



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-10218

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

08/09/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his alcohol consumption. Eligibility for access to classified information is granted.

Statement of the Case

On September 5, 2015, the Department of Defense (DOD Consolidated Adjudication Facility (CAF), issued a Statement of Reasons (SOR) detailing why DOD adjudicators could not find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. The actions were taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended, DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs), implemented by DOD on September 1, 2006.

Applicant responded to the SOR on October 8, 2015, and requested a hearing. The case was assigned to me on January 14, 2016. The case was scheduled for hearing on April 25, 2016. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of four exhibits (GEs 1 through 4); Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on May 6, 2016.

Procedural Issues

Before the close of the hearing, Department Counsel moved to amend ¶ 1.d of the SOR to substitute the words alcohol abuse for alcohol dependent. There being no objection to Department Counsel's motion, and for good cause shown, Department Counsel's motion to amend ¶ 1.d of the SOR was granted.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with an updated substance abuse report. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant submitted an updated substance abuse report. Applicant's submission was admitted without objections as AE A.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) was arrested on three separate occasions between February 1992 and August 2008 for driving under the influence (DUI); specifically, in February 1992 (license suspended), in October 2002 (sentenced to probation summary, 180 days in jail (suspended for five years, fined, 180 days in the sheriff's custody, public service in a work program (PSWP), five-day probation and restricted license); and in August 2008 (sentenced as follows: fined, imposed conditions of no alcohol incidents for one year, participation in victim impact panel (VP), and completion of DUI school within six months); and (b) received treatment from a substance abuse counseling center between October 2008 and April 2009 for diagnosed alcohol dependence with psychological dependence and recommended to abstain from all alcohol and obtain counseling; and (c) continued to consume alcohol until at least December 2013, notwithstanding his alcohol dependence diagnosis and recommended abstinence.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed plans to limit his drinking (not to exceed three drinks per sitting with time allotted between drinks (no more than one drink per hour) and review his drinking the following day to ensure he did not violate any of his own rules. He claimed that he consumed alcohol on about four occasions after mid-2012 and broke his own rules by not preplanning and exceeding three drinks after his last drink in December 2013. He claimed he committed to attending Alcoholics Anonymous (AA) sessions after his last drink in December 2013 and continued with his AA meetings for about nine

months and admitted alcoholism. And he claimed (citing health issues) that he has been alcohol-free since December 2013 and intends to keep it that way.

Findings of Fact

Applicant is a 56-year-old aircraft mechanic for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in April 1998 and divorced his spouse in August 2011. (GE 1; Tr. 36, 45-46) He has no children from this marriage and three step-children from his ex-wife's former marriage. (Tr. 44-48) Applicant attributed his broken marriage to parenting problems with his stepchildren. (Tr. 36) He has not remarried and currently is in a four-year relationship with another woman to whom he is engaged to be married. (Tr. 36, 50-51)

Applicant attended college classes between March 2005 and March 2006 and earned an Associate's degree in March 2006. (GE 1; Tr. 25) Applicant enlisted in the Navy in October 1983, served 24 years of active duty, and received an honorable discharge in October 2007 with a rank of chief petty officer. (GE 1; Tr. 25) Since January 2009, Applicant has worked for his current employer as an aircraft mechanic. (GE 1) Previously, he worked for another employer as a maintenance controller between January 2008 and January 2009. (GE 1)

Applicant's Alcohol Arrest History

Applicant was introduced to alcohol at the age of 21. (GE 3) Typically, he would consume six to eight beers every other weekend at bars with friends. After joining the Navy, he increased his alcohol rate of consumption to two to three times a week and eight beers on weekends. He did not consume alcohol while on Navy deployments, which occurred every six months for six months at a time. (GE 3)

Around 1993, once Applicant began receiving promotions (first to senior petty officer status and later to chief petty officer status), he further increased his drinking to a six-pack a night four to five nights a week during the work week and a 12-pack on the weekends. (GE 3) He continued this frequency of drinking until his second DUI arrest in 2002. Realizing the stress this was placing on his marriage, he slowed his consumption of alcohol to a six-pack on weekends. (GE 3)

Applicant was first arrested for DUI in February 1992. Prior to his civilian arrest he was preparing for sea deployment and made poor decisions to drink with members of his team. (Tr. 23) While deployed overseas he received a notice from the court confirming he was found guilty in absentia and placed on unsupervised probation. (GE 3; Tr. 22) The sentencing court also revoked his driving privileges for one year. (GE 3)

Based on his reports of the incident, his command ordered him to complete a drug and alcohol screening and assistance program, which he completed (NADSAP). (Tr. 22-23, 27-28) His NADSAP counselors recommended he seek marital counseling. (Tr. 29) Whether and to what extent he sought marriage counseling is unclear

In October 2002, Applicant was arrested and charged by civilian authorities with DUI. He consumed six to seven beers before being pulled over by police and asked to take a field sobriety test. (GE 3) He failed his sobriety test and was arrested for DUI and booked in jail. (GE 3) As a result of the incident, the presiding civilian court suspended his license for one year and ordered him to attend an 8-16 hour alcohol education class before he could have his driver's license reinstated. (GEs 2-4; Tr. 28) Court records reveal that he was sentenced to probation summary (five days), to serve 180 days in the custody of the sheriff (suspended for five years conditioned on violating no laws), fined, ordered to attend a PSWP, and had his license restricted for 90 days. Based on his civil conviction, his command issued an administrative warning and referred him to NADSAP counseling. (GE 3; Tr. 27-29) His NADSAP counselors recommended he seek marital counseling, but provided no alcohol counseling or treatment. (Tr. 29) Further details of his NADSAP counseling sessions are not available.

Citing marital strains attributable to caring for his three step-children, Applicant was arrested for a third time for a DUI offense in August 2008. He and some friends consumed 10 beers preceding his arrest. (GE 3; Tr. 45, 50) Following this arrest, he was charged with DUI, pled guilty, and was sentenced as follows: fined, was placed on probation for one year conditioned on no alcohol incidents, ordered to attend a victim impact panel (VP), and given six months to complete DUI classes. (GEs 3-4) Applicant satisfied all of the court's conditions and was released from probation in 2007.

Applicant's recovery history

Following his last DUI offense in 2008, Applicant sought substance abuse counseling from a local substance abuse counseling center. (GE 2; Tr. 32-33) His treatment counselor evaluated him in September 2008, just a month after his 2008 DUI arrest. (GEs 1-4; Tr. 33) Records show that he started his outpatient substance abuse treatment in October 2008 with a private local substance abuse center and was diagnosed by his treatment counselor for moderate alcohol use disorder under Section 303.90 of the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. Amer. Psychiatric Assoc. 1994)(*DSM-IV*). (GE 2) Applicant was discharged after completing six months of an American Society of Addiction Medicine (ASAM) Level 1 outpatient treatment program with his treatment counselor. (GE 2; Tr. 32) No recommendations of observed abstinence are covered in Applicant's 2008 counseling summary, and his counseling provider included no further information in her summary. (GE 2)

Following his counseling discharge in 2008, Applicant returned to active drinking. Between March 2009 and April 2012, he consumed alcohol weekly. Following his October 2008 DUI, he quit drinking for about a year in an effort to save his marriage. (GE 3; Tr. 50-51) Between 2009 and April 2012, he consumed two to three beers a week at

home with friends, and at local bars, and expressed desires to continue to drink at that level in his interview with an agent from the Office of Personnel Management (OPM) in April 2012. Prior to his DUI arrest in October 2008, he estimates drinking to intoxication levels four to five times a month at the rate of three to four beers a sitting. (GE 3)

Applicant's substance abuse counselor never used the term alcoholic in her 2008 counseling sessions and never diagnosed him for alcohol dependence or recommended abstinence. (AE A; Tr. 32-33. 40) After trying to limit his alcohol consumption over the course of the ensuing five years, he slipped some from his self-imposed drinking limitations at a birthday celebration for his wife in December 2013. He admitted to consuming what he considered to be an excessive number of drinks. (GE 3; Tr. 33-34) His drinking lapse caused him to think he could not control his alcohol intake. (Tr. 34) Thereafter, he enrolled in AA meetings, where he learned how to meditate and work through his alcohol-related issues. (Tr. 35) Applicant continued his AA meetings for about nine months before ceasing his participation.

