



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



In the matter of:)
)
-----) ISCR Case No. 12-00020
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/25/2013

Decision

HOWE, Philip S., Administrative Judge:

On September 6, 2011, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On April 24, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). The action was taken 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 acknowledged receipt of the SOR on May 1, 2013. He answered the SOR in writing on May 10, 2013, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request on May 15, 2013. The Department was ready to proceed on July 25, 2013. I received the case assignment on August 1, 2013. DOHA issued a Notice of Hearing on August 2, 2013, and I convened the hearing as scheduled on August 19, 2013.

The Government offered Exhibits 1 through 3, which were received into evidence without objection. Applicant testified and did not submit any exhibits. After the hearing concluded, on August 22, 2013, Applicant sent Department Counsel an email stating he would resign his contractor position for the reasons stated.

DOHA received the transcript of the hearing (Tr.) on August 30, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶ 1.a of the SOR, with explanations. This paragraph was the only allegation in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 61 years old, married for 31 years, and has two adult children. He retired from the Air Force in 1993 as a Master Sergeant. He graduated from high school in 1970. Applicant works for a defense contractor in the medical logistics business. He started that job in March 2006. (Tr. 13-16; Exhibits 1-3)

After the hearing on August 19, 2013, Applicant sent an email communication to Department Counsel stating he would resign his position with his company effective September 13, 2013. He gave as his reasons his feeling that he would not receive a favorable decision because of a lack of time for rehabilitation. Also, he stated he never intended to cease drinking beer but only reduce it to “a more normal consumption level.” (Administrative Exhibit A)

Applicant has a diagnosis from an alcohol treatment facility in 2010 that he is alcohol dependent with continuous drinking behavior. Applicant admitted he started drinking beer at age 18. Applicant drinks only beer. His beer drinking increased when he was stationed in Germany in the 1980s. He drank only at home and at that time he had one or two cans of beer a day after work. His consumption increased in 1983 when he got married the second time. After retiring from the Air Force in 1993, his beer intake increased to six beers per day. He drank eight to nine beers per day before his alcohol evaluation in 2010, and a package of 12 beers per day on weekends before the evaluation. (Tr. 17, 30, 43; Exhibits 1-3)

Applicant self-reported to the military base alcohol evaluator after he came to work in 2010 on a Saturday at 5 p.m. with alcohol on his breath. He was called into work unexpectedly on a weekend. His wife drove him to work that day because she was concerned about his having consumed beer at home. She waited the hour while he performed his duty involving the logistics of a medical package for shipment overseas and then drove him home. The medical coordinator, an Air Force major, smelled alcohol around Applicant and reported him to his supervisor who was not present that Saturday. Two weeks later, after the supervisor returned from leave and was informed by the

major of his concerns, she counseled Applicant. Applicant thought he functioned normally on that Saturday. However, he decided to go to the alcohol evaluation program to address the concerns of his supervisor. (Tr. 23-40, 56; Exhibits 1-3)

The alcohol evaluation diagnosis found that Applicant had alcohol dependency and should abstain from beer or any alcohol consumption. The dependency diagnosis was made and treatment given three times in March through September 2010, and three times in May 2013, the treatment document was signed by a substance abuse counselor, and reviewed by a physician, a licensed clinical social worker, a military staff psychiatrist, or a Ph.D in psychology attached to the recognized treatment program on the government installation where Applicant worked. (Tr. 16-40; Exhibits 2, 3)

As a result of the alcohol evaluation and three sessions of counseling, Applicant stopped drinking beer for several weeks. Then he resumed drinking about three or four weeks later by consuming a non-alcoholic beer. He changed again to regular beer after another three or four week period because it was cheaper than the other product. (Tr. 31-40, 72; Exhibits 2, 3)

In May 2013 Applicant again attended the alcohol evaluation clinic wanting to learn how to quit drinking again and “maintain abstinence for life.” This action occurred after he received the SOR. Applicant agreed to complete the outpatient recovery counseling program. He attended counseling sessions once a week. He started drinking non-alcoholic beer again. Applicant testified that he had no desire to return to drinking regular beer; however his post-hearing statement contradicts that assertion. The licensed clinical social worker at that latest session told Applicant that he needed to cease drinking altogether, not merely “cut back.” Drinking the non-alcoholic beer was not an acceptable alternative to the professional evaluators.

Applicant attended sessions once a month in 2013 and another one several days after the hearing. Applicant did consume coffee at his breakfasts, and a soft drink, iced tea, or water with his lunches. Applicant also consumed regular beer at a July 2013 family reunion. Apparently he drank the available non-alcoholic beer and then drank regular beer because it was the only beverage available that he enjoyed. His wife testified she saw him drink only two regular beers, but Applicant testified he had four or five “light” beers with lime. (Tr. 40-50; Exhibits 2, 3)

Applicant’s wife testified his drinking had concerned her during their marriage. She watched his drinking increase over the years. She tried to persuade him to reduce his consumption or abstain, but soon realized it was better to say nothing to him about it. Applicant’s personality changed when he drank. (Tr. 43-50; Exhibits 2, 3)

Applicant completed a one day tobacco cessation class in March 2013. He wanted to stop smoking cigarettes. He has been successful at that effort. (Tr. 64; Exhibit 2)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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.

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. 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, an "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. Decisions include, by necessity, consideration of the possible risk 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.

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 seven conditions that could raise a security concern and may be disqualifying. Three of those conditions apply to Applicant:

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, 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;

(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

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

Applicant reported for work one Saturday in 2010 with the odor of alcohol on his breath. His supervisor was informed. AG ¶ 22 (b) applies.

Applicant engaged in habitual consumption of alcohol to the level of impaired judgment. The amount of his beer consumption over the past 20 years of several beers a weekday and up to 24 on the weekend showed he has little desire to control his consumption. His wife testified about his changed attitude toward family members after his drinking. His supervisor spoke with him in 2010 about his alcohol consumption after his wife drove him to work one Saturday when he was called in unexpectedly and an officer smelled alcohol on Applicant's breath. These facts support the AG ¶ 22 (c) applicability.

Applicant attended an alcohol evaluation program in 2010 and reduced his drinking of alcohol, but later returned to his prior level of daily consumption and increased consumption on the weekends. He also attended a program in May 2013. He returned again to his previous drinking pattern. The alcohol program professionals diagnosed Applicant as being alcohol dependent. They are licensed professional staff

members, being psychologists, psychiatrists, or clinical social workers, in a recognized treatment program. AG ¶ 22 (e) applies.

Applicant relapsed to his regular beer drinking pattern after the 2010 alcohol program. He readmitted himself in April 2013 after receiving the SOR in this case. His post-hearing statement showed he was terminating his job and returning to his regular beer drinking program. AG ¶ 22 (f) applies as a consequence of the two relapses.

AG ¶ 23 provides four conditions that could mitigate security concerns. None of them apply to Applicant's condition:

(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.

Applicant's alcohol relationship is of long duration and exists to the present time. His post-hearing statement shows it will continue into the future. AG ¶ 23 (a) does not apply.

Applicant does not admit he has an alcohol dependence problem. He wants to continue to drink beer on a daily basis. He has not established a pattern of abstinence in view of his diagnosis of alcohol dependence. AG ¶ 23 (b) does not apply.

Applicant is not participating currently in a counseling or treatment program according to his latest statement, has a history of a prior relapse, and is not making satisfactory progress. AG ¶ 23 (c) does not apply.

Finally, Applicant has not successfully completed an outpatient counseling or rehabilitation program with aftercare, has not demonstrated a clear and established pattern of abstinence in accordance with the treatment program professional's recommendation, and has not received a favorable prognosis from that program's treatment professionals. Therefore, AG ¶ 23 (d) does not apply.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 facts and circumstances surrounding this case. Applicant continues to drink alcohol after treatment program professionals in 2010 and 2013 told him abstention is the best course to follow for him. He tried to quit drinking but does not have the will power or desire to stop drinking, even though his wife of 31 years is concerned about it. His drinking is daily and voluntary, and there are no changes in his behavior over the years except an increased consumption of beer.

Overall, the record evidence leaves me with substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his alcohol consumption. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge