



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



In the matter of:)
)
) ISCR Case No.11-09587
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant continues to drink alcohol despite being evaluated as alcohol dependent. Clearance is denied.

Statement of the Case

On September 28, 2011, 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 26, 2011, admitting all of the allegations except subparagraph 1.f, and requesting a hearing. On December 7, 2011, the case

was assigned to me. On January 10, 2012, a notice of hearing was issued scheduling the case for January 19, 2012. Applicant waived his right to 15 days notice of hearing. (Tr. 8) At the hearing, I received into evidence six Government exhibits marked as Government Exhibits (GE) 1 through 6, and four Applicant Exhibits, marked as Applicant Exhibits (AE) A through D. Also, I considered Applicant's testimony. The transcript was received on January 27, 2012.

Findings of Fact

Applicant is a 55-year-old married man with an adult child from a previous marriage. After graduating from high school, he served four years in the U.S. Army followed by 18 years in the U.S. Navy, retiring in 2006. (AE C; Tr. 19) Since retiring from the Navy, Applicant has worked for a defense contractor. His duties include monitoring calibration standards, performing "true analysis repair," and lab auditing. (Tr. 20)

Applicant is highly respected on the job. According to a customer, Applicant works quickly and efficiently. (AE A) According to his supervisor, he is "uniquely qualified in his position . . . , and is a recognized subject matter expert responsible for ensuring operational capabilities are maintained at [the] calibration activities around the globe." (AE D)

Applicant has a drinking problem. He began drinking when he was 17 years old, drinking approximately a six-pack of beer every other weekend. By the time he was 26, his consumption had increased to six to ten beers every weekend.

In 1988, Applicant was arrested and charged with driving under the influence of alcohol (DUI). (Answer at 1) Applicant then attended treatment for alcohol abuse. It is unclear from the record whether the treatment was court-ordered.

After completing the treatment program, Applicant remained sober for the next seven years. Applicant resumed drinking in 1995. He started with a few beers at dinner periodically over the course of a month. By 1996, he was going to bars every weekend, consuming a half dozen beers and several mixed drinks over the course of each evening. (GE 4 at 4) By the early 2000s, Applicant was drinking a pint of whiskey together with a few beers every weekend.

In September 2003, Applicant was arrested and charged with DUI. He pleaded guilty and was sentenced to probation before judgment. (Answer) As part of probation, Applicant was ordered to attend a substance abuse program. (GE 5)

Applicant entered the program in November 2004. In response to an intake questionnaire, Applicant admitted occasionally drinking before noon. He also admitted to being unable to stop drinking after one to two drinks. (GE 5 at 39) A clinician evaluated him with alcohol abuse. (GE 5 at 17)

Applicant underwent treatment in the program for approximately seven months, participating in both individual and group counseling, together with participation in Alcoholics Anonymous (AA). According to his counselor his prognosis upon discharge was fair. (GE 5 at 1)

Over the next few years, Applicant attempted to quit drinking multiple times, but was unsuccessful. By 2008, Applicant was drinking two pints of liquor over the weekends. It caused him to miss work on Mondays “once every couple of months.” Over time, his alcohol-related absences “migrated into” Tuesdays, also. (Tr. 47) By March 2009, Applicant was spending approximately \$400 per month on alcohol. (GE 6 at 36)

After a particularly bad drinking binge, Applicant spoke with his employer. With his employer’s help, he enrolled in an intensive, 28-day inpatient program on April 20, 2009. (Tr. 49; GE 5 at 2) The program’s counselor evaluated him and concluded he was alcohol dependent. (GE 6 at 20)

Applicant believed the program was not helpful. (Tr. 51) His counselor characterized him as uncooperative and “resistant to treatment.” (GE 56 at 20) His participation in group therapy was minimal, and he had little insight into the issues that could potentially trigger a relapse. He left the treatment center having completed only three weeks of the program. Consequently, the counselor concluded that his prognosis was poor, but that it could improve if he attended the six-month outpatient program and attended AA meetings five to seven times weekly. (GE 6 at 20)

Applicant stopped participating in the outpatient program after two months. (Tr. 50) However, he did attend AA daily through 2009. (Tr. 36) In 2010, he decreased his AA attendance to twice per week. (Tr. 37) Since the summer of 2010, he has been attending AA meetings approximately once per month.

Applicant no longer binge drinks. He credits his wife, whom he married approximately two years ago, with being a significant positive influence. (Tr. 38) He has not drunk to the point of intoxication since October 2009.

Applicant still occasionally has a drink of alcohol. In the past year, he has consumed eight to ten drinks. (Tr. 34) His last drink was approximately three weeks before the hearing. (Tr. 34) When asked during cross-examination why he has continued to drink alcohol despite being counseled to remain abstinent, Applicant responded as follows:

AA of course is going to tell me not to drink. I would suspect [the treatment facility] would recommend I don’t drink. I recommend I don’t drink, but an alcoholic has no control over it at all times. (Tr. 53)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 to obtain a security clearance.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, “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 ¶ 21). Applicant has been battling alcoholism for nearly 30 years. This period encompasses two DUI arrests, seven-years of abstinence followed by a relapse, and stints in both inpatient and outpatient rehabilitation facilities. A clinician’s evaluation in 2004 concluded that Applicant was an alcohol abuser, and a 2009 clinician’s evaluation concluded he was alcohol dependent. AG ¶¶ 22(a), “alcohol 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;” 22(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;” and 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,” apply.

I have considered the mitigating conditions and conclude none apply. Applicant never finished his most recent treatment program, leading his counselor to question his commitment to sobriety. Although Applicant drinks significantly less alcohol than he did two years ago, his consumption is contrary to his counselor’s recommendation that he totally abstain.

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 the 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.

Applicant is highly respected on the job. Previously, he served the country honorably in two branches of the armed services for a combined 22 years before retiring in 2006. His testimony regarding his struggles with alcohol was frank and introspective.

Conversely, Applicant's history of alcohol abuse is longstanding and severe, and his most recent professional prognosis was not good. Most important, Applicant is still drinking alcohol occasionally, in contravention of his clinician's recommendation. Under these circumstances, I cannot conclude that Applicant has mitigated the security concern.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge