



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-03814
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 7, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an August 2, 2011, response, Applicant admitted the three allegations set forth under Guideline G and requested a hearing. DOHA assigned the case to an administrative judge on August 31, 2011. The case was reassigned to me on September 28, 2011, for caseload considerations. The parties proposed a hearing date of October 19, 2011. A notice setting that date for the hearing was issued on September 29, 2011. I convened the hearing as scheduled.

Applicant gave testimony and introduced 18 documents, which were accepted into the record as exhibits (Exs.) A-R. Department Counsel offered five documents, which were admitted as Exs. 1-5 without objection. The parties were given until November 1, 2011, to submit any additional materials. The transcript (Tr.) of the

proceeding was received on October 28, 2011. On November 1, 2011, Department Counsel forwarded without objection four additional documents timely submitted by Applicant. They were accepted as Exs. S-V and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to alcohol consumption. Clearance is granted.

Findings of Fact

Applicant is a 23-year-old engineer who has worked for the same defense contractor for over a year. He has earned a bachelor's degree in engineering. Applicant is single and has no children.

Applicant's parents divorced when he was five years old. His mother, with whom he primarily resided, then remarried. Her new husband was abusive, untrustworthy, and an alcoholic who often deserted the family. While Applicant recounts the day he learned his mother was divorcing the man as "one of the happiest days" of his life.¹ His mother ultimately remarried, as did his biological father. During this time, Applicant split his time between his two biological parents' households. When Applicant was about 10, he was devastated when his father died of cancer.² His passing impacted Applicant's biological mother greatly and she turned to alcohol. His mother's use of alcohol soon turned to alcoholism, followed by multiple interventions and commitments in rehabilitation. To escape from home pressures, Applicant concentrated on sports and music in high school, where his prowess in both areas led to state-wide notoriety.³ He ultimately graduated with a 3.6 grade point average and was highly sought after by colleges.

In college, Applicant led a typical collegiate life. He continued to excel in academics and sports. He also began consuming alcohol with his peers on weekends.⁴ In June 2008, after completing his sophomore year, he was issued a citation for possession of a malt beverage at a college party. He paid a \$250 fine and his driver's license was suspended for 30 days.⁵

Despite success in collegiate sports, Applicant decided to concentrate on engineering after his sophomore year of college. During his final two years of college, he maintained a 3.3 grade point average, volunteered with local civic organizations, and completed highly competitive internships with local engineering firms. By the time he graduated college in May 2010, he had already received multiple job offers from

¹ Tr. 23.

² Ex. D (Stepmother's letter, dated Oct. 14, 2011) at 2.

³ Tr. 24-25; Exs. Q-R (selected articles and materials).

⁴ See Tr. 48 (Applicant noted that his use of alcohol was "just usually on weekends.")

⁵ Tr. 26 (In expressing his contrition, Applicant stated: "I take full responsibility for this, I was young, stupid and put myself in a bad situation. I was an embarrassment to my school, my . . . team, my family and myself.")

reputable companies. As part of his graduation celebration that May, Applicant and three friends decided to visit a nearby college town. While returning home from the local bars, they encountered a fiberglass rendering of an animal that was part of a city-wide fundraising display. One of his friends tipped the statue over, effectively damaging it. The four were quickly arrested. Because the statues were estimated to be potentially worth about \$3,500 as part of the fundraising initiative, and therefore worth in excess of \$1,000, the four were charged with felony misdemeanor mischief. The friend who actually caused the damage was ultimately found guilty of the charge and made restitution. Meanwhile, Applicant's case, in which he denied causing the damage, was ultimately dismissed.⁶

At the end of the summer of 2010, Applicant moved to a nearby state in preparation of beginning his career with his current employer. On September 11, 2010, Applicant went to a bar with a co-worker. On his way home, he was pulled over by police. When it was determined he had been consuming alcohol, he was cited for Driving Under the Influence (DUI). Being a first time offender, he was diverted to a special program, under which he was required to adhere to the program and relinquish his driver's license to four months. He successfully completed that program, his license was restored, and the DUI charge was dismissed.⁷

Although Applicant did not regularly imbibe alcohol, the three alcohol-related incidents began to concern him. On January 29, 2011, Applicant and his girlfriend, with whom he has a committed relationship, were visiting his sister. Applicant drank to excess and got into an argument with his girlfriend. The incident was upsetting to both Applicant and his girlfriend. She does not approve of Applicant's use of alcohol. She has been alcohol-free for at least four years.⁸ Given the examples set by both his former stepfather and his mother, who by now was a recovering alcoholic and member of Alcoholic's Anonymous (AA), Applicant was well aware of the potential alcohol might have to control his life. About that incident, Applicant noted: "At that point I finally realized that drinking just isn't worth it. Literally everything I have done wrong in my life has been related to drinking. I am a good person."⁹ He has not consumed alcohol since that date.

With the support of mother, girlfriend, and friends, Applicant immediately and voluntarily began attending AA. While sacrificing alcohol was not a physical struggle, the experience gave him further insight into both himself and the disease.¹⁰ He now understands why he previously abused alcohol and, therefore, now relies on alternative outlets for mental escape and relaxation. He received his AA six-month chip on June

⁶ Tr. 27, 35-42; Ex. O (Attorney's letter, dated Sep. 26, 2011, and local docket sheet).

⁷ Tr. 27, 42; Ex. V (Court record).

⁸ Tr. 43.

⁹ Tr. 28.

¹⁰ *Id.*

29, 2011.¹¹ He also completed an alcohol education program that same month.¹² In the process, Applicant has found becoming alcohol-free to be a significant learning experience: “The fact is when I drink, I change; my judgement goes out the window and I put myself in bad situations. Everything that has happened in relation to my drinking has been the most stressful things I have faced and has affected my life dramatically. . . . I am so grateful I have realized that there is life outside of drinking, I have realized this at a young age.”¹³

Today, Applicant maintains his sobriety. He has done much to rehabilitate himself from his past conduct.¹⁴ He now lives by himself in a city far removed from his college and hometown friends.¹⁵ His new friends and associates are appreciative of his non-use of alcohol. He generally eschews the bar scene in favor of nights at home with his girlfriend, dinners with friends, or visits to the gym. With his mother successfully involved in AA and happily remarried, he is no longer overly concerned about her well-being. He has refocused his attention on sports and music, taking up the guitar and playing in a local basketball league to relax and reduce stress.¹⁶ Most of his current friends are new and are part of his professional circle.

Applicant is fully committed to maintaining his sobriety. He does not simply dismiss the alcohol-related incidents from his past as mere instances of youthful indiscretion, but of personal warning signs that he had to implement serious changes in his life. He has established a tangible support network that is available in case he again faces stressors that might incite him to use alcohol. As needed, he continues to seek periodic support from AA and his peers. He also receives significant support from his mother, stepfather, girlfriend, and stepmother, who has played a significant role in Applicant’s life and is proud of his decision to stay sober.¹⁷ He is now happier with his

¹¹ Tr. 13-14.

¹² Ex. P (Certificate, date Jun. 15, 2011). The education program also served to help satisfy Applicant’s first offenders program.

¹³ Tr. 28. Applicant testified that he felt he was an alcoholic, although he stated that his self-identification was not made in clinical terms: “I never felt dependent on it, like I had to drink, like I needed to drink to carry out my life. But I think I’m an alcoholic in the sense that it brings trouble to myself, I change, it puts me in bad situations. That’s one thing that I learned in that class is that it’s not necessarily someone that has to drink, it’s when someone starts getting in trouble and it starts really effecting their lives, that’s when -- that’s a form of alcoholism I guess.” Tr. 46-47.

¹⁴ See, e.g., Tr. 56 (“as to mitigation . . . to be very frank, the Applicant seems to have a very mature and sincere response to his own concerns about alcohol and his inability to drink alcohol going forward and, . . . he seems to be in a positive environment now.”)

¹⁵ Tr. 31-32. Applicant notes, however, that his hometown friends appreciate and understand his decision to refrain from alcohol. Tr. 32.

¹⁶ Ex. D, *supra*, note 2.

¹⁷ *Id.* Applicant’s stepmother wrote an insightful letter on Applicant’s behalf. She noted that she feels he “was using alcohol to cope with his mother’s alcoholism” and wrote that she now feels he is rightfully “on his way now in his adult life after spending a few years being lost. . . . I feel that his truly is a success story.”

life than he has been in the past. He is excelling at work, his familial relationships are improved, and he is contemplating marriage.¹⁸ He stated that, “[i]f there is one thing I have learned through all this it’s how much I will lose if I pick up another drink, I would lose everything I have worked my whole life for. Much of what I have worked for has already been put in jeopardy. . . . I am a changed person and changed for the better.”¹⁹

In the past year at work, Applicant has proved to be a valued employee and has received a raise. He has earned a reputation as a quick learner who is communicative and reliable.²⁰ Applicant’s recent maturation has been noted by his elders and professional peers.²¹ He continues to impress his superiors in his civic volunteering duties as a committed individual.²² In his apartment complex, Applicant is well-regarded, pays his rent in a timely manner, and has not been the source of any complaints.²³

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

¹⁸ Tr. 28-29.

¹⁹ Tr. 29.

²⁰ Ex. J (Letter, dated Sep. 30, 2011).

²¹ See, e.g., Ex. F (Letter, dated Sep. 30, 2011); Ex. J, *supra*, note 16.

²² Ex. M (Letter, dated Sep. 30, 2011).

²³ Ex. N (Letter, dated Sep. 12, 2011).

Department Counsel. . . .”²⁴ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁵

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁷

Based upon consideration of the evidence, Guideline G (Alcohol Consumption), is the most pertinent to this case. Conditions pertaining to that AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

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.²⁸ In this case, Applicant admits three allegations, each referencing alcohol-related behavior. Those admissions are sufficient to raise Alcohol Consumption Disqualifying Condition (AC DC) 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*) and AC DC AG ¶ 22(c) (*habitual or binge consumption of alcohol to the point of impaired*

²⁴ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁶ *Id.*

²⁷ *Id.*

²⁸ AG ¶ 21.

judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent). With disqualifying conditions raised, the burden shifts to Applicant to raise mitigating conditions.

At issue are three alcohol-related incidents that occurred between 2008 and 2010. Applicant has been sober for slightly less than one year. Both he and his family members feel he has been able to control his desire to seek refuge in alcohol. Applicant has actively and rigorously examined the source of his occasional abuse of alcohol, completed an alcohol education program, attended AA, and redeveloped alternative activities for stress relief. He has the full support of his extended family, friends, and peers for maintaining his sobriety. He no longer views alcohol as a panacea for his former family problems. He credibly stated that he has never been happier than he is now, and offered multiple examples of how his professional and personal life have improved in the past year. In light of these considerations, Alcohol Consumption Mitigating Conditions (AC MC) 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 individual's current reliability, trustworthiness, or good judgement*) and AG ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*) apply. Although Applicant admits that he abused alcohol and considers himself to be an alcoholic in a non-clinical sense of the term, there is no evidence he has ever been referred for alcohol treatment or that such treatment was warranted. Consequently, none of the other mitigating conditions apply (*ie. AG ¶ 23(c)-(d)*).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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, as well as the whole-person factors. Applicant is a credible and straight-forward young man whose testimony and demeanor reflected genuine introspection and contrition for his past alcohol abuse. Viewing the issues from the whole-person perspective, it is admitted that the alcohol-related behavior at issue constitutes criminal behavior and, therefore, is conduct of a serious nature. Applicant fully appreciates the gravity of the issues. While his abuse of alcohol could be attributed, in part, to the cumulative pressures resulting from familial issues, it is also noted that such abuse is not atypical amongst immature collegians. At the times in question, Applicant was between the ages of 20 and 22. There is no evidence that alcohol posed a problem before or since that period.

By the end of his 22nd year, Applicant made the proactive decision to quit using alcohol entirely. To that end, he sought the support of his those closest to him – his family and his girlfriend. He immediately began AA, where he successfully earned his six-month chip, and completed an alcohol education program. To date, Applicant revisits AA to keep its tenants fresh. He maintains the support of his colleagues, seniors, and peers in eschewing alcohol. In nearly a year of sobriety, he has excelled at work, improved his family relationships, felt happier, returned to his love of music and sports, and is now contemplating marriage. These positive attributes help demonstrate his recent maturation and have proven sufficient to inspire him to never again abuse alcohol. While one year of sobriety may appear to be a short period of time, it is a significant and appropriate length of time in the life of this 23-year-old, whose alcohol abuse seems to have been restricted to periodic weekends during a two year period.

In accomplishing his goal to quit alcohol, Applicant has shown sound judgment and the ability to control his impulses. Through his actions and his credible testimony, Applicant demonstrated his present trustworthiness. I feel confident that his commitment to his family, girlfriend, and himself to maintain his sobriety is genuine and steadfast. Security concerns are mitigated. Clearance is granted.

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.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge