



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-07732
)	
Applicant for Security Clearance)	

Appearances

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

05/09/2013

Decision

MARSHALL, Arthur E., Administrative Judge:

On January 23, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline G (Alcohol Consumption) 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 (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.

On February 4, 2013, Applicant responded to the SOR. He admitted seven of the eight allegations raised under Guideline G and four of the five allegations raised under Guideline E. He also requested a decision without a hearing. On March 14, 2013, Department Counsel submitted a File of Relevant Material (FORM), which included 10 attached items. Applicant timely responded in a letter dated April 11, 2013. The case was assigned to me by the Defense Office of Hearings and Appeals (DOHA) on April 26, 2013. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised in the SOR. Security clearance is denied.

Findings of Fact

Applicant is a 35-year-old custom engineer who submitted a security clearance application (SCA) on January 10, 2011. He has been continuously employed since June 2002, shortly before he received a bachelor's degree. He is single and has no children.

Starting in 1993, when he was about 15 years old, to at least July 2010, when he was 32 years old, Applicant consumed alcohol. He often drank alcohol to the point of intoxication. In September 1997, he was charged with Driving While Intoxicated (DWI), then convicted of Driving While Ability Impaired (DWAI) in January 1998. As a result, his license was revoked and he was fined approximately \$300.

In February 2005, Applicant was charged with DWI. In April 2005, he pled guilty to the charge, had his license revoked, and was fined approximately \$500. In July 2007, Applicant was charged with DWI, a felony, and Operating Motor Vehicle 0.08 or more, a felony. During the summer of 2007, he used marijuana and cocaine. In February 2008, he pled guilty to the DWI charge, was sentenced to five years of probation, and fined \$2,500. In addition, he lost his driver's license for one year, was required to attend alcohol counseling, and was prohibited from consuming alcohol while on probation.

From August 2007 to January 2008, Applicant attended outpatient alcohol treatment at a qualified medical treatment facility, where he was diagnosed with Alcohol Dependence and Cannabis Dependence. While there, he tested negative for alcohol, marijuana, and cocaine.¹ He was unhappy with that facility's group approach. For that reason, as well as personal financial issues and limitations on his health insurance, he looked for one-on-one treatment elsewhere.² From April 2008 to August 2008, Applicant received outpatient alcohol treatment from a licensed psychologist, who diagnosed him with Alcohol Dependence.

In July 2010, Applicant broke up with his girlfriend and consumed six beers and four shots of liquor in a five-hour period. In doing so, he violated the terms of his probation by consuming alcohol. He has not consumed alcohol since that time. In August 2010, he started attending an outpatient alcohol treatment program.

During his initial assessment at the outpatient alcohol treatment facility, Applicant mentioned his two most recent drunk driving incidents, but forgot to note the one from 1997. He denied having ever used cocaine because he considered the 2007 incident to be a "one time incident" and because he was concerned it would change the way he was treated at the facility.³ In addition, although he had used marijuana over 100 times between 1993 and 2008, he stated that he had only used the drug two or three times

¹ See Answer to the SOR and FORM, Item 7 (Facility records).

² FORM, Item 5, Back page (Letter of Apr. 3, 2008).

³ Answer to the SOR.

between 1999 and 2000. Applicant does not recall how he arrived at those numbers. The medical facility diagnosed him with Alcohol Dependence.

On his January 10, 2011, SCA, Applicant answered “Yes” to Section 22(e) (“Have you EVER been charged with any offense(s) related to alcohol or drugs,”) then noted the 2005 and 2008 convictions noted above. He failed, however, to disclose the 1997 DUI charge and resultant DWAI conviction. Applicant denies that he intentionally tried to mislead with his answer. He argues that the question “asked specifically ‘respond for the timeframe of the last 7 years.’” That question does have such a timeframe limitation on one page, before it continues with several subsections onto the next page. The FORM, however, informed him that, based on the way the question is worded, the time restriction is limited to subsections a and b of Section 22, and it does not apply to subsection e, Applicant now understands the phrasing and stresses that he merely misunderstood the question, and did not mean to mislead.

Shortly after completing his SCA, Applicant successfully completed his outpatient treatment in March 2011. Later that year, he was approved for early discharge from probation. Applicant attended Alcoholics Anonymous (AA) for at least two years before quitting. He quit after he lost his sponsor, who relapsed. Today, he remains alcohol-free. His life is focused on work, church, his godson, his nephews and nieces, and a house he recently purchased. He recognizes that he has to be –

responsible enough to not lose them. I am not perfect and I have made my share of mistakes. I can only ask that you understand where I am in life and that I will not ever put anyone or myself in danger and if that means not drinking alcohol and losing people/places or things because of it, then that is how it must be and I am OK with that. I continue with my certifications and will never stop learning. . . . [U]nderstand that I have changed.⁴

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

⁴ Response to the FORM, dated Apr. 11, 2013.

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 Department Counsel. . . .”⁵ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁶

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) (listing multiple prerequisites for access to classified or sensitive information). The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸

Analysis

Guideline G – 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.⁹ In this case, Applicant is a 35-year-old man who used, and at times, abused alcohol from the time he was 15 until he was 32. He was convicted for drinking and driving in 1998, 2005, and 2008. He was diagnosed as alcohol dependent during three different treatments in 2007-2008, 2008, and 2010-2011. These facts are sufficient to raise Alcohol Consumption Disqualifying Conditions

⁵ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

⁸ *Id.*

⁹ AG ¶ 21.

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*), AG ¶ 22(c) (*the 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 qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence*) and AG ¶ 22(f) (*relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Applicant has provided scant facts about his attainment and maintenance of sobriety. Based on his information, he has been sober for less than three years. This period follows nearly 17 years of alcohol abuse and at least three attempts at outpatient treatment for alcohol dependence. However, he acknowledges his past problems with alcohol. He disclosed that he quit drinking after a fight with a girlfriend in August 2010. He writes that he attended AA until his sponsor relapsed. He also wrote that he now spends his time devoted to family and his new home. Although these statements would be more persuasive with some form of corroborating documentary evidence, I find them sufficient to raise Alcohol Consumption Mitigating Condition 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)*). Lacking evidence that he has since received a favorable prognosis by a duly qualified medical professional or licensed clinical social worker, or that he is currently in counseling, however, none of the other mitigating conditions apply.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because 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.¹⁰ In addition, any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process is of special interest.¹¹

In addition to the personal conduct issues related to Applicant's abuse of alcohol, the SOR alleges that Applicant deliberately concealed or misled investigators and medical providers with answers he provided at a 2010 initial assessment at a treatment facility and on a 2011 SCA. If true, Personal Conduct Disqualifying Condition AG ¶ 16(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,*

¹⁰ AG ¶ 15.

¹¹ *Id.*

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) would apply.

Applicant's explanation as to how he listed two, but not all three drinking and driving convictions on his SCA is plausible. As written and as spread out over two pages, one could mistakenly conclude that all the subsections set forth under question 22 were restricted to a certain time frame. Regardless, by disclosing his two most recent convictions, he put investigators on notice that this was an issue.

With regard to his medical initial assessment disclosure of marijuana use in 2010 of two to three times a year between 1999 and 2000, in the context of having used it over 100 times between 1993 and 2008, Applicant has no recollection as to what the actual number was. There is no evidence indicating that he used marijuana more than two to three times during that particular year (1999-2000), which was but one year during a 15-year period (1993-2008). The evidence only suggests that his use must have been higher during that one year because he otherwise admitted to using marijuana over 100 times during a 15-year period. Given that it would take six to seven uses of the drug over 15 years to arrive at an excess of 100 uses, a single year with only two to three uses would not be outside the realm of possibility. Regardless, there is no evidence he intended to conceal or falsify in giving this answer. Similarly, there is no evidence he intentionally tried to conceal his first of three alcohol-related convictions during that initial assessment. His information gave sufficient notice to medical personnel of the issue by providing information about his most recent two convictions

The only evidence of intentional falsification is Applicant's admission that he denied using cocaine during the initial assessment. He explained that he did so because he considered it to have been an isolated incident and because he thought it would alter the treatment center's therapy plans. This is the sole incident in which the evidence shows intentional falsity. It is an isolated incident. But for this incident, the record reflects that Applicant has been fully candid. There is little likelihood that Applicant would ever again seek to conceal information. Under these facts, I find that Personal Conduct Mitigating Condition 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*) and AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) apply.

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 on 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 35-year-old custom engineer who has been continuously employed since June 2002. He has earned a bachelor's degree. He is single, has no children, and recently purchased a home. After abusing alcohol intermittently from age 15 to age 32, Applicant has been sober since July 2010.

Several allegations were raised suggesting that Applicant intentionally falsified certain information on a medical intake form and on his SCA. However, there is insufficient evidence to show that his answers, while deficient, were the result of a deliberate act to conceal or falsify. Only one answer has been shown to be the result of intentional concealment, and it stands isolated as a singular incident unlikely to be repeated.

Applicant's narrative regarding his attainment of sobriety since July 2010 is brief and plausible, but is incomplete. His explanation would be more persuasive had he supplemented the record with recommendations or some other documentary evidence corroborating his narrative. Without such supporting documentation, it is hard to discern whether a period of sobriety of less than three years is sufficient to establish that Applicant has successfully found sobriety without an undue risk of relapse. This is particularly true given the length of time his drinking took place, and the fact he has previously failed to stay sober after treatment. Applicant is clearly on the right track. However, without corroboration as to his efforts to become and remain sober, I find that there is insufficient evidence to mitigate alcohol consumption security concerns. As previously noted, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. Clearance is denied.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL
Administrative Judge