



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



In the matter of:)
)
) ISCR Case No. 11-08693
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

03/11/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On October 12, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) granted Applicant access to classified information. In March 2011, Applicant had an alcohol-related incident that raised a security concern. After an investigation conducted by the Office of Personnel Management (OPM), DOD issued interrogatories to Applicant to clarify or augment potentially disqualifying information. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD adjudicators could not make the affirmative findings required to continue Applicant's access to classified information. On September 20, 2012, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G and criminal conduct under Guideline J. These actions were taken under Executive Order

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in DOD on September 1, 2006.

Applicant answered the SOR on October 26, 2012. He admitted the three allegations under Guideline G and the two allegations under Guideline J with explanations. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 26, 2012, and the case was assigned to another administrative judge on November 29, 2012. DOD issued a Notice of Hearing on December 10, 2012, for a hearing on January 10, 2013. The other administrative judge was unable to convene the hearing and the case was transferred to me on January 7, 2013. I convened the hearing as scheduled on January 10, 2013. The Government offered five exhibits, which I marked and admitted into the record without objections as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified and offered eight exhibits which I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through H. I received the transcript of the hearing (Tr.) on January 17, 2013.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is a 55-year-old engineering technician for a defense contractor. He is a high school graduate, and has an associate's degree. He served 20 years on active duty in the Navy from April 1984 until August 2004. He retired as a first class petty officer (E-6) with an honorable discharge. He received a Navy Achievement medal, good conduct medals, and other citations during his active duty service. Since retiring from active duty, Applicant worked on military aircraft for defense contractors. He has been employed by his employer for approximately six years. (Tr. 23-27; Gov. Ex. 2, e-QIP, dated October 22, 2007; Gov. Ex. 4, Response to Interrogatories, dated August 13, 2012, at 121-122)

The SOR alleges that Applicant was apprehended for driving while intoxicated in 2007 (SOR 1.b), and 2011 (SOR 1.a), and that he was evaluated for alcohol abuse in 2011 (SOR 1.c) The driving while intoxicated offenses were cross-alleged as criminal conduct under Guideline J (SOR 2.a) .

In an interview with a security investigator in May 2011, Applicant admitted he started drinking alcohol in approximately 1976. He usually drank five or six beers on Friday or Saturday with his wife and friends. It would take the five or six beers for him to be intoxicated. He drank to intoxication every other month at his residence. Applicant drank because he enjoyed the taste of beer and it made him relax.

He admitted that in March 2007, he was stopped for traffic violations and arrested for driving while under the influence of alcohol. His blood alcohol content (BAC) was .09. He pled guilty to driving while impaired receiving probation before judgment. He was sentenced to 30 days in jail, suspended, and probation for 12 months.¹ His driver's license was restricted permitting him to only drive to work. He completed the probation in May 2009. He also attended a six-week alcohol counseling program. (Tr. 27-28, 39-41; and Gov. Ex. 3, Response to Interrogatories, dated August 13, 2012, at 2.)

Applicant was stopped by police for speeding and other traffic offenses in March 2011. He was arrested for driving while intoxicated with a BAC of .08. In May 2011, he received a fine, suspended 20-day jail sentence, and probation before judgment of 18 months. Other offenses were *nolle prosequi*. Applicant was placed in the Ignition Interlock Program for 12 months. Applicant successfully completed the interlock program with no program violations. He completed his probation in November 2012. (Tr. 28-32, 36-39; Gov. Ex. 1, JPAS entry, dated May 12, 2011; Gov. Ex. 5, Case Information, dated November 26, 2012; App. Ex. F, letter of completion of Interlock Program, undated; App. Ex H, Case Information, dated January 4, 2012)

In April 2011, about three weeks prior to his court trial in May 2011, Applicant volunteered for and started attending a 26-week outpatient alcohol counseling and treatment program. He was interviewed by a security investigator shortly after he started the program. At the interview, he told the investigator that he was complying with all aspects of his group counseling and had not received a diagnosis. He had not been prescribed any medication for his alcohol consumption. He intended to complete the program and all aspects of his counseling and probation. He further stated that he planned to only drink alcohol moderately in the future so as not to jeopardize his relationship with his wife and his employment. (Gov. Ex. 3, Response to Interrogatories, Transcript of Interview, at 3-4)

Applicant testified at the hearing that shortly after starting the alcohol counseling program and being interviewed by the security investigator in April 2011, he decided that he would stop drinking alcohol. He completed the alcohol treatment program and no further treatment was required. It is not clear from the information from the treatment program if Applicant was diagnosed for alcohol abuse. Applicant believes he may have been diagnosed for alcohol abuse in the 26-week program but he is not sure. However, based on Applicant's answer to the SOR and his testimony, I find that he was diagnosed for alcohol abuse. (App. Ex. G, Treatment Summary, undated) He has not had a drink of alcohol since making the decision not to drink in May 2011. When he was drinking alcohol, his consumption never caused him to be late for work, to need a drink the morning after drinking, to drink before noon, to have blackouts, hallucinations, or

¹ In the state where Applicant's driving while intoxicates charge was adjudicated, probation before judgment is not considered a conviction. But the defendant can be sentenced to a fine, and any jail sentence is suspended. The driving while intoxicated charge cannot later be expunged by the judge. (Md. Ann. Crim. Pro Art. 10-105(a)(3))

withdrawal symptoms, or lie about his drinking. He never considered himself an alcoholic. (Tr. 42-54)

Applicant's coworkers submitted letters of recommendation. One worker wrote that he has worked with Applicant for over five years. Applicant has good character traits as well as compassion for others. He has a good work ethic and works for the betterment of others. His experience with Applicant is positive. Applicant is always honest and selfless. (App. Ex. A, Letter, dated December 27, 2012) Another coworker wrote he has worked with Applicant for five years. Applicant is dependable and an asset to their organization. Applicant always displays good judgment and a regard for safety of all workers. He is highly regarded by his fellow workers. He notes that Applicant has expressed remorse for his alcohol use and is taking actions to mend his ways. (App. Ex. B, Letter, dated December 28, 2012) A third co-worker wrote that he has known Applicant for over seven years. Applicant demonstrates sound judgment, and has worked to protect classified information. Applicant has not offered excuses for his alcohol-related mistakes and is remorseful. (App. Ex. C, Letter, dated December 28, 2012) A fourth coworker wrote that he worked with Applicant for over six years. Applicant is a tireless hard worker who provides a quality product. Applicant admits he exhibited a lack of good judgment leading to his driving while intoxicated arrests. He sought help and counseling and is making an effort to reform his life. Applicant is not dependent on alcohol, and is committed to following the core values of honor, courage, and commitment. (App. Ex. D, Letter, dated December 27, 2012)

Applicant's supervisor wrote that he has known Applicant for over a year. Applicant works in a critical area that requires concentration, discipline, attention to detail, and ability to work as a team member under pressure. Applicant demonstrates an ability to work at a high level on all projects. He is an asset to the organization. He has great expertise and is committed and dependable. (App. Ex. D, Letter, dated December 31, 2012)

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 must be considered 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, the 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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 ¶ 21)

Applicant was convicted of driving while intoxicated in 2007 and 2011. He has been diagnosed by an alcohol counselor for alcohol abuse. Applicant's convictions and diagnosis 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(e) (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program).

I considered Alcohol Consumption Mitigating Conditions AG ¶ 23(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); AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of

action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)); and AG ¶ 23 (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 licensed social worker who is a staff member of a recognized alcohol treatment program).

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant was arrested for driving while intoxicated in 2007 with a BAC of .09. He successfully completed an alcohol-treatment program and 12-month probation. He had a second driving while intoxicated arrest in 2011 with a BAC of .08. He volunteered for and successfully completed a 26-week outpatient alcohol counseling and treatment program. He successfully completed probation after both incidents and successfully completed a state program that placed an interlock device on his car after the second incident. He has a good support system at home and with friends.

Applicant established a pattern of abstinence and has shown sufficient evidence of action taken to overcome his alcohol consumption problems. Applicant had two alcohol-related incidents away from work in four years. He did not have any work-related incidents or other alcohol-related symptoms, after-effects, or other issues. He completed two alcohol counseling programs, completed all court-ordered programs, and refrained from drinking alcohol for over 18 months. His work is excellent and well regarded. This information shows that a significant period of time has passed without evidence of an alcohol-related problem. Applicant demonstrated a change in his circumstances and conduct reflecting a change in his life. His total abstinence from alcohol consumption indicates that he can control his alcohol consumption impulses, and establishes a favorable opinion of his reliability and trustworthiness. The evidence shows that Applicant has been reformed or rehabilitated, and his history shows that he will continue to not consume alcohol to excess. I find that Applicant has mitigated the security concerns for alcohol consumption and that he will not present a security concern based on his alcohol consumption.

Criminal Conduct

The security concerns for alcohol consumption and criminal conduct are the same. The concerns involve questions of Applicant's reliability, judgment, and trustworthiness. Criminal activity creates doubt about a person's judgment, reliability,

and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulation. (AG ¶ 30)

Applicant had two driving while intoxicated criminal offenses in four years. This conduct raises Criminal Conduct Disqualifying Condition AG ¶ 31(a) (a single serious crime or multiple lesser offenses). The criminal conduct mitigating conditions involve issues similar to those discussed under alcohol consumption. The issues involve the passage of time, the unusual nature of the action causing security concerns, the likelihood of recurrence, and whether the actions cast doubt on the individual's reliability, trustworthiness, and judgment. The Criminal Conduct mitigating conditions that apply are AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and AG ¶ 32(d) (there is evidence of successful rehabilitation including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training, higher education good employment record, or constructive community involvement). For the same reasons stated above under alcohol consumption, Applicant has mitigated the security concern for criminal conduct.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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 the facts and circumstances surrounding this case. I considered Applicant's 20 years of honorable service on active duty in the Navy. I considered that Applicant has worked for defense contractors for almost ten years and was granted eligibility for access to classified information for many years. I considered that Applicant is a good employee and his job performance is excellent. Applicant's attended and completed alcohol counseling and treatment programs after each driving while intoxicated offense. He

successfully completed court-ordered probation and having an interlock device on his car. He has not consumed alcohol in over 18 months. He has a strong support system at home and with friends. Applicant presented sufficient information to establish that he has been rehabilitated and he ceased his consumption of alcohol. Applicant's history shows that he is reliable and trustworthy and has the ability to protect classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated alcohol consumption and criminal 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
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline J:	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.

THOMAS M. CREAN
Administrative Judge