



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-12598
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

08/12/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his abuse of alcohol, his alcohol-related misconduct, his misconduct in the workplace, and his repeated attempts to mislead the Government about important information in his background. Clearance denied.

Statement of the Case

On June 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, which included his responses to interrogatories from Department of Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.² On March

¹ Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

20, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ for alcohol consumption (Guideline G) and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 25, 2013, and I convened a hearing in this matter on July 15, 2013. The parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 6, which were admitted without objection. Applicant's Answer included seven attachments that were admitted without objection as Applicant's Exhibits (Ax.) A - G. At hearing, he proffered an additional exhibit, which was admitted without objection as Ax. H. Applicant also testified. DOHA received a transcript (Tr.) of the hearing on July 30, 2013.

Findings of Fact

Under Guideline G, the Government alleged that from about 1977 until at least November 2012, Applicant consumed alcohol, at times to excess and to the point of intoxication (SOR 1.a); that despite attending Alcoholics Anonymous twice weekly, he continued to consume alcohol until November 2012 (SOR 1.b); that in May 2002, he was arrested and charged with driving under the influence of alcohol (DUI) and driving while intoxicated (SOR 1.c); that as a consequence of the 2002 DUI arrest, he was ordered to complete an alcohol assessment, after which it was recommended that he seek additional counseling about his use of alcohol (SOR 1.d); that in October 1999, Applicant was arrested and charged with DUI (SOR 1.e); that in June 1983, he was charged with public intoxication (SOR 1.f); that in February 1982 he was charged with disorderly conduct and resisting arrest, which occurred after he had been drinking (SOR 1.g); that in 1979, he was charged with public intoxication (SOR 1.h); and that in 1977 he was charged with underage drinking (SOR 1.i). Applicant admitted with explanation SOR 1.a and 1.b, and denied, with explanation SOR 1.c - 1.i.

Under Guideline E, the Government cross-alleged the conduct alleged at SOR 1.c - 1.i (SOR 2.a). It was also alleged that Applicant deliberately made a false official statement to the Government when, in response to question 22.e of his June 2011 eQIP, he failed to disclose the alcohol-related arrests alleged at SOR 1.c - 1.i (SOR 2.b); that his negative answer to question 21 of his June 2011 eQIP was also a deliberate attempt to mislead the Government because he failed to disclose mental health-related problems, treatment, or counseling between 2005 and 2012 (SOR 2.c); that in August 2008, Applicant received a written reprimand from his employer for violating security procedures (SOR 2.d); that in June 2005, Applicant received a written reprimand from his employer for smoking and having a "bad disposition" (SOR 2.e); that he was demoted at work in 2003 after an altercation with a co-worker (SOR 2.f); and that he deliberately omitted the alcohol-related arrests alleged in SOR 1.e - 1.i when he submitted a security clearance application (SCA) in April 1999. (SOR 2.g) Applicant

³ The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

denied with explanation the allegations at SOR 2.d, 2.e, and 2.g. He admitted with explanation the remaining Guideline E allegations.

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 50 years old. He has been married since March 1988, and he has two adult children. Applicant served briefly in the Navy but was honorably discharged for medical reasons in January 1986 before completing basic training. He has completed a variety of technical training related to his work as an electronics technician, and he is a licensed electrician. (Gx. 1; Ax. F)

Applicant began working for defense contractors in June 1989 and has held at least a secret-level security clearance since 1991. He has been interviewed by Government investigators during background investigations in at least 1995, 1996, 1999, 2001, and 2011. Applicant has worked for his current employer, a large defense contractor, since 2001 and is currently a senior electronic engineering technician. (Gx. 1; Gx. 3; Ax. F)

By his own admission, Applicant has a problem with alcohol and believes he is an alcoholic. (Tr. 72) He started drinking, usually beer, when he was 15. His alcohol use resulted in four alcohol-related arrests before age 21. In 1977, he was charged with underage drinking; in 1979, he was charged with public intoxication; in 1982, he was charged with disorderly conduct and resisting arrest after he had been drinking; and in 1983, he was again charged with public intoxication. (Gx. 2, 5, and 6)

As an adult, Applicant was charged in 1992 with DUI. He had consumed three or four beers at his brother's house and decided to drive home. He was stopped at a police checkpoint and alcohol was detected. A breath test showed a blood alcohol content (BAC) of .081 and he was arrested. Applicant's attorney was eventually able to discredit the breath test and this charge was dismissed. (Gx. 2 and 5)

In 2002, Applicant was returning to his quarters on the military installation where he was working on temporary duty. He had been drinking at a friend's house. Applicant was stopped by base police at the gate after the odor of alcohol was detected. He failed a field sobriety test and was found to have a .15 BAC. He was arrested and charged with DUI. When Applicant appeared in court, he pleaded guilty to a reduced charge of careless driving. He was ordered to complete a defensive driving course as well as an alcohol awareness course, which included an alcohol evaluation. He completed both orders in June 2002. In July 2002, he received the results of an alcohol risk assessment showing his attitudes and life style promoted high risk alcohol use. The report went on to say that "a very strong commitment to change these patterns is needed" and it recommended he seek professional help with his alcohol use. (Gx. 3, 4)

Applicant has attended Alcoholics Anonymous (AA) as often as twice weekly because he knows he has a problem. (Tr. 47) However, his drinking continued while attending AA and he did not follow the recommendation that he get professional help. At

hearing, he presented documentation of an appointment with a state alcohol counseling agency for the day after the hearing. (Ax. H) The only time he has abstained from alcohol was for about three weeks in 2009. He stopped drinking liquor in 2009 because of other medications he takes, and before 2009 he had experienced blackouts from drinking. He averred that he has not consumed alcohol in excess or to the point of intoxication since November 2012. However, he testified that he usually drinks about four beers a day, most recently two days before the hearing, and that he drank eight beers in one sitting as recently as May 2013. With his Answer, he submitted a notarized statement of his intent to no longer abuse alcohol or become involved in alcohol-related misconduct. (Gx. 3; Ax. B; Tr. 76 - 79)

Applicant also has mental health issues for which he has been treated since about 2005. He was seen by a psychiatrist between 2005 and 2009 once or twice monthly for attention deficit disorder, bi-polar disorder, depression, anxiety, and sleep disorder. He was prescribed multiple medications for these conditions. In 2005, he was found lying in a roadside ditch after he had disappeared from his home the previous night. He had taken a sleep medication and went sleep walking. While in that state, he overdosed on one of his other medications. Thereafter, he spent three days under observation at a psychiatric unit. Since 2009, he has received less frequent treatment from a different psychiatrist for the same conditions. His medications have been modified and he has stopped drinking hard liquor.

In the workplace, Applicant has been disciplined at least three times for violating procedures or for workplace misconduct. In 2003, he was demoted for his involvement in an argument among co-workers. Applicant averred that he was simply trying to intervene in an altercation and was trying to enforce a company policy against using profanity in the workplace. In 2005, Applicant was given a written reprimand for violating company policy against smoking and for having a "bad disposition." Applicant does not contest that this happened, but argues that there was no policy against smoking at the time. Finally, in 2008, Applicant received a written reprimand for violating security procedures when he allowed an unauthorized person to remain unescorted in a secured part of the workplace. Applicant does not deny this happened, but maintains this was an inadvertent mistake and a minor violation as the unescorted person was only in the area for about five minutes. He also has denied that he received a written reprimand.

Since 1991, Applicant has been investigated several times to obtain and renew his security clearance. In subject interviews conducted in 1995, 1996, 1999, 2001, and 2011, he was asked about alcohol-related arrests and the omission from his security clearance applications of information about his use of alcohol. In the 1996 and 2011 interviews, he had to be confronted with the alcohol-related arrest information he omitted before acknowledging it and providing details about it. (Gx. 3; Tr. 22, 80 - 81)

In April 1999, Applicant submitted a security clearance application to renew his security clearance. In response to question 24 (*Your Police Record - Alcohol/Drug Offenses - Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*), he answered "no." Although he disclosed his 1992 DUI arrest under a question about felony offenses, he did not list his other alcohol-related arrests or charges that had occurred to that point. When Applicant submitted an eQIP in June

2011, he did not list any of his alcohol-related charges or arrests. Applicant also answered “no” to question 21 of his June 2011 eQIP (*Mental Health - In the last 7 years, have you consulted with a health care professional regarding an emotional or mental health condition or were you hospitalized for such a condition?*).

Applicant has averred that his omissions occurred either because he was rushed to complete the eQIP and did not have time to gather detailed information sought by the questions, or that he did not understand the question. He did not otherwise explain why he simply did not answer “yes” to the questions about his alcohol-related conduct or his mental health treatment.

Aside from the aforementioned reprimands, Applicant has a good reputation at work. Performance evaluations for 2010 through 2012 show he meets expectations for his position. Letters from co-workers and friends praise him for his honesty, professionalism, hard work, dedication, and reliability. (Ax. A; Ax. G)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁴ with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive. 6.3.

then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Alcohol Consumption

Applicant admits he has a problem with alcohol. For the past 35 years, his alcohol use has caused him significant problems. He has been charged or arrested for alcohol-related criminal conduct at least six times since 1977. Applicant did not heed a state agency finding after his 2002 DUI that he was at risk for continued alcohol abuse and did not act on a recommendation that he seek professional help. Despite representations that he has not abused alcohol since November 2012, his daily consumption of four beers, and his periodic consumption of twice that amount is excessive. The security concerns raised by his alcohol consumption are stated at AG ¶ 21 as follows:

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.

More specifically, available information requires application of the following AG ¶ 22 disqualifying conditions:

(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;

(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;

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

(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; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has an extensive history of alcohol-related incidents, including arrests for public intoxication, disorderly conduct, and DUI. Before 2009, he experienced blackouts after consuming too much alcohol, and a state evaluation determined that he needed professional help to address his abusive consumption of alcohol. However, he failed to follow that recommendation.

I have also considered the following AG ¶ 23 mitigating conditions:

(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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

None of these conditions apply. Applicant admits he has a problem with alcohol and has been advised that his drinking is abusive. However, he still drinks, at times to excess. Despite his claims to the contrary, he has not completed any rehabilitation program. The information about an alcohol awareness class and defensive driving course he completed in 2002 does not show those involved any sort of alcohol abuse treatment or rehabilitation within the meaning of AG ¶ 23(d). Applicant has not established any pattern of abstinence, and his participation in AA, during which he continued to drink, was only a nominal attempt to gain insight into his problem. Unless and until he commits to changing his use of alcohol, Applicant's drinking will remain a disqualifying security concern.

Personal Conduct

Despite Applicant's denials of intentional falsification, available information established that he deliberately omitted information about his alcohol-related arrests, and about his mental health treatment. He did so on at least two applications for a security clearance. Available information also showed Applicant has been reprimanded for workplace misconduct at least three times since 2003. This information raises security concerns about his personal conduct, which is addressed at AG ¶ 15, as follows:

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.

Specifically, the record requires application of the following AG ¶ 16 disqualifying conditions:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of: (2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations.

As to the falsification allegations, Applicant has completed similar questionnaires multiple times since 1991. He has been interviewed about alcohol-related information he omitted from previous questionnaires and had to be confronted about those events. His

claim that he could not answer “yes” to certain questions because he was rushed or because he did not have sufficient information about those issues is untenable. He has more than 20 years experience in applying for and renewing his security clearances. He has been interviewed about similar omissions from other applications, and cannot claim he did not understand the questions. Given his experience in these matters, Applicant knew, or should have known, that he was required to disclose all of his alcohol-related arrests, no matter how dated the events. He also knew, or should have known, that he was required to disclose his mental health information, all of which occurred within seven years of his most recent eQIP. All of the information probative of Applicant’s intent regarding answers in his eQIP and previous applications shows he intended to withhold adverse information in his background from the Government. The disqualifying conditions at AG ¶¶ 16(a) and 16(d)(3) apply.

As to his conduct in the workplace, Applicant does not contest that he was reprimanded or demoted as alleged. However, he denies that he did anything wrong even though his explanations support the alleged events leading to the reprimands. All of the reprimands alleged have occurred while employed at his current company, so they must be viewed as recent. Further, his admissions established those allegations and shifted the burden to Applicant to refute, extenuate, or mitigate them. As to SOR 2.d, the 2008 security violation, Applicant stated simply that it was a minor violation as the unescorted person was only in the secure area for a few minutes. As to SOR 2.e, the 2005 smoking and “bad disposition” allegation, Applicant’s response simply averred that there was no policy about smoking and that he was otherwise blameless and surprised by the reprimand. Finally, in response to the SOR 2.f allegation regarding a workplace altercation, Applicant claimed he was either trying to stop an argument or to enforce a company policy against the use of profanity in the workplace. I did not find Applicant’s explanations credible. It goes against common sense that all three reprimands were wrongfully given. Applicant’s response to these SOR allegations attempted to deflect responsibility for his conduct and he did not present any corroboration to support his response.

Applicant’s workplace misconduct requires application of the disqualifying conditions at AG ¶¶ 16(c) and 16(d)(2). By contrast, I have also considered the following pertinent AG 17 mitigating conditions:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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.

Applicant has experience in completing security clearance applications since 1991. He also has been confronted several times by investigators with information he omitted from his applications. There is no indication he has ever tried to correct his omissions before being confronted with the missing information. Applicant has a history of trying to minimize the scope of adverse information in his background. His conduct in this regard is ongoing and recent. It is also significant, in that his deliberate falsifications are potential violations of federal law governing false official statements. He has not acknowledged that he was at fault in any of the allegations under Guideline E, and I conclude that his failures of judgment, trustworthiness, and honesty will likely recur. On balance, the security concerns about his personal conduct remain unmitigated.

Whole-Person Concept

I have evaluated the available information and have applied the appropriate adjudicative factors under Guidelines E and G. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I further note that Applicant is 50 years old and presumed to be a mature, responsible adult. He has been a satisfactory employee for his company for more than a decade and he has a high degree of professional expertise that continues to be of great value. However, this positive information is outweighed by Applicant's long history of alcohol abuse, alcohol-related arrests, and his continued failure to disclose that information and to address his use of alcohol. Also of concern is the combination of his mental health issues and his deliberate failure to disclose them as required. His workplace misconduct and his repeated falsifications further underscore the doubts, still unresolved, about his suitability for continued access to classified information. Because protection of the national interest is the primary concern here, those doubts must be resolved by discontinuing Applicant's access to classified information.

Formal Findings

Formal findings 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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.g:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge