



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



In the matter of:)
)
) ISCR Case No. 11-08606
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 23, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the security concerns that arose out of his three alcohol-related convictions and related questionable judgment during the period of 2006 through January 2011. He has matured and no longer consumes alcohol to the point of impairment. Eligibility for access to classified information is granted.

Statement of the Case

On August 15, 2012, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines G and E. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on September 25, 2012, and requested a hearing before an administrative judge. The case was assigned to me on December 3, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

December 3, 2012, scheduling the hearing for January 8, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through E, which were admitted without objection. Applicant testified on his own behalf and called seven witnesses. The record was left open for additional exhibits and on January 14, 2013, Applicant presented a 12-page exhibit, marked AE F. The Government had no objections and AE F was admitted into the record. DOHA received the transcript of the hearing (Tr.) on January 16, 2013.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.a, 1.b, 1.c, 1.d, and 2.a, with qualifications. (Answer.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 27-year-old government contractor. He has been employed at a military installation for the past eight years, with various contracting entities. He worked his way up from an entry-level position on base to a more senior role. Applicant is a high school graduate and has never been married. He resides with his four-year-old daughter, his girlfriend, and his girlfriend's minor child. (GE 1; Tr. 36-41.)

On December 2, 2006, Applicant was charged with Disorderly Conduct: Alcohol and Obstruction of Public Officer. Applicant was a passenger in a vehicle that was stopped by a police officer after leaving a bar. The vehicle was stopped near Applicant's residence and Applicant requested he be permitted to leave. The officer would not let Applicant go home, but instead, arrested Applicant for Disorderly Conduct after Applicant questioned his authority to detain him. Applicant pled guilty to this charge and was sentenced to two years of probation. Applicant was 21 years old at the time of this offense. Applicant admits that his judgment at the time was impaired. (GE 1; GE 4; Tr. 45-46.)

On October 8, 2010, Applicant was arrested and charged with Driving Under the Influence (DUI). Prior to his arrest, Applicant consumed six-to-eight beers at a friend's home, but felt he could drive himself home. On his way home, he was stopped by a police officer for a dim taillight. The officer detected alcohol on his breath and Applicant was arrested. Applicant testified that his blood alcohol content was between .12 and .13, which was beyond his state's legal limit. He pled guilty and was sentenced to serve three days in jail, a fine of \$1,955, and placed on probation for five years. Applicant is still on probation for this offense. (Answer; GE 1; GE 3; GE 4; GE 5; Tr. 46-49.)

On January 21, 2011, Applicant was charged with Disorderly Conduct: Drunk, While Serving a five-year Court ordered DUI probation since October 2010. Applicant had been drinking at a sports bar and was intoxicated. He left the sports bar to walk across the street to a restaurant so that he could eat while he waited for a sober driver to pick him up. A police officer, who knew him from his previous DUI, saw he was intoxicated and arrested him for Public Intoxication. Applicant pled guilty and was sentenced to a fine of \$645. (GE 2; GE 3; Tr. 50; Tr. 50-51.)

Applicant was also required to attend a three-month traffic-and-alcohol-awareness class as a result of his alcohol-related offenses. He presented a certificate of completion of the class dated April 4, 2011. Applicant testified that while taking the class, he grew to understand the seriousness of operating a motor vehicle while intoxicated. (AE F; Tr. 25, 48, 64.)

Applicant testified that his October 2010 DUI impressed upon him that he should not drink and drive, but that it was not until he was arrested in January 2011 that he was cognizant of the lapses in judgment he makes while intoxicated. He admitted that his actions were "stupid." Since that date, he has not consumed alcohol to the point of intoxication. He still consumes alcohol, usually with his father who also has a security clearance, but does so infrequently and always in moderation. He limits his alcohol intake to a maximum of three beers (his drink of choice) over a seven-hour period. He does not consume any other type of alcohol. He now only consumes beer at family gatherings and never drives after consuming any alcohol. He is no longer friends with his drinking buddies and does not go out and party. He testified, "There is no more partying. All those days are behind me . . . I choose not to do that anymore because that's not who I am. That's not who I've become." He has taken up new hobbies such as golf and racing. His focus is on providing a good life for his daughter, girlfriend, and girlfriend's daughter. Applicant and his girlfriend do not customarily have alcohol at their home, unless they host a family event. Applicant's girlfriend testified that Applicant did not consume any alcohol on New Year's Eve, as they were at home. (Tr. 32-35, 50-58.)

Applicant's girlfriend, mother, father, facility security officer, supervisor, and co-workers spoke at the hearing on Applicant's behalf. Additionally, Applicant presented four letters of support. Each confirmed that Applicant has matured significantly over the past two years. His girlfriend, parents, and co-workers (who Applicant sees socially) testified that Applicant's use of alcohol has significantly reduced since his alcohol-related incidents. He has taken responsibility for his past mistakes and now drinks responsibly. His facility security officer testified, "I think that you have learned from your mistakes, [Applicant]. I don't see you as somebody who has an alcohol problem. I think that you've learned what alcohol can do and where it takes you." His facility security officer testified that Applicant voluntarily self-reported the two incidents that occurred while employed with his current employer and that she has counseled him. None of his witnesses felt that Applicant had a problem with alcohol or reported seeing Applicant intoxicated since his January 2011 incident. His co-workers and supervisor indicated that Applicant is a good employee and none believe Applicant is a security risk. He also presented a letter of appreciation and copies of certificates he has earned to show he is a good employee. (AE A; AE B; AE C; AE D; AE E; AE F; Tr. 23-30, 60-89.)

On January 11, 2013, Applicant attended an Alcoholics Anonymous meeting to further learn about the dangers of alcohol. He plans to attend future meeting (AE F.)

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 and mitigating conditions, 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "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."

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 EO 10865 provides that adverse 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).

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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 had three alcohol-related incidents away from work, including two Disorderly Conduct convictions and one DUI. These convictions resulted from his decision to engage in binge drinking that impaired his judgment. AG ¶¶ 22(a) and 22(c) are disqualifying.

One Alcohol Consumption Mitigating Conditions under AG ¶ 23 is potentially applicable:

(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.

Applicant's last alcohol related incident occurred in January 2011. It has been two years since he had any alcohol-related problems. During the past two years, he successfully completed a court ordered three-month traffic-and-alcohol-awareness class. He also is going beyond the court mandate and seeking further information on alcohol through Alcoholics Anonymous. In addition, he has changed his drinking pattern. He limits himself to consuming alcohol in moderation with his family in a home setting. He no longer drives after consuming alcohol. He no longer drinks to the point of intoxication. He has changed his associations. He now focuses on spending time with his young child, girlfriend, and girlfriend's daughter. He has developed new hobbies to fill his time. He no longer "parties." These changes are not the result of his continued probation, but instead reflect the efforts of a man who has matured past his youthful

indiscretion and wants to be a productive member of society. Applicant's past problems with alcohol are unlikely to recur given the new, positive influences and changes in his life. AG ¶ 23(a) is mitigating.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant admits he used questionable judgment when intoxicated. His questionable judgment led to three criminal convictions. AG ¶ 16(c) is disqualifying.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶ 17(c) applies. As discussed above, Applicant has matured and modified his drinking. Future criminal incidents are unlikely to recur given his commitment to drinking in moderation and his focus on his family. His past alcohol-related incidents of questionable judgment do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

AG ¶ 17(d) also applies. Applicant has completed the three-month traffic-and-alcohol-awareness class. He has changed his drinking pattern, no longer associates with his friends that drink heavily, and has found new hobbies to fill his time. Future alcohol-related incidents of poor judgment are unlikely to recur.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and D in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has acknowledged the seriousness of his prior alcohol-related incidents and related poor judgment. Since his last incident in January 2011, Applicant has matured significantly. He is now a responsible father, son, boyfriend, and employee, as attested to by those who know him best. He has made significant behavioral changes. He no longer associates with any heavy drinkers, he no longer goes to bars, and he will not drive with any alcohol in his system. He limits his alcohol consumption significantly and has not consumed alcohol to the level of intoxication since his January 2011 arrest. These behavioral changes were motivated by his love for his child, girlfriend, and by his growing dedication to his job. The likelihood of a recurrence is low. I am sufficiently persuaded that he will not engage in future binge drinking and seek rehabilitative assistance should he be unable to manage his consumption of alcohol. The whole-person concept is found for the Applicant.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the Alcohol Consumption and Personal Conduct security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Jennifer I. Goldstein
Administrative Judge