



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-07868 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

10/09/2012

Decision

WHITE, David M., Administrative Judge:

Applicant regularly consumed alcohol while underage, with two such occasions resulting in criminal charges and fines. He then underwent a year of court-ordered alcohol treatment. He had another alcohol-related conviction for Driving Under the Influence in 2009. 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 August 14, 2007, and was granted a clearance based on the results of the ensuing investigation. On March 21, 2012, the Defense Office of Hearings and Appeals (DOHA) 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 April 1, 2012, and requested that a decision be reached on the written record without a hearing. On May 17, 2012, pursuant to Directive ¶ E3.1.7, Department Counsel requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 12, 2012. The case was assigned to me on June 14, 2012. DOHA issued a Notice of Hearing on July 20, 2012, and I convened the hearing, as scheduled, on August 15, 2012. The Government offered exhibits (GE) 1 and 2, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered no documentary evidence, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 23, 2012.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He is divorced, with no children. He is a high school graduate, and has no prior military service. (GE 1; Tr. 6.) In his response to the SOR, Applicant admitted the truth of all of the factual allegations in the SOR. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 2), are incorporated in the following findings.

Applicant and a friend went to Canada in April 1999 because the legal drinking age for beer and wine there is 19. His friend drove. Applicant was due to turn 19 the following month, but was able to purchase and consume some beer. On their way back into the U.S., the border patrol officer detected that Applicant had consumed alcohol, and issued him a citation for "Minor in Possession of Alcohol" (MIP). The officer also cited him for Obstruction of Justice after finding a different friend's identification card in Applicant's possession. Applicant was subsequently fined \$450 for these offenses, which he paid. (AR; GE 2.)

During February 2001, Applicant and two friends had dinner and drinks at a steak house. Shortly after midnight, Applicant left the restaurant and started to drive home. He was stopped by a police officer, and arrested after failing a field sobriety test. He submitted to a breath test at the police station, with a blood alcohol level (BAC) result of .18, exceeding the .08 legal limit in the state. He was later found guilty of Driving Under the Influence (DUI), sentenced to one day in jail, fined \$1,050, and ordered to attend a DUI Victim Impact Panel and undergo alcohol treatment for one year. He successfully met all of the court's requirements. He was not diagnosed with alcohol dependence or alcohol abuse, but was required to participate in the treatment program because it was his second alcohol-related offense in two years while under age 21. (AR; GE 2; Tr. 26-32, 39-40.)

Before his 2001 DUI arrest, Applicant would drink beer or wine socially with friends two or three times a week starting at age 18. Afterwards, he stopped drinking almost completely for about five or six years. He eventually resumed drinking one or two glasses of wine or beers with family over dinner a couple times per month. Both of Applicant's alcohol-related incidents were disclosed on the SF 86 he completed in 2007, before receiving his security clearance. (GE 1; GE 2; Tr. 31-35.)

On November 14, 2009, Applicant met a friend and former coworker at a tavern to catch up after not seeing each other for some time. Applicant had not eaten anything since lunch. He says that they split a pitcher of beer over the course of two to three hours, and he drank two or three glasses of beer. They left the tavern around midnight in Applicant's car. A State Patrol officer stopped him for failing to use his turn signal as he left the parking lot. Applicant failed the field sobriety test, and was arrested. At the county sheriff's office, a breath test revealed his BAC to be .12, and he was issued a citation for DUI. He was later convicted of that offense, and sentenced to serve one day in jail and two years on unsupervised probation, to pay a fine of \$1,050, to attend a DUI Victim Impact Panel, to obtain and comply with the treatment recommendations of an alcohol evaluation, and to install a breathalyzer ignition interlock on his car for one year. (AR; GE 2; Tr. 35-38.)

Applicant was permitted to serve 24 hours of community service in lieu of jail, paid his fine, and successfully completed his probation without further incident. He paid his fine, used the ignition interlock for a year, and attended the DUI Victim Impact Panel. His alcohol evaluation revealed no alcohol dependence or alcohol abuse, with no treatment recommended. In such cases, state law mandates attendance at an eight-hour Alcohol Information School, which Applicant completed. He currently drinks one or two glasses of wine or beer once or twice a month with friends or family. (GE 2; Tr. 36-41.)

Applicant submitted no references or other evidence concerning his reputation, work performance, or good character. His testimony, including his stated intention not to abuse alcohol or drive after drinking more than one drink in the future, appeared to be sincere and credible. (Tr. 23-24, 42-43.) However, during the hearing Applicant claimed that he stopped drinking altogether after his 2009 DUI arrest and did not resume occasional moderate consumption until his probation was over in May 2012. (Tr. 37-41.) During his interview with an investigator from the Office of Personnel Management on December 28, 2010, he said that he currently drank beer with his friends one or two times a month, and "becomes more relaxed and happy when he is intoxicated." (GE 2 at I11.) He affirmed the accuracy of those statements under oath on February 1, 2012, and said that he was currently drinking one to two glasses of beer or wine on a weekly basis. (GE 2 at I2, I16-I17.)

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 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 was arrested for, and found guilty of, MIP and DUI offenses in 1999 and 2001, before turning 21 years old. He admitted to regular underage drinking from 1998 until his DUI arrest in 2001, after which he completed a year-long alcohol treatment program. He was arrested for DUI again in November 2009, with a BAC of .12 despite his claim to have consumed only a couple beers over the course several hours. 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. The evidence concerning subsequent periods of abstinence and moderate consumption comes only from his statements, which are inconsistent and contradictory. His latest documented

incident was less than three years ago, and he was pending charges or on probation for all but a few months of that time. In the absence of any independent evidence of responsibility or good character, 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 claims to be currently consuming alcohol in moderation, but offered contradictory statements concerning his alcohol consumption throughout the past several years. He intends to continue alcohol consumption, and offered no evidence of a substantial support network or a favorable prognosis concerning future alcohol abuse. He committed a second DUI offense with a BAC of 1.5 times the legal limit in November 2009, despite having completed a year-long alcohol treatment program in 2002. 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. He is a mature individual who is accountable for his choices and actions. His history of alcohol-related misconduct dates back fourteen years, and his latest DUI is too recent to permit a conclusion, absent other evidence, that recurrence is unlikely. His inconsistent and contradictory statements concerning his post-treatment alcohol use preclude a supportable finding of permanent behavioral changes or rehabilitation. The potential for exploitation or duress is undiminished. Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance, and any such doubt must be resolved in

