



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



In the matter of:)
)
) ISCR Case No. 11-09208
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: William F. Savarino, Esq.

03/15/2013

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 May 11, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain 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. Applicant's employer provided an adverse information report of the incident for adjudication. The Office of Personnel Management (OPM) conducted an investigation, and DOD issued interrogatories to Applicant to clarify or augment information from the investigation. 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 October 5, 2012, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. This action was 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 November 7, 2012. He admitted some of the allegations in part and denied some of the allegations in part. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 4, 2013, and the case was assigned to me on January 11, 2013. DOD issued a Notice of Hearing on February 13, 2013, for a hearing on February 25, 2013. I convened the hearing as scheduled. The Government offered eight exhibits, which I marked and admitted into the record without objections as Government Exhibits (Gov. Ex.) 1 through 8. Applicant testified and offered five exhibits, which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through E. I received the transcript of the hearing (Tr.) on March 4, 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 36-year-old aircraft mechanic for a defense contractor. He is a high school graduate. He served on active duty in the U.S. Air Force as a F-16 crew chief from 1998 until 2009, and was honorably discharged as a technical sergeant (E-6). He is married with no children. (Tr. 20-22; Gov. Ex. 1, e-QIP, dated May 11, 2010)

The SOR alleges that Applicant was arrested for underage drinking of alcohol in 1994 (SOR 1.a); that he was involved in an alcohol-related incident in 1998(SOR 1.b); and that he was charged with leaving the scene of an accident after consumption of alcohol in 2004 (SOR 1.c). There is also an allegation of an arrest and charge for malicious destruction of property after consumption of alcohol in March 2011 (SOR 1.d), and outpatient treatment for substance abuse and a diagnosis of alcohol dependence in April 2011 (SOR 1.e). It is also alleged that Applicant continued to consume alcohol after a diagnosis of alcohol dependence (SOR 1.f). Applicant admits the underage drinking allegation, denies the 1998 incident, and admits the incident in 2004 but denies that it was alcohol-related. He admits the destruction of property in 2011, and admits the outpatient treatment for substance abuse. He states that if he was diagnosed as alcohol dependent, he was never informed of the diagnosis. He admits he consumed alcohol after 2011, but has not consumed alcohol since September 2012.

Applicant admits that in 1994 when he was 18 years old, he attended a party and drank alcohol as a minor. When he left the party, he was stopped by police and failed a field sobriety test. He was charged with underage drinking of alcohol, spent a night in jail, his license was suspended, and he paid a fine. (Tr. 22-24; Gov. Ex. 8, police report, dated October 30, 1994)

Applicant denies he was involved in an incident, alcohol-related or not, in 1998. In 1998, he was on active duty. The Government's information on this offense is based on a comment in the OPM investigator's report of his interview of Applicant. The report states that Applicant stopped drinking alcohol "after an underage drinking offense in 10/1998." Applicant did not correct this statement when he verified the report because he did not see that the date was not correct. In 1998, Applicant was no longer underage. I find that there was no alcohol-related incident in 1998.

Applicant admits that in 2004 he was charged with leaving the scene of an accident. Applicant and a fellow airman went into a farmer's field near the airbase where they were stationed to set-off fireworks on July 4. Their vehicle got stuck in the mud and they could not get it out. They left the field, went back to their on-base dormitory, and returned the next day to get the vehicle. The farmer called police. When Applicant returned to retrieve the vehicle, he was arrested for leaving the scene of an accident. He was sentenced to 90-days probation. He completed the probation without any problems. Applicant denied that he drank alcohol that night and that the incident was alcohol-related. (Tr. 26-28)

The Government based its allegation that the offense was alcohol-related on Applicant's answers to questions on two e-QIPs he submitted. On his May 2010 e-QIP, he checked the box asking if he had ever been charged with an offense related to alcohol and drugs, and listed the July 2004 incident. On an e-QIP he submitted earlier on July 16, 2007, he checked the box concerning felony convictions and listed the July 2004 offense. He provided the same information on both forms listing the same police department, that the offense was for leaving the scene of an accident, and that he served probation for three months. (Tr. 53-55; Gov. Ex. 1, e-QIP, dated May 11, 2010, at 43; Gov. Ex. 6, e-QIP, dated Jul 16, 2007, at 26) At the hearing, Applicant stated he did not know why he listed the July 2004 as alcohol-related or as a felony. He stated that it was difficult to complete the form and he was confused. (Tr. 55-56) I find that the July 2004 was neither a felony nor alcohol-related.

Applicant and his wife, who also served on active duty in the U.S. Air Force, met when they were assigned from different air bases to Iraq. After returning from Iraq, they had a long-distance romance until they married in August 2004. They were eventually assigned to the same location. Applicant and his wife decided to leave the Air Force. Applicant was hired by the defense contractor and moved to their present location. His wife stayed at their last assignment location while a medical discharge was being processed. In March 2011, Applicant was living separate from his wife, and was working the overnight shift for the defense contractor as an aircraft mechanic. One evening, he came home from work and started to clean his apartment in the early morning hours. He was lonely without his wife so he started to drink alcohol. He admitted that he became intoxicated that night, had an argument over noise with a neighbor, and damaged the neighbor's car. Police were called and he was arrested for alcohol intoxication, malicious destruction of property, and littering/dumping. Applicant appeared in court and was fined, paid for the car damage, and received probation before judgment. (Tr. 30-36, 42-43, 56-57; Gov. Ex. 2, Response to Interrogatories, dated August 6, 2012, at 4-5)

The offense was expunged from his record by court order. (Gov. Ex. 2, Response to Interrogatories, dated August 6, 2012, at 168)

After the alcohol-related incident in March 2011, and before going to court about the incident, Applicant, on the advice of his attorney, self-referred for evaluation and treatment at a substance abuse program. The admission diagnosis on April 12, 2011, was alcohol dependence based on clinical impressions with a recommendation for outpatient treatment. (Tr. 58-61; Gov. Ex.3, Clinical Report, dated April 12, 2011 at 1-4) Applicant attended a 13-week program consisting of two 15-minute individual counseling sessions and 11 weekly one-hour group counseling sessions. Applicant tested negative four times during the program for substance abuse. He completed the program and was discharged on August 4, 2011. The discharge profile clinical notes list the diagnosis as alcohol dependence. His prognosis was good based on his program completion and his compliance with treatment recommendations. No further treatment was recommended. (Gov. Ex. 3, Discharge Summary, dated August 4, 2011, at 1-4) However, the client discharge treatment summary does not note a diagnosis of alcohol dependence. It is also noted that Applicant's substance abuse counselor, who completed all of the treatment documents, is listed as a trainee. (Gov. Ex. 3, Client Discharge Treatment Summary, dated September 2, 2011)

The counselor never informed him during or after his treatment of an alcohol dependence diagnosis. Applicant did not drink alcohol after the diagnosis except on his birthday in April 2012, and his last promotion in September 2012. Applicant is not sure if there was another time he consumed alcohol. However, in response to the interrogatories, Applicant stated he may drink a six pack of beer once or twice a month while grilling. Applicant thought his response referred to his prior consumption and not his present consumption of alcohol. He stated his present alcohol consumption has been very infrequent. He and his wife do not keep alcohol in the house. He only consumes alcohol with his wife and not the work friends he had consumed alcohol with prior to his attendance at the substance abuse sessions. He cannot state that he will not drink alcohol in the future because the future is uncertain. (Tr. 42-43, 61-70)

Prior to the hearing, Applicant was evaluated by a certified advanced alcohol and drug counselor. The counselor had four evaluation sessions with Applicant, and an evaluation session with Applicant's wife. Applicant informed the counselor of all his prior alcohol-related incidents. The counselor also examined the records from the previous alcohol treatment program. The counselor opined that the information does not support a diagnosis of alcohol dependence. The counselor noted that an alcohol dependence diagnosis is based on a maladaptive pattern of drinking, leading to clinically significant impairment or distress manifested by three or more alcohol-related issues in a 12 month period. The alcohol-related incidents issues that could lead to alcohol dependence are a marked increase in the amount of alcohol needed to achieve intoxication or desired effect; a marked diminished effect from continued use of the same amount of alcohol; exhibiting characteristic withdrawal symptoms from alcohol consumption; drinking to relieve or avoid withdrawal symptoms; drinking large amounts of alcohol; over a longer period of time; a persistent desire or unsuccessful efforts to cut down or control drinking;

important social, occupational or recreational activities given up or reduced because of drinking; increased time spent in recovering from the effect of alcohol; and continued drinking in spite of persistent or recurring physical or psychological problem cause or exacerbated by drinking. Since Applicant has not exhibited any of these signs or conditions, the drug counselor concluded that the diagnosis of alcohol dependence is not sustainable. She opined that in March 2011, Applicant appeared to only be suffering from an adjustment disorder with a disturbance of conduct. (App. Ex. E, Evaluation, dated December 30, 2012)

Applicant presented affidavits concerning his alcohol consumption and work performance. Applicant's wife wrote that he is a decent, loyal, hard-working person, and he has never given her a reason to distrust him. Applicant has only been an occasional social drinker and never abused alcohol. She has never seen him intoxicated. She is aware of the March 2011 alcohol-related incident. Applicant has not been a problem drinker in the ten years she has known him. He stopped using alcohol in September 2012 when alcohol-related security clearance issues were raised. Since he stopped drinking alcohol, they do not keep alcohol in the house. (App. Ex. A, Affidavit, dated February 21, 2013)

A former supervisor and now co-worker wrote that he has worked with Applicant daily for over three years. Applicant's performance has been exemplary. His professionalism is stellar and his job productivity is at a high level. He is a person of strong ethics and character. He is dependable, honest, and trustworthy. He has never seen Applicant abuse alcohol or be intoxicated. He has never heard Applicant talk of alcohol in a way to suggest he has an alcohol-related problem. (App. Ex. B, Affidavit dated February 14, 2013)

Applicant's work lead wrote that he has known Applicant since June 2010 and sees him five or six days a week. He never had a problem with Applicant's work or attitude. He has a can-do and good attitude. He has strong ethics and character. He is dependable, honest, and trustworthy. He has never seen Applicant abuse alcohol, be intoxicated, or exhibit an alcohol-related problem. (App. Ex. C, Affidavit, date February 14, 2013)

Applicant's first line supervisor wrote that he hired Applicant in September 2010. He sees him a few times a week on the job. He respects Applicant's skill and knowledge of his job. He evaluated Applicant's performance with an overall rating that merited a salary increase. He is on track to have his next rating to be the highest rating possible. Applicant is dependable, honest and trustworthy. He has never seen Applicant abuse alcohol or be intoxicated. Applicant does not speak of any alcohol-related problems. (App. Ex. D, Affidavit, dated February 14, 2013)

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)

Two alcohol-related incidents were established for Applicant; charges and convictions for underage drinking in 1994, and charges and convictions for destruction

of property and alcohol intoxication in 2011. He may have been diagnosed by an alcohol counselor as alcohol dependent. He was not informed of the diagnosis. Applicant's convictions and potential 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 had two alcohol-related incidents in 17 years. He was diagnosed with alcohol dependence after the 2011 incident when he attended and successfully completed an alcohol treatment program. That opinion was rendered by an addiction counselor trainee based on two short individual sessions and 11 group therapy sessions. The diagnosis was questioned and disputed by another alcohol counselor. The second counselor, who provided an opinion on December 30, 2012, is a certified advanced alcohol and drug counselor who had four individual counseling sessions with Applicant and also had the benefit of information provided in an interview with Applicant's wife. While I considered the opinions of both counselors, I find the first opinion to be tenuous and give greater weight to the opinion of the second counselor based on her experience and the information available to her.

I also find that Applicant was not informed of the first diagnosis of alcohol dependence. The client discharge treatment summary provided to Applicant did not

have a diagnosis listed. The client treatment summary only showed treatment completion and no further treatment needed. Applicant admits he drank alcohol at least twice after the diagnosis with his last consumption of alcohol in September 2012.

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 17 years. He did not have any work-related incidents or other alcohol-related symptoms, after-effects, or other issues. He completed alcohol counseling programs. The diagnosis of alcohol dependence is questionable. Applicant was not informed of the diagnosis. He drank alcohol only twice since the diagnosis in 2011. He has not had a drink of alcohol in eight months. His work is excellent and he is well regarded by his supervisors. All note that they have never seen him take a drink of alcohol or be intoxicated. He was evaluated by an advanced alcohol counselor who refuted the earlier evaluation and opined that Applicant is not alcohol dependent. He has a strong support system at home to keep him on track concerning his alcohol consumption.

A significant period of time has passed without evidence of an alcohol-related problem. He has consumed very little alcohol since March 2011. Applicant demonstrated a change in his circumstances and his conduct reflects a change in his life. He established that he can control his alcohol consumption impulses. 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.

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 11 years of honorable service on active duty in the Air force. I considered that Applicant has successfully been eligible for access to classified information for over 15 years. I considered that Applicant has worked for a defense contractor for almost five years and is a good employee with an excellent job performance. Applicant was charged and convicted of two alcohol-related offenses in 17 years, underage drinking in 1994 and malicious destruction of property and alcohol intoxication in 2011. He volunteered for and completed alcohol counseling and treatment after the 2011 incident. The result of the treatment was a diagnosis of alcohol dependence. There is a 2012 diagnosis that challenges the basis for the earlier diagnosis and concludes that there is no alcohol dependence. I find that Applicant is not alcohol dependent. He has consumed alcohol on only two occasions since March 2011 and has not been intoxicated since that time. His supervisors have never seen him drink alcohol or be intoxicated. He has a strong support system at home.

Applicant presented sufficient information to establish that he has been rehabilitated and 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 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.f: 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