



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



In the matter of:)
)
) ISCR Case No. 11-14888
)
)
Applicant for Security Clearance)

Appearances

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

08/31/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline G, alcohol consumption. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On April 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 23, 2012, and requested a hearing before an administrative judge. The case was assigned to me on June 22, 2012. DOHA issued

a notice of hearing on July 19, 2012, and the hearing was convened as scheduled on August 14, 2012. The Government offered exhibits (GE) 1 through 6, which were admitted without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, but did not offer any documentary evidence at the hearing, other than what was attached to his answer. DOHA received the hearing transcript (Tr.) on August 28, 2012.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old. He is single and has no children. Since December 2009, he has worked for a defense contractor. He currently is working towards an associate's degree. He served in the Army from 2002 to 2006 and had two combat deployments. He separated with an honorable discharge. He does not currently hold a security clearance.¹

Applicant's conduct raised in the SOR includes: (1) being arrested and charged with driving under the influence (DUI), but pleading guilty to reckless driving in April 2006 (admitted); (2) being arrested, charged and pleading guilty to DUI in January 2009 (admitted); and, (3) continued alcohol consumption (admitted).

In February 2006, Applicant was home on leave from the Army. He met some friends at a local bar. After drinking several beers he attempted to drive home. He was stopped by the state police. He was given a breathalyzer test which gave a reading of .08 or .09 percent of blood alcohol. He was arrested for DUI. He eventually entered into a plea bargain where he agreed to plead guilty to the lesser offense of reckless driving. He was sentenced to a three year probation term and three months' worth of once-a-week alcohol counseling. He successfully completed the alcohol counseling and his probation was terminated after one year. He was not diagnosed during his counseling as either an alcohol abuser or as being alcohol dependent.²

In October 2008, Applicant was drinking at a local bar. He went to the bar because he was feeling down. That day was the anniversary of an incident that happened in Iraq where several of his Army comrades were killed by an improvised explosive device. He drank several beers and had several shots of alcohol. He left the bar and attempted to drive home. He was stopped by the state police. He failed the field sobriety tests and a breathalyzer test. He believes his blood alcohol level was about .16. He was arrested and charged with DUI. He was sentenced to 30 days of jail time (serving 19 days), placed on five years' probation, and ordered into an 18 month alcohol

¹ Tr. at 5, 28, 30; GE 1; Answer.

² Tr. at 30-32; GE 5; Answer.

counseling program. He completed the alcohol counseling and was abstinent from alcohol during his participation in the counseling. He was not diagnosed as an alcohol abuser or as alcohol dependent while in the counseling program. He currently remains on probation until December 2013.³

Currently, Applicant continues to drink in moderation. He mostly drinks while watching sports on television during the weekends, or when barbequing at home. He does not drink more than two times a month. He does not drink and drive. He has not had another alcohol-related incident since his October 2008 DUI arrest. Since that incident, he obtained his current job and has done very well receiving several pay increases over time. He realizes that he has a great deal to lose at his job (his income is about \$75,000 annually) and does not intend to have any further alcohol-related incidents. He believes he has matured significantly since his last arrest. The last time he was intoxicated was this past July 4th holiday when he was camping with his girlfriend. He has been attending counseling through the Department of Veterans Affairs (VA) for post-traumatic stress disorder that he incurred during his combat deployments. It is not specifically related to alcohol, but is helping him with all aspects of his life.⁴

Applicant received the Army Commendation Medal "With Valor" for his actions while deployed. His former commander wrote a letter of support emphasizing his integrity, loyalty, and work ethic. Applicant also presented his most recent job appraisal where he is rated either "excellent" or "outstanding" in every category. His supervisor describes him as an "outstanding employee and an absolute pleasure to have working [at that location]."⁵

Policies

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 used 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 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,

³ Tr. at 38-45.

⁴ Tr. at 35-38, 67; GE 3.

⁵ Answer.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Two are applicable in this case:

(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; and

(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.

Applicant's two DUI arrests support the application of both AG ¶¶ 22(a) and (b).

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and especially considered the following:

(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; and

(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).

Even though he has not been diagnosed as either an alcohol abuser or as alcohol dependent, Applicant realized that his drinking to excess led to his DUI charges. He has since been educated through his participation in alcohol counseling and his own maturity to only drink responsibly. He was 22 and 24 years old at the time of his two DUI arrests. He has not had another alcohol-related incident in nearly four years. He also is participating in counseling through the VA. His past Army record and his current employment appraisal support that he is reliable, trustworthy, and exercises good judgment. I find that sufficient time has passed since his last alcohol-related incident and none of the incidents cast doubt on his current reliability, trustworthiness, or good judgment in view of his changed lifestyle and commitment to responsible use of alcohol. I find both AG ¶¶ 23(a) and (b).

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered Applicant's age, education, his probationary status, combat veteran status, including his decoration for valor, his commitment to responsible use of alcohol, his job performance appraisal, and his character reference. I am convinced that Applicant learned his lesson from his past alcohol arrests and is committed to responsible use of alcohol in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline G, alcohol consumption.

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
Subparagraphs 1.a-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.

Robert E. Coacher
Administrative Judge