



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



In the matter of:)
)
) ISCR Case No. 12-01947
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Department Counsel
For Applicant: *Pro se*

02/24/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline G for alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On October 26, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 4) He had not previously held eligibility for access to classified information. On October 25, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on November 14, 2013. He admitted the five allegations under Guideline G. Applicant requested a decision on the written record. (Item 3) Department Counsel submitted the Government's written case on January 2, 2014. Applicant received a complete file of relevant material (FORM) on January 16, 2014, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM on February 16, 2014. The case was assigned to me on February 20, 2014.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 24-year-old high school graduate who is working as an air cushion vehicle technician for a defense contractor. He studied over three years to be an officer in the merchant marine, but he did not complete his schooling. He is not married and has no children. He resigned from the merchant marine officer school he was attending in 2010 rather than being declared academically ineligible. He felt this permitted him some sense of dignity and preserved his decent GPA. Other than the time in school studying to be a merchant marine officer where he was concurrently a naval reservist, he has no military service. (Item 4, e-QIP, dated October 26, 2011)

Under Guideline G for alcohol consumption, the SOR alleges and Applicant admits that from approximately 2006 until May 2013 he consumed alcohol at times to the point of intoxication (SOR 1.a); that in October 2009, he was taken to an emergency room for acute alcohol poisoning with a blood alcohol content of 0.28 (SOR 1.b); after the incident in SOR 1.b, he was advised to seek alcohol counseling and he received outpatient alcohol counseling from November 2009 until March 2010 (SOR 1.c); he was diagnosed as alcohol dependent at the completion of the counseling but he continued to consume alcohol until at least May 2013 (SOR 1.d); and he was diagnosed as alcohol dependent – severe in July 2013 (SOR 1.e).

Applicant admits he started drinking alcohol when he was 17 years old. By the age of 20, he was drinking frequently to the point of intoxication. In September 2009, he was assigned to a ship as part of his training and education. When the ship was in port, he was underage to drink alcohol, but he went alone to a bar and started drinking alcohol. He consumed 15 to 20 mixed drinks in about three hours. He passed out and was taken to a hospital emergency room. He had a blood alcohol reading of .28. He was treated in the hospital for about six hours and did not miss the movement of the ship. He reported the incident to both the ship's captain and to his academic supervisor. (Item 6 at 3)

The school he was attending ordered him to attend alcohol counseling before being readmitted to his studies. He received alcohol counseling at a private clinic from November 2009 until March 2010. Applicant was diagnosed as alcohol dependent when

he was released from counseling. He did not drink alcohol from March 2010 until August 2010. He drank approximately two beers a week and drinking to intoxication about four times a year until September 2013. In addition to his full-time employment with the defense contractor, he works part time at a club where alcohol is served. As part of his security clearance screening, he was again evaluated for alcohol dependency in Jul 2013. On July 19, 2013, he was diagnosed as alcohol dependent – severe. He was still consumed alcohol until September 2013. (Item 6 at 4; Item 7, Response to Interrogatories, dated October 4, 2013; Item 8, Letter from Counseling Service, dated May 14, 2013)

In response to the FORM, Applicant states that his last drink of alcohol was on September 10, 2013. He attended alcohol counseling for the last four months (October 2013 until January 2014). He now attends Alcoholic Anonymous (AA) meetings two to three times per week. He has not had an alcohol-related incident, such as blackouts or legal problems, since 2009. He states he now knows that he is alcohol dependent and cannot consume any alcohol. If he had known this earlier, he would not have consumed alcohol after completing counseling. He had not appreciated the scope and magnitude of the diagnosis of alcohol dependent. (Response to FORM, undated but received at DOHA on February 14, 2014)

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 must be considered 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, 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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 drank alcohol to the point of intoxication at times from 2006 until May 2013. In October 2009, he was taken to an emergency room with acute alcohol poisoning and a blood alcohol content of 0.28. He received alcohol counseling from November 2009 until March 2010, and was diagnosed as alcohol dependent. He continued to consume alcohol until at least September 2013. He was diagnosed as alcohol dependent-severe in July 2013 because of his continued consumption of alcohol. Applicant's alcohol consumption and diagnosis are sufficient to raise Alcohol Consumption Disqualifying Conditions AG ¶ 22(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); 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); AG ¶ 22(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 AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).

I considered Alcohol Consumption Mitigating Conditions AG ¶ 23(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); AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if

alcohol dependent) or responsible use (if an alcohol abuser)); and 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 licensed social worker who is a staff member of a recognized alcohol treatment program). These mitigating conditions do not apply.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents. A determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant was only 17 years old when he started consuming alcohol. He was still a minor and under the legal drinking age when he drank alone and consumed enough alcohol to be diagnosed with alcohol poisoning with a blood alcohol level of 0.28. He left school, attended counseling, and was diagnosed as alcohol dependent. Even with this diagnosis, he still continued to consume alcohol. He drank a few beers per week, worked in a club part time, and would drink to the point of intoxication about four times a year.

In response to the FORM, Applicant states he has not drunk alcohol since September 2013. He seems to have matured and understands the dangers of his alcohol dependence. He is attending AA meetings on a regular basis. Applicant established a pattern of abstinence for only the last five months and has shown evidence of some action to overcome his alcohol dependence problems. Applicant started drinking alcohol at an early age and had a severe alcohol-related incident away from work approximately four years ago. He completed alcohol counseling and was diagnosed as alcohol dependent, but he continued to consume alcohol, sometimes to the point of intoxication. Only in the last five months has he shown signs of maturity and abstinence from alcohol consumption

A significant period of time has not passed without evidence of an alcohol-related problem. He continues to work part time in a club, a dangerous environment for someone alcohol dependent. Applicant may be on the road to recovery but he has not yet demonstrated a change in his circumstances and his conduct does not reflect a change in his life. He has not established that he can completely control his alcohol consumption impulses as required for someone that is alcohol dependent. The evidence does not show that Applicant has yet been reformed or rehabilitated. His history shows that he may continue to consume alcohol to excess. I find that Applicant has not mitigated the security concerns for alcohol consumption.

Applicant seems to be on the correct path for recovery. If he continues his abstinence from alcohol consumption in the near future, sufficient time may pass with evidence of abstinence to resolve the security clearance concerns in favor of granting him access to classified information.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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. Applicant started drinking alcohol at an early age and drank to excess many times from 2006 until 2013. He had an alcohol poisoning incident in 2009 and was sent to alcohol counseling. He was diagnosed as alcohol dependent but still continued to drink alcohol. Only in the last five months has he seemed to have matured and stopped his consumption of alcohol. This is insufficient to establish a change of life circumstances when considered against his previous history of continued alcohol consumption following counseling and diagnosis. Applicant did not present sufficient information to establish that he has been rehabilitated and ceased his consumption of alcohol. Applicant's history shows that he is not now reliable and trustworthy and has the ability to protect classified information. He may be on the road to recovery but he is not there yet. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated alcohol consumption security concerns.

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.e: 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.

THOMAS M. CREAN
Administrative Judge