Since December 2013, Applicant has maintained his abstinence. (Tr. 33) In an updated explanatory account of April 2016, Applicant's treatment counselor provided background of Applicant's drinking history. (AE A) After addressing his past drinking and emotional, behavioral, cognitive history, his counselor (the same one who evaluated him in 2008) assessed him for no potential relapse risk. (AE A) She took note of his two completed alcohol education programs while in the Navy and the six to eight month ASAM program he completed in 2008. And she considered Applicant's own understanding of relapse triggers and how he can avoid relapses in the future. (AE A)

Based on her review of Applicant's substance use history, his counseling initiatives, and his individual risk assessments, Applicant's treatment counselor concluded that Applicant does not fit the criteria of the *DSM's* (DSM-5) published criteria for any diagnosis (AE A) She opined that Applicant currently poses no security risk due to his alcohol use history. (AE A) His counselor's opinions are neither challenged nor at odds in any way with the developed facts and are not unreasonable considering all of the circumstances surrounding Applicant's drinking and treatment history. Her opinions are accepted as well-developed assessments of Applicant's alcohol status and recurrence risks, and are fully compatible with the evidence of record.

Still, Applicant has continued to self-diagnose himself as alcoholic. (Tr. 38-41, 52) He cites his AA meetings as helpful to reinforcing his own assessments. (Tr. 38) During his nine months of AA attendance, he worked the 12-steps without completing them or engaging a sponsor for network support. (Tr. 53-54) He credited his AA meetings with affording him network opportunities to talk with others about the risks associated with alcohol consumption and still occasionally attends AA meetings. (Tr. 54-56)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that

could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors:

(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.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Alcohol Consumption

The Concern: 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 ¶ 21.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative

judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a conscientious and dependable aircraft mechanic for his defense contractor who presents with a considerable history of alcohol-related arrests: three in all over a 16-year period spanning 1992 and 2008. Principal security issues raised in this case center on Applicant's history of alcohol-related offenses and a prior diagnosis of alcohol abuse by a licensed substance abuse counselor at a local substance abuse center in 2008, followed by recurrent drinking to December 2013.

Applicant's recurrent problems with abusive drinking and alcohol-related arrests over a 16-year period raise initial concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, four disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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," DC ¶ 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," DC ¶ 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 DC ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

While Applicant has never been diagnosed with any known alcohol dependence, he did attend several alcohol counseling programs sponsored by the Navy and privately licensed that stressed educational and group therapy issues. Altogether, he attended two Navy-sponsored counseling programs and one operated by a private substance center. His counseling programs offered little visible practical guidance or follow-up but did provide enough information on drinking to provide important lessons on how to manage his drinking. His accounts of limited drinking enabled him to manage his drinking at safe levels for over five years before slipping in December 2013 at a birthday celebration for his wife. Imposing self-abstinence on himself since his December 2013 slip, Applicant has abstained from alcohol consumption for over two and one-half years and is credited with his efforts by his substance abuse counselor who found no evidence of excessive drinking in her April 2016 report.

Considering Applicant's recurrent, but aged, arrest history and the substantial elapse of time since his last DUI in August 2008, application of MC ¶ 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," is fully available to him. Applicable, too, to Applicant's circumstances is MC ¶ 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 (AA) 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."

From a whole-person perspective, Applicant presents with a considerable history of alcohol abuse without any probative professional evidence of alcohol dependence. While his three-DUI offenses over a 16-year period (last in 2008) raise some recurrence risks, his substance abuse counselor could find no basis to make any adverse abuse findings based on her review of Applicant's alcohol history.

Applicant's demonstrated leadership in the Navy and his own honest accounting of his experiences with alcohol promise to serve him well in managing his alcohol issues in the future. While two and a half years of sustained abstinence might not be enough for typically diagnosed alcohol dependent individuals, it is with the probative facts in Applicant's situation.

Taking into account both Applicant's history of alcohol abuse and incidents away from work and corresponding solid probative evidence of a seasoned track record of abstinence without probation conditions, the applicable guidelines, and a whole-person assessment of his avoidance of alcohol following his latest 2013 drinking incident with his wife, safe predictions can be made about his ability to avert recurrent alcohol abuse in the foreseeable future. Favorable conclusions warrant with respect to the allegations covered by the alcohol consumption guideline of the SOR.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a -1.e: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge