



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-07798
)	
Applicant for Security Clearance)	

Appearances

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

12/07/2012

Decision

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

On August 3, 2012, the Defense Office of Hearings and Appeals (DOHA) 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.

In a response dated August 10, 2012, Applicant admitted all allegations raised in the SOR and requested a determination without a hearing. The Government compiled a Form of Relevant Material (FORM) on September 11, 2012. On October 4, 2012, Applicant submitted a response to the FORM. DOHA assigned the case to me on November 20, 2012. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden with regard to Personal Conduct security concerns. Clearance is denied.

Findings of Fact

Applicant is a 50-year-old quality assurance (QA) inspector who has worked for the same employer since August 2007. He previously worked for that employer from the time he graduated from high school in 1979 until he was laid off in 1995. Applicant married his present wife in 1997. He has a child from a previous marriage.

In 1976, when he was 15 years old, Applicant began consuming alcohol. Over the years, his use of alcohol increased. He eventually could imbibe 12 beers a day, and would become intoxicated about twice a month. His alcohol abuse worsened after his divorce from his first wife in the 1990s. In April 2001, Applicant was in a bar fight. He was charged with Assault of a Person Over 60 Years Old. The charge was later reduced to misdemeanor assault, and he was put on probation for a year.

In July 2005, when he was in his early-to-mid 40s, Applicant drove to work after drinking alcohol. He was stopped *en route* to his workplace and pulled from traffic after his vehicle's side mirror had struck a mailbox. He failed a breathalyzer test and a field sobriety examination. Ultimately, he was charged with Driving Under the Influence of Drugs/Alcohol (DUI). On his own volition, he immediately quit drinking and attended alcohol counseling.

Found guilty of DUI, Applicant was fined approximately \$900. His driver's license was suspended for three months, he was ordered to perform 10 hours of community service, and he was required to take a driving class. Despite three months of counseling in 2005, Applicant relapsed and abused alcohol from between mid-2006 and January 2007. He underwent intensive inpatient counseling in January 2007 to address that relapse. Also in 2007, he began regular attendance in Alcoholics Attendance (A.A.). He continues attending A.A. to date. He has not consumed alcohol since January 2007.

On March 3, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). In submitting the form, he affirmed that the answers provided therein were true, accurate, and complete. He listed alcohol-related incidents that had occurred between April 2001 and August 2005. However, under Section 24(c) (*In the last 7 years, have you received counseling or treatment as a result of your use of alcohol?*), Applicant wrote "no." Consequently, the 2005 alcohol counseling and 2007 alcohol treatments were not disclosed.¹

In his August 10, 2012, response to SOR sub-allegation 2.a (Guideline E) regarding his failure to disclose his past alcohol-related counselings and treatments, Applicant wrote: "I admit, I did not deliberately want to not disclose my passed (sic) alcohol use and the treatment, [b]elieving that it was very personal and nobody's

¹ Sub-allegation ¶ 2.a actually ends by stating in answering no, "[Applicant] deliberately failed to disclose that [he] attended inpatient and outpatient alcohol treatment on two occasions in 2007." This statement is erroneous. The facts show that the two courses of counseling were in 2005 and 2007, respectively.

business.. (sic) But I understand the importance's (sic) of the DOD job to thoroughly check all applicants."²

At work, Applicant is considered to be a valued and reliable employee. In A.A., he is admired for his commitment to sobriety and for his willingness to help others. There is no evidence that he has abused alcohol since 2007.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised 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 Department Counsel. . . ." ³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ⁴

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

² Response to the SOR, page 2. Applicant's answer is literally conveyed with the following language and syntax: "I admit , I did not deliberately want to not disclose my passed alcohol use and the treatment , Believing that it was very personal and nobody's business,. But I understand the importance of the DOD job to thoroughly check all applicants."

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

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶

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.⁷ In this case, Applicant is a 50-year-old man who has used alcohol since high school. He was regularly abusing alcohol by the 1990s, when he and his first wife divorced. In 2001, he was charged with assault in an alcohol-related incident. In 2005, he was cited for and convicted of DUI on his way to work, and subsequently attended alcohol counseling. He again received treatment after lapsing between mid-2006 and January 2007. These facts are sufficient to raise Alcohol Consumption Disqualifying Conditions 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 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*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Applicant admits that, starting in 1976, he used, then abused, alcohol. By his mid-40s, he hoped to amend his drinking habits. After a mid-2006 to January 2007 relapse, Applicant received intensive inpatient treatment to reenforce his resolve to stay sober. Since January 2007, he has been alcohol-free. He is committed to sobriety. Therefore, I find that 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)*) applies.

⁵ *Id.*

⁶ *Id.*

⁷ AG ¶ 21.

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.⁸ 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.⁹

On a security clearance application dated March 3, 2011, Applicant answered "no" to Question 24(c), "*In the last 7 years, have you received counseling or treatment as a result of your use of alcohol?*" No mention is made of the alcohol counseling he pursued after his July 2005 DUI charge or the inpatient alcohol treatment he received in January 2007. If such failures were intentional, 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, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) would apply.

In his response to the SOR, Applicant initially admitted allegation ¶ 2.a, which alleged that he had falsified material facts on the application when he answered no to Question 24(c). He did so with the words, "I admit." However, he then went further by way of explanation by writing: "I did not deliberately want to not disclose my passed alcohol use and the treatment , Believing that it was very personal and nobody's business,. But I understand the importance of the DOD job to thoroughly check all applicants." (Typographical errors in the original). As typed, Applicant's intention is confusing. He clearly opens his comment with an admission to the allegation. The following use of the double negative, selection and spacing of punctuation marks, significance of starting some clauses after a comma with a capital letter, etc. leaves the remainder of the sentence open to interpretation. Regardless, the burden in these proceedings is on the applicant. This Applicant chose a decision without hearing. Without further explanation or clarification, I find no significance in the language following the admission that tends to benefit Applicant in terms of mitigation. Consequently, no Personal Conduct Mitigating Conditions 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

⁸ AG ¶ 15.

⁹ *Id.*

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 mature man who has devoted many years of productive service to his present employer. He is a father. After a history of alcohol abuse dating back to his teenage years, he has been sober since January 2007. He continues to utilize A.A. as a support network in his battle to maintain sobriety. When he encountered a prior relapse after about a year-and-a-half of sobriety in mid-2006 until January 2007, he addressed it with immediacy, sought counseling, and has since doubled his resolve to stay sober. There is no evidence he will ever again relapse or lose his resolve.

What remains a concern is Applicant’s personal conduct with regard to his e-QIP answers. Although he divulged his past alcohol abuse on the March 2011 form, he failed to acknowledge his 2005 and 2007 alcohol counseling and treatment. In response to the SOR, he admits this allegation with explanation, but the explanation remains vague due to semantics. What is clear is that he felt such information was very personal and private. Without further clarification in the record from Applicant, his answer and explanation cannot be said to mitigate the security concerns raised. 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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against 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, JR.
Administrative Judge