



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



In the matter of:)	
)	
)	ISCR Case No. 11-05949
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

06/25/2013

Decision

WHITE, David M., Administrative Judge:

Applicant regularly consumed alcohol to the point of intoxication from 1991 through 2012. He was arrested for driving under the influence of alcohol in 1991, 2009, and 2012. He has successfully participated in alcohol treatment since December 2012, but the evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on January 24, 2011, in connection with the periodic reinvestigation of a security clearance he has held since 1984. On November 8, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on December 17, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 14, 2013. The case was assigned to me on March 12, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 9, 2013, and I convened the hearing, as scheduled, on April 25, 2013. The Government offered exhibits (GE) 1 through 4, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant testified on his own behalf and offered exhibits (AE) A through E, which were admitted without objection after Department Counsel had an opportunity to review them. DOHA received the transcript of the hearing (Tr.) on May 7, 2013.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He is divorced, with three children ages 25, 23, and 18. He earned an associate's degree in applied science from a community college in 1983, and has no prior military service. (GE 1; GE 2; Tr. 7.) In his answer, Applicant admitted the truth of all factual allegations in the SOR and provided additional information about himself. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 2 and GE 3), are incorporated in the following findings.

Applicant began drinking alcohol at age 18 or 19. He admitted consuming alcohol, at times to excess and to the point of intoxication, from approximately 1991 to December 2012. He said that he became intoxicated after three to five drinks, and did so one to three times a week through at least April 2012. (AR; GE 2; Tr. 68.)

Applicant and a friend went golfing on November 23, 1991, and had a lot to drink. Applicant started to drive them home in his car, but recognized that he was too impaired and asked his friend to drive. They got lost, and stopped at a convenience store. On their way back to the car in the parking lot, they were approached by two police officers who asked whose car it was. Applicant said it was his. A police officer told him to get behind the wheel of his car, then arrested him for Driving Under the Influence (DUI). At his first court appearance on this charge, the judge dismissed it after learning that Applicant had not driven the car to the store. (AR; GE 2; Tr. 50-51.)

On a Friday evening in December 4, 2009, Applicant drank about six mixed drinks at a bar. Around 2:00 a.m. on December 5, 2009, he attempted to drive home. He hit a patch of ice on a bridge, spun out, crashed through a wood rail fence, and landed about 200 feet into a vacant field. The dispatched police officer noticed a heavy odor of alcohol on Applicant's breath, his watery and bloodshot eyes, and his flushed facial complexion. Applicant told the officer he had drunk three beers at a local pub. Applicant failed the field sobriety test and was arrested for DUI. At the station about an hour and a half later, he provided breath samples that tested for alcohol contents (BAC) of .173 and .179. On March 31, 2009, pursuant to a pretrial agreement, he pled guilty to Reckless Driving and was sentenced to 365 days in jail (with 363 suspended for a year and the other two converted to community service), fines and costs of \$1,105, and

attendance at a DUI Victim's Panel and Alcohol/Drug Information School. He was not sentenced to formal probation, other than the requirement of no further violations during the period his sentence was suspended. He reduced his drinking to some extent during that period. An alcohol assessment determined that he had no significant problem with alcohol, so no other treatment was ordered. (AR; GE 2; GE 3; Tr. 52-56.)

DOHA sent Interrogatories concerning his alcohol consumption to Applicant, which he answered on May 1, 2012. In his responses, he said that he still drank alcoholic beverages, but changed his answer to the question asking if he intended to drink alcohol in the future from, "Yes," to, "No." He said that he drank to the point of intoxication, "once a week," but repeated that he did not intend to continue to drink alcohol. When asked if he had been arrested for anything since his February 2011 interview with an Office of Personnel Management (OPM) investigator, he reported being arrested for DUI again on February 2, 2012.¹

Applicant is in a committed relationship with a woman, but they had temporarily separated for four or five days in late January 2012. While at work that February 2nd, he learned that she had spent the previous night with someone else. After work, he went to his "local watering hole" (Tr. 58.), and drank at least three to six Scotch drinks, although it could have been more because he was not counting them. Applicant did not provide requested legal documentation concerning the head-on collision he caused while attempting to drive home that evening. However, he explained that he caused it by straying across the center line and hitting an oncoming minivan. He said the woman driving the minivan and her passenger were not hurt, but he had to be cut out of his car by emergency personnel and suffered a concussion and two broken vertebrae. After being released from the hospital, he was charged with DUI. (AR; GE 2; GE 3; Tr. 56-66.)

Applicant's first court appearance in connection with this DUI charge was in May 2012. The judge continued the trial, but entered an order that prohibited Applicant from drinking alcohol during the pendency of the proceedings. Nevertheless, and contrary to the statement in his May 1, 2012 interrogatory response that he did not intend to do so, Applicant continued to drink at his "watering hole" bar at least once a week, traveling by cab since he had an ignition interlock on his car. This pattern of drinking continued until December 2012, when he entered his present two-year alcohol treatment program. (Tr. 66-72.)

After Applicant had demonstrated a month of successful participation in Phase One Intensive Outpatient alcohol treatment in January 2013, the judge in his criminal case granted him entry into a deferred prosecution program. This is a state-law-

¹The SOR alleges that this arrest took place on February 12, 2012, but that appears to be a typographical error. Applicant admitted the allegation in his SOR answer, and during the hearing (Tr. 56.), but this arrest occurred when he had an accident after leaving a bar where he was drinking after work. February 2 was a Thursday, and February 12 was a Sunday in 2012. I find that the correct date was February 2, 2012. The only official document provided by either party concerning this incident was AE C, but it does not show the date on which the offense occurred.

authorized procedure to allow persons accused of alcohol-related crimes, who are diagnosed as being alcohol dependent, to participate in a two-year comprehensive treatment program. Upon successful completion of the treatment program, without any relapse, the prosecution on the admitted criminal offense remains deferred for an additional period of three years (for a minimum of five years under court-supervised probation). At the end of such period, successful participation results in dismissal of the criminal charge. Failure to complete the program results in admission by consent of all evidence proving guilt of the charge, and imposition of an appropriate sentence. The order granting Applicant entry into the deferred prosecution program was signed on January 28, 2013. As of the date of his hearing, Applicant had completed the first phase of his treatment, and was in compliance with program requirements. He attends the required monthly number of Alcoholics Anonymous meetings, but does not have a sponsor because he has not connected with anyone he trusts. He still regularly frequents his local “watering hole” for recreation but says he no longer drinks alcohol while there. (AR; AE B; AE C; AE D; AE E; Tr. 72-83.)

Applicant submitted numerous documents reflecting special recognition and awards for exceptional performance at work, as well as evaluations reflecting his excellent professional contributions and results. (AR; AE A.)

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the allegations in the SOR and record evidence are:

(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.

Applicant admitted to habitual and binge consumption of alcohol to the point of intoxication on a regular basis from 1991 through 2012. He also admitted driving after having consumed sufficient alcohol to put him over the legal limit in 1991, 2009, and 2012. Criminal DUI charges for his first incident were dismissed, and for the second incident were reduced to Reckless Driving. He is currently about five months into a five-year court-supervised probationary program resulting from his nearly fatal DUI in February 2012. These incidents raise security concerns under AG ¶¶ 22(a) and (c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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);

(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

(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 lengthy history of alcohol-related offenses, leading to a series of criminal charges under circumstances demonstrating bad judgment. His latest documented incident was in February 2012, while this clearance application was pending. Given his continued pattern of drinking in violation of a court order, and contrary to his stated intent not to do so in interrogatory responses, it cannot be determined that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Applicant failed to meet his burden to establish mitigation under AG ¶ 20(a).

Applicant has been compliant with his two-year court-supervised alcohol dependency treatment program since December 2012. He says that he intends to continue abstaining from alcohol consumption, but offered no evidence of a substantial support network or a favorable prognosis concerning future alcohol abuse. His successful treatment program participation to date is a commendable start to establishing mitigation. However, this current period of abstinence follows his continued drinking for a similar length of time in violation of a court order and his declared intention not to do so. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d).

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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant appeared to be a sincere and earnest individual, but did not take the opportunity to introduce evidence of his good character, reliability, or trustworthiness other than awards and performance evaluations from work. He is a mature individual who is accountable for his choices and actions. His history of alcohol-related misconduct dates back 22 years. When combined with his continuing regular attendance at his favorite bar, his latest DUI is too recent to permit a conclusion that recurrence of alcohol abuse is unlikely. The potential for exploitation or duress is undiminished because he has just started his five-year court-supervised rehabilitation program. Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance, and such doubt must be resolved in favor of the national security. Although Applicant has begun to establish a recent record of responsible conduct, he did not meet his burden to mitigate the security concerns arising from his alcohol consumption.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	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.

DAVID M. WHITE
Administrative Judge