



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00538

Appearances

For Government: Candace Garcia, Esquire
For Applicant: *Pro se*

03/24/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On June 24, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct).¹ Applicant answered the SOR on July 27, 2015. He admitted all allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. DOHA issued a notice of hearing on April 29, 2016, setting the hearing for June 10, 2016. The hearing was convened as scheduled.

The Government offered six documents and a request for administrative notice, accepted without objection as exhibits (Exs.) 1-6 and hearing exhibit (HE) 1. Applicant offered testimony and eight documents, accepted as Exs. A-H. The record was kept open for 30 days in the event the parties wished to submit additional materials. The

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 within the DOD on September 1, 2006.

transcript (Tr.) was received on June 20, 2016. With no additional materials received, the record was closed on July 10, 2016.

Findings of Fact

Applicant is a 37-year-old software adjuster who has been with the same entity for over six years. In 2010, he was granted a security clearance and has received related training annually. (Tr. 19) He is completing a bachelor's degree from a renowned university. Applicant is cohabitating with a girlfriend who has a teenaged child. He has a reputation for reliability and industry, and he is a well-regarded employee.

Applicant had a history of alcohol abuse, starting at age 16. (Tr. 24) From August 1997 to at least February 2012, he consumed alcohol to excess and, at times, to the point of intoxication on multiple occasions during and after college. In the interim, in April 2001, he was charged with public urination and public drunkenness. He eschewed illegal drugs as his father served on his county's narcotics squad, and his grandfather, uncle, and brother were all local law enforcement personnel. (Tr. 46)

In February 2012, Applicant missed at least one work meeting due to binge drinking. As a result, he was told to seek alcohol treatment or lose his job. (Tr. 24) On February 21, 2012, he voluntarily self-referred to a qualified in-patient treatment center. On in-take, a lab sample was taken at 9:50 p.m. (21:50). At 10:25 p.m., an Alcohol Detox Admitting Order was completed, noting medications used for detoxification. (Ex. 5 at 6) The intake material does not note medications or supplements he regularly took.

The lab test was ultimately determined to be positive for marijuana. (Ex. 5 at 18 (Lab Results)). When he was formally admitted by a medical doctor on the morning of February 22, 2012, it was noted that he was there for alcohol and THC (tetrahydrocannabinol) dependence. (Ex. 5 at 5 (Physicians Orders)) THC is the chemical responsible for most of marijuana's psychological effects.

The Patient History under Section VIII (Addiction & Relapse History), noted at Ex. 5 at 26-42, reflected a history only of alcohol issues. In contrast, the Treatment History & Outcome of Treatment section, completed days later on February 24, 2012, noted that he was admitted on February 21, 2012, for alcohol dependence and cannabis abuse, but only references past issues and incidents involving alcohol.

The Treatment Plan lists the Axis I diagnosis as alcohol dependence and cannabis abuse on one page, but on the page Applicant signed, it only referenced alcohol dependence and aftercare. (Ex. 5 at 33-34). No other relevant entries regarding marijuana, THC, or cannabis abuse are noted in the reports. No reference is made to past instances of Applicant abusing cannabis. Applicant's Completion Certificate (Ex. 5 at 41) does not specify alcohol or cannabis treatment. His Discharge Summary repeats references to alcohol dependence, but only noted "cannabis" without reference to abuse or dependence. The term "chemical use" is not narrowed to identify if it references use of alcohol or marijuana. Overall, however, Applicant is given a positive prognosis.

The five-page Discharge Plan, which Applicant signed, consists of practitioner releases, a receipt of possession, a photo, and a monetary listing of expenditures made in treatment (i.e., cigarettes), but does not reference alcohol or cannabis. (Ex. 5 at 47-51). Ex. 6 is comprised of Applicant's Director of Security's incident report concerning Applicant's alcohol treatment, supported by material from the treatment center and an email from Applicant. Reference to alcohol is made. Later, in an Interrogatory from January 2014, Applicant only referenced his abuse of alcohol in response to the questions posed. (Ex. 3) In April 2014 Interrogatories, