression, and terror attacks, he felt only alcohol gave him ease and comfort. He was terrified with the process and the medication. He now finds all of his comfort from attending and participating in AA meetings and programs. Initially, he attended meetings almost daily. Now he does some type of AA activity daily. He attends at least three meetings a week, speaks to groups and individuals, particularly those in detoxification treatment. He talks and counsels someone in the program almost daily. He learns about himself and alcoholism from talking and working with others with alcohol issues. His AA sponsor reports that Applicant has been continuously clean and sober since January 19, 2011, and that he is an active participant in AA program. (Tr. 44-48, 60-64; AX C, Letter, dated July 29, 2014).

In the last year, Applicant met periodically with his substance abuse counselor who was also assisting his son with an eating disorder. A few months ago, he had an anxiety attack and she counselled him. He has been seeing her on a biweekly basis since. He also talks to his primary care physician concerning his medications. Applicant has not had a drink of alcohol since January 19, 2011. He knows he is alcoholic dependent and cannot drink alcohol. He recognizes the signs and signals about his illness returning and immediately seeks assistance from his doctors. (Tr. 48-51, 59-60; AX B, Substance Abuse Counselor's letter, dated July 23, 2014).

Applicant has had episodes of anxiety and depression which is connected to his alcoholism. His doctor prescribed medication and it worked well for a long time. When the doctors tried to decrease his medications over concerns for side effects, he started to have anxiety and depression attacks again. Also after he started AA, he was able to control anxiety and depression without medication through participation in AA. After detoxification and starting with the AA programs, he did not take any medications. The AA program insists that he work the program without medications. In July 2014, he had a small anxiety and depression attack. He recognized the signs and immediately saw his substance abuse counselor and his primary care physician. After he had another anxiety attack a few months later, the doctor started him back on medication. He is on medication now and is following the recommendations and advice of his doctors and substance abuse counselor. His doctor reports he is doing well and his condition is under control. His substance abuse counselor reports that he does not have a condition

that indicates a defect in judgment, reliability, or stability. (Tr. 48-56, 63-71; AX A, Letter, dated July 24, 2014; AX B, Letter, dated July 23, 2014)

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 admitted that he is alcohol dependent and has consumed alcohol after receiving a diagnosis of alcohol dependence. Applicant's medical records verify that he is alcohol dependent and that he consumed alcohol after the diagnosis. There was no information that Applicant had any alcohol-related incidents away from work. There are indications from his employer of incidents at work, requiring them to send him from the job. Applicant's admissions and the information in medical records concerning Applicant's alcohol consumption are sufficient to raise Alcohol Consumption Disqualifying Conditions:

AG ¶ 22(b) (alcohol-related incidents at work, such as reporting to work or duty in an intoxicated or impaired condition, or drinking on the job, 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); and

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).

Applicant has not relapsed back to alcohol consumption since he completed the detoxification and rehabilitation programs in early 2011. Disqualifying Condition AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program) is not raised.

Applicant was a social consumer of alcohol before his wife died in 1991. By 2004, he was a serious heavy consumer of alcohol. He was sent home from work. He was binge drinking alcohol, consuming a bottle of wine a day, ending in 2010 with drinking a bottle of vodka and eight or so beers a day. He was drinking alcohol day and night. He was diagnosed as alcohol dependent by both his doctor and his licensed substance abuse counselor but continued to consume alcohol. He underwent detoxification and successfully completed a residential treatment facility program. From

2004 until January 2011, Applicant consumed alcohol excessively. His excess alcohol consumption may lead to questionable judgment or failure to control impulses and raises questions about his reliability and judgment. However, the fact that the excessive alcohol consumption led to rehabilitation treatment and counseling does not in itself indicate questionable judgment or failure to control impulses and does not question Applicant's reliability and trustworthiness.

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).

These mitigating conditions apply.

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 admits to being alcohol dependent for from 2004 until 2011. He consumed alcohol on various occasions after the diagnosis, and last consumed alcohol and intoxicated in January 2011. His last consumption of alcohol was over three and a half years ago on January 19, 2011. He completed a detoxification program, an intense

substance abuse program and has seen an active participant in AA aftercare programs for the three and a half years. He not only attends meetings but he counsels others and speaks at AA programs. He acknowledges that he is alcoholic dependent. In spite of his alcohol dependence, his work performance is excellent. His employer has kept him on the job and found work for him as he underwent treatment. His government supervisor reports that his job performance is good.

Applicant has established a pattern of abstinence and shown sufficient evidence of action taken to overcome his alcohol consumption problems. Applicant started heavy consumption of alcohol a few years after his first wife died. He was diagnosed as alcohol dependent but continued to consume alcohol. He attended detoxification and rehabilitation programs and is an active participant in AA. He did not immediately participate in AA after detoxification and rehabilitation, but realized he needed the program to assist him in controlling his alcohol dependence. He has not consumed alcohol in over three years. His over three years of abstinence from alcohol and active participation in AA is sufficient to show a change of circumstance. His abstinence from alcohol consumption since completion of detoxification and rehabilitation indicates that he can now control his alcohol consumption impulses. His over three years of abstinence establishes a favorable opinion of his reliability and trustworthiness. The evidence shows that Applicant has been reformed or rehabilitated. I find that Applicant mitigated security concern for alcohol consumption and that he does not present a security concern based on alcohol consumption.

Guideline I, Psychological Conditions

A security concern is raised because certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying or mitigating information under this guideline. (AG ¶ 27)

The Government presented medical records to show that Applicant was diagnosed with anxiety and major depression. Applicant admits he was diagnosed with major depression, recurrent, requiring medication. The medical reports do not indicate any emotional, unstable, irresponsible, violent, paranoid, or bizarre behavior. There is no indication of any impaired judgment, reliability, or trustworthiness. However, the diagnosis of major depression, recurrent, is sufficient to raise psychological conditions disqualifying conditions:

AG ¶ 28(a) (behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior); and

AG ¶ 28(b) (an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline but may impair judgment, reliability, or trustworthiness).

There is no indication that Applicant has failed to follow his treatment plans, so AG ¶ 28(c) (the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication) is not raised.

I considered Psychological Conditions Mitigating Conditions:

AG ¶ 29(a) (the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan);

AG ¶ 29(b) (the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional);

AG ¶ 29(c) (recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation):

AG ¶ 29(d) (the past emotional instability was a temporary condition (e.g. one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer has indications of emotional instability); and

AG ¶ 29 (e) (there is no indication of a current problem).

These mitigating conditions apply.

The Government presented medical information to show that there is a connection between alcohol dependence and depression. As noted in the discussion of alcohol consumption, Applicant's depression is caused by his alcohol consumption and not due to a temporary condition. The information from the medical personnel treating Applicant shows his ongoing and consistent compliance with the treatment program they gave him. Applicant voluntarily entered treatment programs and successfully completed them. He did not lapse back into alcohol consumption. He had an episode of depression in the last year which he immediately recognized and sought medical treatment. He complied with the doctor's orders. The doctors indicate that Applicant's condition can be treated by medication and is under control. Applicant mitigated security concerns based on psychological conditions.

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 that Applicant is a good employee with good job performance. Applicant admits he has been alcohol dependent for over 10 years. He admits he has been diagnosed with major depression. He completed alcohol detoxification and an intense rehabilitation program. He has not consumed alcohol since entering those programs over three years ago. He is a very active participant in AA. He follows the treatment plans prescribed by his doctors for his alcoholism and depression. There has been a significant period of alcohol abstinence in addition to his participation in abstinence programs to indicate that Applicant has changed and has been reformed and rehabilitated. This history shows that Applicant 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 and psychological condition 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 – 1b:	For Applicant
Paragraph 2, Guideline I:	FOR APPLICANT

Subparagraph 2.a:

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