



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-14293
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Ronald C. Sykstus, Esquire

12/11/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his use of illegal drugs and his alcohol consumption. Clearance is granted.

Statement of the Case

After reviewing the results of Applicant’s background investigation, adjudicators for the Department of Defense Clearance Adjudication Facility (DOD CAF) were unable to find that it is clearly consistent with the national interest to grant Applicant’s request for access to classified information.¹ On June 12, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

the adjudicative guidelines² for drug involvement (Guideline H) and alcohol consumption (Guideline G).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 9, 2013, and I convened a hearing on September 19, 2013. Department Counsel presented Government Exhibits (Gx.) 1 and 2, which were admitted without objection. (Tr. 14 - 15) Applicant testified and presented six witnesses. He also presented five exhibits, which have been included in the record without objection as Applicant's Exhibits (Ax.) A - E. (Tr. 16 - 18) Additionally, I left the record open after hearing to receive additional relevant information from Applicant. The record closed on October 15, 2013, when I received Applicant's timely post-hearing submission. It has been included in the record without objection as Ax. F. DOHA received the transcript of hearing (Tr.) on September 30, 2013.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used illegal drugs while possessing a security clearance between 2007 and May 2009, and between April 2011 and June 2011. (SOR 1.a) It was also alleged that Applicant was diagnosed as opioid and alcohol dependent in June 2011. (SOR 1.b) Under Guideline G, the Government alleged that, in September 2005, Applicant was arrested for driving under the influence (DUI), a charge that was later dismissed, after failing a field sobriety test (SOR 2.a); that in October 2010, he was arrested and charged with DUI, a charge that was later dismissed, after driving off the road (SOR 2.b); and that on May 20, 2012, Applicant consumed alcohol despite having been previously diagnosed as alcohol dependent (SOR 2.c).

Applicant admitted, with explanations, all of the SOR allegations. In addition to his admissions, I make the following findings of fact.

Applicant is 30 years old. Since December 2011, he has worked as a senior software developer with his current defense contractor employer, a 40-person company that is subcontracted to a larger defense contractor. He previously held similar positions with two other defense contractors beginning in July 2004. Applicant first received a security clearance in connection with his work in January 2005. His 2011 e-QIP was submitted for a periodic review of his eligibility for access to classified information.

Applicant attended college from August 2002 until May 2008, when he received a bachelor's degree in mathematics, with a minor in English. At first, he attended full time, but became a part-time student when he began an internship with a defense contractor who eventually hired Applicant for a paid position. (Gx. 1)

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

Applicant began consuming alcohol in high school at about age 17. He drank beer with friends as a means to help him socialize. His use of alcohol escalated to the point he sometimes consumed 15 beers daily by himself. However, most of his drinking in public was much more moderate. (Gx. 2; Ax. F; Tr. 65)

In September 2005, after an evening of drinking with friends, he was pulled over while driving home for having an expired tag. He was arrested and charged with DUI after failing a field sobriety test. Applicant claims he drank about three or four beers that evening. In early 2006, the charge was dismissed, and Applicant was ordered to pay court costs. In October 2010, Applicant had a few beers at a bar by himself over the course of several hours. He fell asleep while driving home and ran off the road. Police arrived, smelled alcohol on his breath and administered a field sobriety test, which Applicant failed. Applicant was charged with DUI, but that charge was also later dismissed with court costs assessed. (Answer; Gx. 1; Gx. 2; Tr. 26 - 27, 60 - 64)

Applicant is a recovering drug addict and alcoholic. In about October 2007, he was at a party where he had consumed a few beers. A friend offered him a dose of oxycontin, a prescription opiate-based painkiller. Applicant snorted a crushed up pill that evening. He eventually became addicted to oxycontin to the point of illegal purchases and use of at least one pill daily at times. In May 2009, when Applicant was about 25 years old, he started seeing a mental health professional for help with depression. As part of his treatment, he was prescribed medication that blocks the intake of opiates and related substances. Applicant did not use any illegal substances during the two years he was being treated for depression. However, when that treatment and its medication was discontinued in April 2011, he started using roxycontin, an equally addictive variation of oxycontin. He continued to be addicted to and use this drug, usually by snorting it, until June 2011. At that time, his family intervened and urged him to seek treatment, to which Applicant was amenable. On June 5, 2011, he self-referred to an inpatient treatment center. On June 21, 2011, he was discharged to an intensive outpatient program that he successfully completed on July 11, 2011. In treatment, Applicant was diagnosed as alcohol and opioid dependent with a history of depression. He was urged to attend 12-step meetings of Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) as part of an aftercare plan that was geared to complete and permanent abstinence from all mood altering substances. (Answer; Gx. 1; Gx. 2; Ax. A; Ax. F; Tr. 23 - 26, 28, 42 - 58)

Applicant readily characterizes himself as a drug addict and alcoholic. It has been his goal since treatment to stay drug free and sober as a permanent way of life. He has not used or otherwise been involved with any illegal drugs since June 2011. He did not drink from about three weeks before entering inpatient treatment until May 20, 2012. Applicant went to a bar by himself and had a few beers. He decided to drive home but was arrested at a gas station after being observed by a police officer. A DUI charged was dismissed in January 2013. (Answer; Gx. 2; Tr. 31 - 32, 66 - 67)

However, Applicant has not consumed alcohol since May 20, 2012, and now understands that being alcohol dependent means he can never let his guard down or he may suffer another relapse. Ironically, his parents testified credibly that they are more

confident now after Applicant's relapse that he has better insight into his alcohol dependence, and that Applicant now is able to sustain his recovery. Applicant still attends AA meetings at least weekly since his treatment, and he has a sponsor with whom he communicates regularly. Applicant has also severed all ties to high school and college friends, and others with whom he drank or used drugs in the past. He has a close support system in his family, and he provided a notarized statement averring that, should it be learned that he ever again uses alcohol or illegal drugs, he would not appeal an automatic revocation of his security clearance. (Answer; Ax. D; Tr. 30 - 32, 59, 68 - 73, 86 - 99)

Applicant's witnesses included two co-workers and two supervisors from work. They have had daily contact with Applicant since December 2011. They unanimously regard him as a valuable member of the military mission they all support. There have not been any signs of substance abuse, his attendance record is impeccable, and his work is generally regarded as superior. Applicant has a solid reputation in the workplace for hard work, expertise, and reliability. His resume reflects a broad range of technical expertise and four awards for excellent performance since 2006. (Ax. E; Tr. 109 - 127)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). 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 determinative of a conclusion for or against an applicant. 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. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue

³ See Directive. 6.3.

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

to have 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 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.⁵

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.⁶

Analysis

Drug Involvement

Applicant abused prescription pain medications from 2007 until 2009, and for three months in 2011. He illegally purchased those substances, sometimes daily, and was addicted to them when he entered treatment in June 2011. At all times while Applicant was involved with illegal drugs, he held a security clearance first granted him in 2005. This information raises a security concern articulated at AG ¶ 24 as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

More specifically, information about Applicant's drug use requires application of the following AG ¶ 25 disqualifying conditions:

- (a) any drug abuse (see above definition);
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program; and
- (g) any illegal drug use after being granted a security clearance.

By contrast, Applicant's last illegal involvement with drugs was in June 2011. At the behest of his family, he promptly obtained and successfully completed inpatient and outpatient treatment for his addiction. He has submitted a statement acknowledging that, should he again illegally use drugs, his clearance would be automatically revoked. Applicant has also severed all ties to persons with whom he used drugs and who supplied them. Available information supports application of the following AG ¶ 26 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) dissociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence;
 - (4) a signed statement of intent with automatic revocation of clearance for any violation; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

As to ¶ AG 26(d), the only information suggestive of a prognosis, either favorable or unfavorable, consists of a 2011 treatment record that indicated Applicant was actively engaged in his treatment and committed to a life without mood altering substances. Also, there has been no subsequent drug use in more than two years. This, along with

the positive information about his changed lifestyle and his outstanding job performance since he completed treatment, support at least partial application of this mitigating factor. On balance, available information shows the security concerns about Applicant's drug use are mitigated.

Alcohol Consumption

Applicant began using alcohol in about 2000. His use was, at times, abusive and it escalated to the point of dependence in 2011. He has been arrested for DUI three times. Even though all of the charges were dismissed, Applicant admits that alcohol is a problem for him and that he must stay sober indefinitely. Applicant's third DUI, in May 2012, constitutes a relapse after completion of inpatient and outpatient treatment in 2011. These facts raise a security concern about alcohol consumption that is expressed 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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's consumption of alcohol continues to be a security concern because of his 2012 relapse. However, Applicant has responded to that event in a way that reflects well on his judgment and character. He has not consumed alcohol since May 20, 2012, and he now has a better grasp on how difficult it can be to maintain his sobriety. His circumstances have changed in that he has eliminated all ties to persons and circumstances involved with his drinking. Those closest to him and who know him best are more confident since his relapse than before that he will not drink again. Available information supports application of the mitigating condition at AG ¶ 23(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).

I have also concluded that some benefit inures to Applicant from the mitigating condition at 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

As with application of the mitigating condition at AG ¶ 26(d) under Guideline H, there is no prognosis in the record, favorable or otherwise. However, all other information probative of this mitigating condition warrants partial application. Applicant has been sober for at least 16 months, he has demonstrated through his participation in AA, his notarized statement of intent regarding future alcohol use, and through the positive changes in his personal and professional circumstances, that he is committed to living a sober and productive lifestyle. On balance, the record evidence as a whole shows that Applicant has mitigated the security concerns about his alcohol dependence.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines G and H. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 30 years old and presumed to be a mature, responsible adult. He has been candid at all times about adverse information in his background, and he recognizes that his ability to stay drug and alcohol free require constant vigilance. His recovery started on his own volition after an intervention by his family, who constitute a strong support network. His professional work never suffered throughout his treatment, and he self-reported his relapse in 2012. I am mindful of the fact that Applicant's conduct occurred while he has had access to classified information. Nonetheless, his response to those adverse circumstances was mature and exhibited sound judgment, and he has established an excellent reputation in the workplace for reliability and trustworthiness. A fair and commonsense assessment of all available information shows that Applicant has mitigated the security concerns about his drug use.

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 H:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge