



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



In the matter of:)	
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)	ISCR Case No. 11-10999
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro se*

June 19, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on April 29, 2011. (Item 5.) On December 13, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G (Alcohol Consumption) concerning Applicant. The action was taken under Executive Order (EO) 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 27, 2012. (Item 3.) He subsequently submitted an Answer to the SOR on January 3, 2013, and requested a decision be made without a hearing. (Item 4.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on March 12, 2013. Applicant received the FORM on March 21, 2013, and was given 30 days to submit any additional information. Applicant submitted an additional statement dated April 15, 2013, which is admitted into evidence without objection as Applicant Exhibit A. The case was assigned to me on May

6, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 27, and single. He has been employed by a defense contractor since September 2010 and seeks to obtain a security clearance in connection with his employment. Applicant admitted all of the allegations in the SOR. Those admissions are findings of fact. Applicant's admissions, which include his responses to DoD interrogatories,¹ are incorporated into the following findings of fact.

Paragraph 1 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he uses intoxicants to excess.

1.a. Applicant admits that he occasionally drinks alcohol to excess, and to the point of intoxication. He states that this may happen "once every few months." He also stated this last occurred in September 2012. (Item 6 at 15.) He states in his Answer that he works six days a week and rarely drinks during the work week. (Item 4 at 3.)

1.b. Applicant admits that he was charged by the US Coast Guard with Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug. He was fined \$500 for this offense, which occurred on July 4, 2010. Applicant was out with two friends on his boat. Over most of a day he admits drinking about 10 beers. He stopped drinking about three hours before driving his boat. At this point he was stopped by the Coast Guard, admitted that he had been drinking, failed field sobriety tests, and had a breathalyzer result of .092. The Coast Guard reported, "The captain [Applicant] was extremely cooperative and cordial to the boarding team; he acknowledged all violations and recommendations from the boarding officer." (Item 5 at 19-34.)

1.c. Applicant admits being arrested and charged with Driving While Intoxicated in May 2009. This occurred after he had been attending a rehearsal dinner before a wedding. He received a fine and his driver's license was restricted for one year. He also successfully attended a 20 hour ASAP alcohol and driving course. (Item 5 at 37.)

Applicant states in the Interrogatory, "I feel the alcohol related incidents miss represent my character. I will not make those same mistakes again. I am a [sic] very hardworking, driven, loyal, and goal oriented." (Item 6 at 36.) He further states in his Answer, "I completely understand how big of an issue it is to receive this security clearance." (Item 4 at 3.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect

¹Item 6.

to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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(a) describing 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, "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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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 following disqualifying condition applies to this case under AG ¶ 22:

(a) alcohol-related incidents away from work, such as driving while under the influence, 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.

I have examined the potential mitigating conditions under this paragraph and find that one of them applies under 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.

In this case Applicant was involved in two alcohol-related incidents within 14 months. However, the last incident was in July 2010 and there is no evidence he has had any other incidents since then. There have been no incidents since Applicant began work with his current employer in September 2010. Applicant is knowledgeable of the responsibilities his work entails, and that he cannot abuse alcohol while holding a security clearance. Applicant is a young man who appears to have learned harsh lessons about when he can and cannot use alcohol. Under the particular circumstances of this case he has mitigated the security significance of his alcohol use.

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 applicant's conduct and all the circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant had two alcohol-related incidents, one in 2009 and the other in 2010. Based on the available evidence I do not find that he is a problem drinker. He is knowledgeable of his responsibilities as a security clearance holder not to engage in such conduct in the future. If he does his clearance will be in immediate jeopardy. Under AG ¶ 2(a)(3), Applicant's conduct is not recent. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is not a high likelihood of recurrence (AG ¶ 2(a)(9)).

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 has mitigated the security concerns arising from his alcohol consumption.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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

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.

WILFORD H. ROSS
Administrative Judge