



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



In the matter of:)	
)	
)	ISCR Case No. 11-13781
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a long history of alcohol abuse, highlighted by five alcohol-related incidents (one assault and four driving while intoxicated (DWI)). His most recent is a felony DWI conviction in 2010. He was diagnosed as alcohol dependent. He has ongoing financial problems, and he is not in control of his financial situation. Clearance is revoked.

Statement of the Case

Applicant submitted his security clearance application (SCA) on October 21, 2010. On December 14, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline F (financial considerations).¹ Applicant answered the SOR on January 19, 2013, and requested a decision without a hearing.

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

Department Counsel requested a hearing before an administrative judge on February 11, 2013. The case was assigned to me on April 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2013, scheduling a hearing for May 6, 2013.

Applicant participated in his hearing via video teleconference (VTC) from Syracuse, New York. Department Counsel, the court reporter, and I were located in Arlington, Virginia. At the hearing, the Government offered exhibits (GE) 1 through 18. Applicant testified and submitted exhibits (AE) 1 through 3. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on May 14, 2013.

Procedural Issue

At his hearing, Applicant waived his right to 15 days advanced notice of his hearing. He had sufficient time to prepare and was ready to proceed. (Tr. 15-16)

Findings of Fact

Applicant admitted all allegations under SOR ¶ 1 (alcohol consumption) and ¶ 2 (criminal conduct). The criminal conduct allegations are factually the same allegations alleged under the alcohol consumption guideline. In his answer to the SOR, Applicant failed to admit or deny any of the Guideline J allegations (SOR ¶ 2). He admitted all SOR ¶ 2 allegations at his hearing. Applicant admitted SOR ¶¶ 3.a, 3.b, and 3.f through 3.j. He denied SOR ¶¶ 3.c through 3.e. His admissions are incorporated herein as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 44-year-old test engineer employed with a government contractor. He served in the U.S. Army from March 1988 until February 1996. He achieved the rank of sergeant (E-5), and his service was characterized as honorable. Applicant testified that while in the service he possessed access to classified information at the secret level. Applicant married his first wife in June 1989, and they were divorced in April 2000. He has three children of this marriage, ages 22, 21, and 18. He attended college and earned an associates' degree in April 2005.

Applicant started working for his current employer, a government contractor, in 2005. He has held access to classified information at the secret level from 2005 to present. There is no evidence to show that he has compromised or caused others to compromise classified information. Outside of the security concerns alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern.

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant started consuming alcoholic beverages at age 16. From 1990 until February 2010, he consumed alcoholic beverages to the point of intoxication about twice a month. Between 1993 and February 2010, he has been involved in five alcohol-related incidents of misconduct. In May 1993, while in the service, he was convicted of assault on another service member, and was barred from reenlistment. In December 1993, he was charged with driving while intoxicated (DWI). In April 1994, he pled guilty to driving with ability impaired (DWA).

In August 1995, Applicant was charged with driving while intoxicated (DWI). In October 1995, he pled guilty to driving with ability impaired (DWA). He was charged with DWI in September 2000, and pled guilty to the charge in November 2000. His driver's license was revoked and he was required to attend alcohol counseling. In February 2010, he was arrested and charged with aggravated DWI, a felony, and harassment in the second degree. He pled guilty to both offenses in November 2010, and was placed on an 18-month protection order and on conditional discharge (unsupervised probation) for three years. He was required to attend alcohol counseling and aftercare treatment. He was diagnosed with alcohol dependence and his prognosis was considered guarded. The diagnosis was performed by a certified counselor and approved by a physician at a court-ordered substance abuse counseling center.

At his hearing, Applicant acknowledged his alcohol problem and expressed sincere remorse for his past alcohol-related behavior. He understands that he has displayed a lack of control and a serious lack of judgment. He is fully aware of the concerns raised by his alcohol consumption and indicated that is the reason he did not request a hearing. He did not submit a recent diagnosis and prognosis.

Applicant testified that he has not consumed any alcoholic beverages since 2010. He averred he has been attending Alcoholic Anonymous (AA) at least twice a week since his 2010 DWI felony conviction. He has an AA sponsor, and he is a sponsor for other AA participants. Applicant stated that he has made lifestyle changes to remain sober. He no longer associates with his alcohol-drinking friends and avoids places and activities where alcohol is being served.

Regarding the status of his delinquent debts, Applicant has not contacted the creditors, he made no payments, and did not dispute any of the debts alleged in SOR ¶¶ 3.a, 3.b, 3.f, 3.g, and 3.i. He paid the debts alleged in SOR ¶¶ 3.c, 3.d, and 3.e. He claimed he started making payments on the debt alleged in SOR ¶ 3.h two weeks before the hearing. (Tr. 37) He failed to submit any documentary evidence to support his claim. The debt alleged in SOR ¶ 3.j pertains to Applicant's mortgage, which is currently pending foreclosure. Applicant testified he is meeting with the creditors in the near future to try to negotiate a short sale, or a reduced payment arrangement.

Applicant's financial problems are the result of his 2010 DWI conviction. He had to pay substantial court fines and lawyer's fees resulting from his trial and conviction. Additionally, he had to pay substantial medical bills for his daughter's medical treatment. He believes that in 2010 alone he paid around \$12,500 in hospital bills. He has been

contacting and paying his creditors one at a time, based on his financial ability. Most of Applicant's SOR allegations are for delinquent credit card accounts. He used his credit card accounts to pay for his day-to-day living expenses. Applicant presented no evidence to show he has participated in financial counseling.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter 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 those who must protect national interest as their 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

Under Guideline G the Government's concern is that 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 consumed alcohol, at times to excess, from 1990 to February 2010. He exercised questionable judgment by consuming alcohol to excess and engaging in criminal misconduct on five occasions (assault in 1993, DWAI in 1994 and 1995, DWI in 2000, and felony DWI in 2010). He was diagnosed with alcohol dependence in 2010. His prognosis was considered guarded.

Disqualifying conditions AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;" AG ¶ 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 AG ¶ 22(d): "diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence," apply.

There are four Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying 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.

All of the above mitigating conditions partially apply, but do not fully mitigate the alcohol considerations concerns. Applicant has been consuming alcoholic beverages since age 16. He has a long history of abusing alcohol and exercising poor judgment. Between 1993 and 2000, he was involved in four alcohol-related offenses, three of them DWIs. Notwithstanding his alcohol counseling and prior convictions, in 2010 he drove again while intoxicated and was convicted of a felony DWI.

Applicant claimed he has been sober and attending after care counseling with AA since 2010. During most of this time, he has been on unsupervised probation by the court. Because of his long history of alcohol abuse, his 2010 guarded prognosis, and the lack of a recent diagnosis and prognosis, I have questions as to Applicant's ability to remain sober. Not enough time has passed for me to conclude that he has overcome his alcohol dependence problem.

Guideline J, Criminal Conduct

Under Guideline J, the Government's concern is that 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 regulations." AG ¶ 30.

From 1993 to 2010, Applicant was involved in five alcohol-related offenses - assault in 1993, DWIs in 1994 and 1995, DWI in 2000, and a felony DWI in 2010. Applicant's criminal behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists four conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

- (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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and

(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 or higher education, good employment record, or constructive community involvement.

Considering the evidence as a whole, and for the same reasons discussed under Guideline G, incorporated herein, none of the Guideline J mitigating conditions fully apply. Appellant's last criminal behavior is not recent, but happened under ordinary circumstances, and resulted from his alcohol dependency. Because of his long history of alcohol abuse and his guarded prognosis, I have questions as to Applicant's ability to remain sober and avoid additional criminal misconduct. Not enough time has passed since his release probation in early 2013 for me to conclude that he has overcome his alcohol dependence. AG ¶¶ 32(a) and (d) do not fully apply. AG ¶¶ 32(b) and (c) are not reasonably raised by the evidence, and are not applicable.

Applicant's abstinence, his continued participation in alcohol counseling, and lifestyle changes are evidence that he is on the right path to rehabilitation. Notwithstanding, because of his past recidivism, doubts about his current reliability, trustworthiness, and judgment remain. The criminal conduct concern is not fully mitigated.

Guideline F, Financial Considerations

Under Guideline F, the security concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

The SOR alleges, and the evidence established, that Applicant had 10 delinquent debts. He paid three debts, and the remaining seven debts total near \$27,000. His debts became delinquent, in part, because of his alcohol dependency - he had to pay court fines and attorney fees resulting from his 2010 felony DWI. Additionally, he had extensive medical debts resulting from his daughter's treatment. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations trustworthiness concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are, in part, the result of his alcohol dependence and criminal misconduct. His misconduct occurred under normal circumstances, and Applicant's evidence is insufficient to show that it is unlikely to recur. His criminal behavior, alcohol problem, and financial situation currently cast doubt on his reliability, trustworthiness, and judgment. He presented no evidence to show he participated in financial counseling.

Applicant receives credit for resolving three of his SOR debts, and for paying his daughter's medical bills. His daughter's medical condition is a circumstance beyond his control that contributed to his financial problems. AG ¶ 20(b) applies, in part, but does not fully mitigate the security concerns. Applicant's evidence is insufficient to show that he was financially responsible under the circumstances. Considering the evidence as a whole, Applicant's financial problems are ongoing, and he does not have a viable plan to resolve his financial problems. He is also not in control of his financial situation.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

Applicant, 44, has worked as a test engineer for a government contractor while possessing a security clearance since 2005. He is a good father and takes care of his daughter. However, he demonstrated extremely bad judgment by driving while intoxicated on four occasions.

Applicant has been abstinent since his 2010 felony DWI, and seems to be on the correct path for rehabilitation. Notwithstanding, at this time, because of his long history of alcohol abuse and repeated criminal misconduct, the passage of time alone is insufficient to establish that Applicant will remain sober, that he will not be involved in any further criminal misconduct, and that he will resolve his ongoing financial problems.

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.h:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Subparagraphs 2.f-2.h:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a, 3.b, 3.f-3.h:	Against Applicant
Subparagraphs 3.c-3.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to reinstate Applicant's eligibility for a security clearance. Clearance is revoked.

JUAN J. RIVERA
Administrative Judge