



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-00287
)	
)	
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 mitigated security concerns raised by his abuse of alcohol and his alcohol-related misconduct. His request for a security clearance is granted.

Statement of the Case

On December 29, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. This is his first application for a security clearance. 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

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

access to classified information.² On February 26, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ regarding alcohol consumption (Guideline G).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 21, 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 ten attachments that were admitted without objection as Applicant's Exhibits (Ax.) A - J. At hearing, he proffered two more exhibits, which were admitted without objection as Ax. K and L. Applicant also testified. DOHA received a transcript (Tr.) of the hearing on July 30, 2013.

Pleadings

Under Guideline G, the Government alleged that from about June 1989 until at least September 2012, Applicant consumed alcohol, at times to excess and to the point of intoxication (SOR 1.a); that in June 1989, he was charged with and pleaded guilty to public drunkenness (SOR 1.b); that in July 1992, he was charged with public drunkenness and possession of a false identification, for which he was fined and his driver's license was suspended for 90 days (SOR 1.c); that in March 2002, he was arrested and charged with driving under the influence (DUI), a charge that was reduced three years later, when he was fined and ordered to attend six weeks of alcohol treatment (SOR 1.d); that in April 2010, he was arrested and charged with DUI, 2nd offense, a charge that was *nolle prosequi* despite his admission that he had consumed three or four beers before he was arrested (SOR 1.e); that from February to April 2011, he received treatment for a diagnosis of alcohol dependence (SOR 1.f); and that Applicant intends to consume alcohol, approximately twice monthly, despite being diagnosed as alcohol dependent (SOR 1.h).

Applicant denied, with explanation, the allegations at SOR 1.a and 1.h. Some of his explanations admit facts which support the allegations being denied. He admitted, with explanation, the remaining allegations.⁴

Findings of Fact

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, and based on my assessment of

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

³ The adjudicative guidelines (AG) 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).

⁴ Although information in support of SOR 1.g has been considered as part of the record as a whole, this allegation does not present facts which raise a security concern. Accordingly, I find for Applicant as to SOR 1.g.

Applicant's demeanor and credibility at the hearing, I make the following additional findings of fact.

Applicant is 41 years old and is employed by a defense contractor for work in cyberanalysis and business development. In 2010, he was hired for that work by another contractor, and he has worked in the same capacity for his current employer since July 2012. Before finding work as a defense contractor, Applicant owned or was partners in several small businesses. In 1995, he and his father partnered in a business running two convenience stores. In 2008, a dispute about the business started when Applicant's sister and father took over the business without his knowledge. A civil suit filed by Applicant in January 2010 was settled in April 2012; however, Applicant struggled personally with these events and is still estranged from his parents and his sister as a result. (Gx. 1; Gx. 4; Tr. 32)

Applicant was married from October 1995 until March 2003, when he and his ex-wife divorced after three years of separation. They had two children together, now ages 16 and 13, for whom Applicant pays monthly support and has shared custody. (Gx. 4)

After submitting his eQIP in 2010, Applicant was given an interim clearance that was subsequently revoked pending resolution of the issues presented in this case. There is no indication he mishandled classified information or otherwise did not meet his obligations while holding the interim clearance. (Gx. 1; Tr. 25 - 26, 32)

In his eQIP, Applicant disclosed the alcohol-related arrests alleged in the SOR. Subject interviews and records produced during his background investigation and in response to DOD interrogatories (Gx. 2 - 6) showed the following:

SOR 1.b: Applicant began drinking in high school, and was first arrested at age 17 for public intoxication. He had been drinking beer and whiskey with some friends. When he passed out on a neighbor's lawn, the police were called and he was taken to jail for the night. He pleaded guilty and paid a \$100 fine.

SOR 1.c: In 1992, at age 20 and still underage for drinking, he and some friends went to the beach, where they used altered driver's licenses to go to bars. After drinking between eight and ten beers at one bar, Applicant was stopped by a police officer while walking to another bar. Applicant was arrested and charged with public intoxication and possession of false identification. His friends posted a \$200 bond to get him out of jail. Applicant pleaded guilty, forfeited the \$200, and his driver's license was suspended for 90 days.

SOR 1.d: In March 2002, while his divorce was pending, Applicant went out with friends and drank about eight beers and three or four shots of vodka. While driving home, he lost control of his vehicle and ran off the road. He was taken to the hospital for minor medical treatment. A blood test showed he was intoxicated and Applicant was charged with driving under the influence (DUI). The case was continued for three years and Applicant eventually pleaded guilty to a reduced charge of driving with an unlawful alcohol concentration (DUAC). In February 2005, he completed a court-ordered six-week alcohol and drug safety action

program (ADSAP). He was also ordered to obtain a state-mandated auto insurance rider required for anyone convicted of an alcohol-related driving offense.

SOR 1.e: In April 2010, Applicant was arrested and charged with DUI, 2nd Offense. He had met some friends at a bar. As he drove home, a police officer saw him swerve in traffic and pulled him over. Applicant admitted having a few beers and was given several field sobriety tests. He was then taken to jail where he refused a breathalyser test. On February 7, 2011, Applicant enrolled in ADSAP while his DUI case was still pending. He completed that course on April 28, 2011 (Ax. B); however, he also was provisionally evaluated by ADSAP as being physiologically dependent on alcohol, and it was recommended that he “needs work towards total abstinence.”

Applicant last consumed more than three or four beers the night of his second DUI arrest. From then until October 2012, he consumed alcohol moderately, drinking no more than one or two beers or glasses of wine each month. Some months he would not drink at all. Applicant avers he has not consumed any alcohol since October 6, 2012, and he submitted a notarized statement of his intent to abstain from future alcohol use. Applicant now attends Alcoholics Anonymous (AA) about three times a month. (Answer; Gx. 5; Tr. 30 - 31, 32, 39, 42, 45 - 47)

In January 2013, Applicant was evaluated by a family physician whom he has seen since 2007 for general medical treatment. The physician determined, through interviews and blood tests, that he showed no signs of alcohol dependence or physical damage related to alcohol.

In preparation for this hearing, Applicant was evaluated by a licensed clinical psychologist on March 27, 2013. The evaluation included a 60-minute interview and a 60-minute testing session. An April 10, 2013 report of that evaluation included disclosures by Applicant of his alcohol-related conduct that is consistent with the investigative record. The psychologist observed that Applicant has been abstinent since October 2012, but that he became psychologically (as opposed to physiologically) dependent on alcohol because of stressors associated with his estrangement from his family, the failure of his business ventures, and the end of his marriage. It was recommended that he continue to abstain from alcohol, and he received a good prognosis for doing so based on his candor about his abuse of alcohol and his insight into the need for sobriety. (Gx. 5; Ax. L; Tr. 40 -41)

Much of Applicant’s alcohol-related misconduct occurred with high school and college friends with whom he no longer associates. He now leads a lifestyle supportive of sobriety. He has a girlfriend who does not drink, and he spends his free time engaged in his hobbies and active outdoor activities. (Tr. 44 - 45, 48 - 50)

Applicant has an excellent personal and professional reputation. His co-workers, company supervisors, and friends hold him in high regard for his hard work, reliability, integrity, and honesty. In the workplace, he has shown initiative, leadership, and a commitment to the mission his company supports. He also has demonstrated his

willingness and ability to abide by all regulations and procedures for safeguarding classified information. Applicant has completed numerous technical training courses to ensure he remains qualified for his assigned duties. His personal associates laud him for being a good father, for his generosity, and for his work in the community, primarily as a youth athletic coach. (Ax. C - K)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁵ 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,⁶ 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 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.⁷

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

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive. 6.3.

⁷ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Alcohol Consumption

Applicant consumed alcohol, at times to excess, from 1989, when he was 17, until April 2010, when he was 38. Thereafter, his drinking moderated until October 2012, when he stopped drinking altogether. However, in 2011, he was diagnosed by ADSAP as alcohol dependent, but continued drinking, albeit much less. His alcohol use resulted in four arrests between 1989 and 2010. The record as a whole presents security concerns about Applicant's alcohol consumption that 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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (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.

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

⁸ See *Egan*; AG ¶ 2(b).

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); 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 last abusive consumption of alcohol and alcohol-related misconduct occurred in April 2010. Thereafter, he significantly curtailed his drinking until stopping altogether ten months before his hearing. A favorable prognosis was provided in April 2013 by a licensed clinical psychologist based on a demonstrated commitment to abstinence, and good insight into his dependence on alcohol. Applicant's personal circumstances have improved through the attenuation of personal stressors, such as his divorce and his estrangement from his parents, and his new career with a defense contractor. Applicant is active in AA, and he no longer associates with his drinking buddies from high school and college. Also, he has a new girlfriend with whom he enjoys a lifestyle supportive of continued sobriety. On balance, his abuse of alcohol and adverse alcohol-related conduct are not likely to recur. Applicant has mitigated the security concerns raised under this guideline.

Whole-Person Concept

I have evaluated the available information and have applied the appropriate adjudicative factors under Guideline G. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 41 years old and has established an excellent reputation for integrity, reliability, and candor. In the past three years, he has recognized that he cannot continue to use alcohol. The worst alcohol-related event in his background, his March 2002 DUI arrest, occurred amidst the difficult circumstances of his pending divorce and his estrangement from his parents and sister. Those circumstances no longer influence his conduct, and he has made further positive changes in support of his abstinence from alcohol. Applicant has been candid and open about all aspects of his adverse conduct, and he appears committed to moving forward without alcohol. A fair and commonsense assessment of the record as a whole shows that Applicant's abuse of alcohol and his alcohol-related misconduct are not likely to recur, and no longer present an unacceptable security concern.

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: FOR APPLICANT

Subparagraphs 1.a - 1.h: 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. Request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge