



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



In the matter of:)
)
) ISCR Case No. 11-03655
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

January 13, 2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On August 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 6, 2011, and elected to have his case decided on the written record. On October 25, 2011, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on October 31, 2011, and it was received on November 18, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on January 9, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted all of the factual allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 22 years old. He is a high school graduate. He is not married and has no children. He has worked for a federal contractor since January 2008.

Applicant began drinking alcohol when he was 16 years old. His level of consumption increased over time until he was consuming alcohol daily. He would drink 3-5 cans of beer a night and 6 to 9 on Friday and Saturday nights. He would also consume whiskey and mixed drinks on the weekend, in varied amounts.¹

On August 2007, Applicant was charged with driving under the influence (DUI) of alcohol. His charge was reduced to reckless endangerment. He was fined and placed on two year's probation, and required to attend a DUI impact panel.

In March 2009, Applicant was issued a citation for minor in possession of alcohol. In May 2010, Applicant was charged with DUI. After consuming alcohol, he lost control of his car, drove off the road, and struck a fence. His blood alcohol was .139%. He received a deferred prosecution. He was ordered to attend two years of intensive outpatient treatment, attend Alcohol Anonymous meetings, and have an interlock device installed on his vehicle. Applicant received alcohol treatment from about August 10, 2010, until at least the date he received the SOR. At his treatment he was diagnosed as alcohol dependent. He has been complying with the alcohol treatment. From the age of 16 until his court-ordered treatment, Applicant consumed alcohol, progressing to consumption on a daily basis, and sometimes in excess to the point of intoxication. Applicant is addressing his alcohol problem through the court-ordered program. He has not yet completed the two-year program.²

Applicant used marijuana from approximately age 15, until about six weeks before he received the court-ordered alcohol evaluation in August 2010. On his security clearance application (SCA) signed April 3, 2009, he disclosed he used marijuana from

¹ Item 6.

² Item 1, 4, 5, 6, 7, 9, 10.

about March 2006 to about August 2007. He indicated he smoked marijuana about 12 times during this period of time.³ During his investigative interview in January 2011, he told the investigator that he used marijuana six to seven times a year from his first use, at age 15 until about six weeks prior to his alcohol evaluation in August 2010. He indicated he used it mostly with friends on the weekend. He also admitted to the investigator that he purchased marijuana about 20 times from a friend, paying about \$60 to \$80 for a small quantity each time. At the time of investigative interview, he still associated with the friend he purchased marijuana from. In Applicant's answer to the SOR in August 2011, he indicated after he graduated from high school his marijuana use had progressed to almost daily use until August 2010.⁴

On Applicant's SCA, in response to Question 23 which required disclosure of his past drug use, Applicant stated he used marijuana 12 times from March 2006 through August 2007. Applicant intentionally and deliberately provided false information on his SCA. In fact he was using marijuana daily even after he applied for a security clearance and after his investigative interview. During the interview, he stated he used marijuana about six or seven times a year until about six weeks before he started his alcohol treatment. This contradicts his answer to the SOR. He indicated during his interview that he did not believe he was addicted to marijuana. He also stated he stopped using marijuana because he had to submit to drug and alcohol testing as part of his treatment.⁵

Applicant's alcohol counselor provided a statement indicating Applicant has been in intensive outpatient treatment since August 30, 2010. He has attended the mandated group sessions and has completed phase I and II of treatment. He is in the third phase and is compliant. He has completed two of the required eight sessions. He then has a final phase of treatment, that is once a month for a year. He is also attending a minimum of two 12-step meetings weekly. The counselor indicated Applicant is making excellent progress.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

³ Item 5.

⁴ Item 6.

⁵ *Id.*

⁶ Item 9.

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 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be "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

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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.

I have considered all of the disqualifying conditions under AG ¶ 22 and the following are potentially applicable:

(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; and

(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;

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

Applicant was arrested twice for DUI. His earlier charge was reduced to reckless endangerment. Applicant is under a deferred prosecution program for his last DUI. He was diagnosed as alcohol dependent, but there is insufficient evidence to determine the qualifications of the person who made the diagnosis, so I cannot apply AG ¶ 22(d). Applicant also received a citation for minor in possession of alcohol. He admitted he consumed alcohol daily until he began the court-mandated treatment program. I find AG ¶¶ 22(a) and 22(c) apply

I have also considered all of the mitigating conditions under AG ¶ 23 and the following are potentially applicable:

(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 participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has a long history of alcohol dependence. He is still undergoing court-mandated alcohol treatment as part of his deferred prosecution. It appears he has abstained from alcohol use since beginning the program. He has not yet completed the program, nor shown an aftercare period of abstinence without court mandated supervision. He is actively participating in treatment, but insufficient evidence was presented to indicate he acknowledges his alcohol dependence. He has not yet established a pattern of abstinence when he is not subject to the scrutiny of the treatment program. I find none of the above mitigating conditions apply.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under drug involvement AG ¶ 25 and conclude the following have been raised:

(a) any drug abuse; and

Applicant first used marijuana when he was 15 years old. He used it throughout high school and progressed to using it daily until he began his alcohol treatment program. He used it after he applied for a security clearance and after his investigative interview. I find AG ¶ 25(a) applies.

I have considered all of the mitigating conditions under AG ¶ 26. The following three are potentially applicable:

(a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant was a habitual marijuana user. When he started his court-mandated alcohol treatment he received drug and alcohol tests. He stopped using marijuana before that time. Applicant's use was sufficiently recent and frequent that I cannot conclude it is unlikely to recur. The fact he continued to use it after he applied for a security clearance and after his investigative interview casts doubt on his reliability, trustworthiness and good judgment. Applicant has not had an appropriate period of abstinence from drug use. He continues to associate with a person with whom he purchased drugs. Insufficient evidence was provided to apply AG ¶26 (b). There is evidence Applicant is in an alcohol treatment program. I do not have sufficient evidence to conclude that his drug issues are also being addressed. In any event, he has not completed the program. Therefore, AG ¶ 26(d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and conclude the following have been raised:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose on his SCA the full extent of his marijuana use. After he completed the SCA, he later admitted in his answer that he was using marijuana daily. He stated on his SCA that he used it twelve times from March 2006 to August 2007. This contradicts other admissions he made about his drug use. I find Applicant deliberately and intentionally falsified his SCA, and the above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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 was aware of the frequency of his past drug use and his responsibility to disclose it when he completed his SCA. He did not promptly correct his falsification. Rather, he continued to change his answer and provide false information. His falsifications are not minor. His actions cast doubt on his reliability, trustworthiness and good judgment. Finally, on his answer to the SOR, he seemed to acknowledge the extent of his past drug use. Although this is a positive step, there is insufficient evidence to find any of the above mitigating conditions apply.

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. I have incorporated my comments under Guidelines G, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has been drinking alcohol and using marijuana since he was a teenager. He was arrested twice for DUI. The first charge was reduced and the second charge is held in abeyance under a deferred prosecution program. He is mandated by the court to attend an intensive two-year alcohol treatment program. He has completed a part of it, but must continue to comply with it before his case is dismissed. Applicant has been compliant and appears to be doing well. However, until he successfully completes the program and has an extended period of abstinence from drugs and alcohol, it is too early to conclude that these issues are no longer a security concern. Applicant's falsifications also remain a security concern. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, and Guideline E, Personal Conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge