



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



In the matter of:)
)
-----) ISCR Case No. 11-02078
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff A. Nagel, Esquire, Department Counsel

For Applicant:
Christopher Graham, Esquire
Tully Rinckey PLLC

November 9, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 24, 2010. (Government Exhibit 1.) On December 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, which detailed security concerns under Guidelines G (Alcohol Consumption) and 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 within the Department of Defense for SORs on September 1, 2006.

Applicant answered the SOR in writing on February 27, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 11, 2012. This case was assigned to me on July 2, 2012. DOHA issued a

notice of hearing on July 9, 2012. I convened the hearing as scheduled on August 13, 2012. The Government offered Government Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf, called four additional witnesses, and submitted Applicant Exhibits A through P, which were received without objection. DOHA received the transcript (Tr.) of the hearing on August 21, 2012, and the record closed. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 48, married and has a Ph.D. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for a clearance because he used intoxicants to excess. Applicant admitted the factual allegations of the SOR under this paragraph. Those admissions are findings of fact.

Applicant was a social drinker for several years. Beginning in approximately 2007 his drinking began to increase until, by 2008, he was drinking to excess on a daily basis. Applicant knew by 2009 that he was an alcoholic, as did his spouse and employer. They attempted to get him to accept help, but were unable to persuade him to do so. (Tr. 45-46, 62-64.)

Applicant calls the period when he was abusing alcohol his “dark years.” Alcohol began to affect his work in terms of absences, inability to concentrate and at least one alcohol-related incident when he was in a one car accident on company grounds. (Tr. 64-68.) Finally, in February and March 2010, Applicant was placed on administrative leave by his employer for several weeks, and received a written warning, in part, because of his alcohol issues. (Tr. 51-52, 54.)

Applicant has had two alcohol-related arrests. He was arrested for Driving Under the Influence (DUI) in April 2009 and March 27, 2010. His arrests resulted in convictions for alcohol-related offenses each time. The 2010 conviction resulted in a fine, jail time, requirements to attend Alcoholics Anonymous (AA) and a Multiple Offender DUI program, and his driver’s license was suspended. He also received five years informal probation, which continues to run until 2015. (Government Exhibit 4; Tr. 53-54.)

As a result of his second arrest, Applicant stopped drinking on March 27, 2010, and entered treatment for alcoholism the next day. It was Applicant’s choice to enter an extensive, long-term, alcohol treatment program. The program consisted of inpatient treatment, extended care treatment, monitored residential care treatment, and monitored outpatient treatment, as set out in Government Exhibit 3. He entered treatment on March 28, 2010, and left it on October 19, 2010. A progress report from the treatment center states, “[Applicant] has made a firm commitment to overcoming his

alcohol abuse and dependency. . . . He has responded favorably to the treatment process and his wife is supportive of his recovery.” (Government Exhibit 3 at 1.) The discharge summary from the treatment center described his “discharge status” as “Successful.” (Government Exhibit 3 at 5.) (See Government Exhibit 2 at 11-13; Tr. 46-48.)

Since his discharge, Applicant has been heavily involved in AA, as well as alumni activities at the treatment facility. Applicant is a speaker to recovery groups at hospitals and other institutions throughout the area where he lives, in addition to being a speaker at AA meetings. Applicant attends three to five AA meetings a week, including when he is traveling out of town for work. (Applicant Exhibit M; Tr. 48, 57-58, 72-75.)

Concerning the possibility of his using alcohol in the future, Applicant states, “Right now, . . . sobriety is the most important thing to me right now. Without my sobriety, I have too much to lose. I’ll lose my family, my kids, my employment. So my number one priority today is my sobriety. So, I am doing everything I know how to do to maintain that sobriety.” (Tr. 48.)

Applicant testified that he has an extensive support group, including his team at work, his work supervisors, and his family. This is in addition to his sponsor and friends within AA. Applicant has also been open and candid with his military customers, and people he works with from other companies, about his struggles with alcohol. (Applicant Exhibits A, D, I; Tr. 59-60.)

He also sees an Employee Assistance Program counselor at his employer on a fairly frequent basis. Applicant began seeing this counselor in November 2009 on a self-referral basis. The counselor has been in constant contact with Applicant’s personal physician and the treatment facility. In a written statement he says:

[Applicant’s] progress has been excellent. He has a very solid AA program. He attends three or four AA meetings per week. He has a sponsor and is working the steps.

[Applicant’s] prognosis is excellent. He is doing everything that is recommended to him to stay sober.

I do not believe that [Applicant] poses a security risk in any way at this time. (Applicant Exhibit E at 2.)

Applicant’s personal physician testified. She has known Applicant over 23 years. He first talked to her about his excessive drinking in February 2010. Since May 2010, after the inpatient program ended, she has seen him 16 times, about every six to eight weeks, on a professional basis. She testified that his current condition is “excellent.” She further described his dedicated efforts to maintain sobriety, his truthfulness with her, and her belief in his ability to maintain sobriety. (Tr. 25-41.) In a written statement she says, “I think [Applicant] hit ‘rock bottom’ and has worked hard on his sobriety. As a medical physician that knows [Applicant] well, I feel he has incredible moral character in

addition to being highly intelligent and accomplished and predict he will continue on his current path of sobriety.” (Applicant Exhibit C at 1.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this subparagraph 2.a. that Applicant is ineligible for a clearance because his conduct under Paragraph 1, above, shows untrustworthiness, questionable judgment, unreliability, or other characteristics indicating that Applicant may not properly safeguard classified information. Accordingly, Applicant’s history of alcohol-related incidents is cognizable under this guideline, as well as Guideline G.

In subparagraph 2.b, Applicant admitted being counseled by his employer concerning misuse of his company credit card to purchase personal items in 2009. He paid for the inappropriate purchases. Such conduct has not been repeated. (Tr. 55-56, 68-70.)

Mitigation

Applicant is a highly respected person and employee. A co-worker and friend of Applicant for 26 years both testified and provided a written statement. In his statement he says, “[Applicant] has the highest strength of character and ethics.” (Applicant Exhibit J at 2.) The witness has had a security clearance for many years and is knowledgeable about security matters. In his testimony, the witness described Applicant’s work, how open Applicant has been about his struggles with alcohol, and how he is working to maintain sobriety. The witness stated that Applicant is a trustworthy person who should have a security clearance. He concluded his testimony by stating, with regards to the Applicant, “I would trust him with my life.” (Tr. 81-90.)

A supervisor of Applicant submitted Applicant Exhibit B. He has known Applicant since January 2008. He states, “Through his own actions, [Applicant] has demonstrated a high standard of performance and a high standard of ethical behavior.” (See Applicant Exhibit F.) (See Applicant Exhibit P.)

Current and past work colleagues of Applicant submitted extremely laudatory letters of recommendation. (Applicant Exhibits B, F, K and L.) As stated above, Applicant has also been open with other members of the defense industry about his problem, and the president of one company wrote a letter of support. (Applicant Exhibit I.)

Another witness for Applicant is a division chief at a military research facility (Facility). He also submitted a statement, along with his wife who is a branch chief at the same facility. The witness has known Applicant over 20 years. In both written and oral statements he discusses Applicant’s openness about his problems with alcohol. (Applicant Exhibit D; Tr. 91-100.) He testified that Applicant should continue to have access to classified information, “As a Supervisor, I make recommendations for Clearance on a somewhat regular basis, and I have never seen anybody attack the sort

of mitigation phase of the alcoholism that [Applicant] has gone through ever before as enthusiastically and sincerely as he has.” (Tr. 95.)

A joint letter of recommendation was written in support of the Applicant by a program manager, program lead and branch chief at the Facility. In this letter they state that Applicant told them in 2009 of his problems with alcohol and his desire to address the problem. (Applicant Exhibit A.) In addition, a senior official in the Office of the Secretary of Defense also wrote a letter on Applicant’s behalf, describing Applicant as a person of “integrity, honesty and conviction.” (Applicant Exhibit G.)

In addition to his full-time job with the defense industry, Applicant is a tenured professor at a local college. The dean of his academic department, who is also a retired colonel in the Air Force, submitted a very positive letter on Applicant’s behalf. (Applicant Exhibit N.) He has known Applicant for 16 years, the last 14 as his supervisor. The dean states, “Tact, self-confidence, a sense of dedication and responsibility are qualities that make [Applicant’s] renewal of a security clearance a definite yes. He has the honor and character necessary to retain the security clearance he has held for more than twenty five years.” (Emphasis in original.)

Policies

Security clearance decisions are not made in a vacuum. 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 AG list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline G - Alcohol Consumption)

The security concern relating to the guideline for Alcohol Consumption is set out in 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 was involved in two alcohol-related incidents in 2009 and 2010. The evidence also shows that Applicant used alcohol to excess, from about 2008 until March 2010. His drinking influenced his work performance, and he had an alcohol-related incident at his place of work. He has not drunk alcohol since March 27, 2010.

There are four Disqualifying Conditions that apply to this case 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;

(b) alcohol-related incidents at work, such as reporting for 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;

(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) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Under the particular facts of this case, the following mitigating conditions currently apply to Applicant's situation pursuant to 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 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 participating 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.

The record shows that Applicant had three alcohol-related incidents, including two arrests, and a history of alcohol abuse, which had come to the attention of his wife, his employer, and the military researchers he worked with. The last incident resulted in the arrest of Applicant for DUI. At that time, in March 2010, Applicant realized he had a problem, and entered inpatient treatment the next day. His extensive inpatient and outpatient treatment, six months in duration, was documented to be successful.

As stated, he had been abstinent for almost two and half years as of the date of the hearing. He attends three or more AA meetings a week, and is a speaker at many meetings, including ones held at the facility he attended. His credible testimony shows someone who has internalized the requirements of AA, has a balanced approach to his sobriety, and has established a pattern of abstinence.

Applicant's personal physician testified and gave him a favorable prognosis, based on her 23 year history with Applicant. It is also important to note the favorable statement from the Employee Assistance Program counselor who Applicant continues to see on a regular basis, and who has extensive knowledge of the Applicant and of the programs he is attending.

The testimony of Applicant's co-workers and wife, as well as the positive statements in the extensive letters of recommendation, fully support the Applicant. They show that he has successfully turned his life around and is fully committed to a future of sobriety.

All of the mitigating conditions apply. When they are viewed along with the whole-person concept discussion below, the facts support a finding for Applicant under Paragraph 1 of the SOR.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The history of Applicant's alcohol use, and his misuse of his employer's credit card, are activities that may affect his professional standing at his employer or raise questions about his trustworthiness. The following Disqualifying Conditions are arguably applicable under AG ¶ 16:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (2) disruptive, violent, or other inappropriate behavior in the workplace; . . . (4) evidence of significant misuse of Government or other employer's time or resources; and

(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

Based on all the available evidence, the following Mitigating Conditions apply under AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant showed that all three of these Mitigating Conditions apply in this case. As stated at length above under Guideline G, his history of alcohol use has been mitigated by all of the work he has done, and continues to do, to be abstinent. His misuse of his employer's credit card was in the past, has not been repeated, and is no longer of security significance. Finally, virtually everyone who is important to him on a professional or personal basis is aware of his past issues and his successful efforts at reform and rehabilitation. He has mitigated this concern. Paragraph 2 is found for Applicant.

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. My Guideline G and Guideline E

discussions are applicable here as well. Applicant engaged in alcohol abuse that ended about two and half years before the record closed. The record shows that since his last alcohol-related incident he has changed his life in fundamental ways. He successfully attended treatment and continues with after-care, understands the nature of his conduct, and credibly established that such conduct will not happen in the future.

Applicant's conduct was serious, but there is considerable evidence of rehabilitation. Applicant is an intelligent man with a history of outstanding achievement, and a bright future ahead of him. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is very little likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his Alcohol Consumption and Personal Conduct. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance.

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. through 1.j.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. and 2.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.

WILFORD H. ROSS
Administrative Judge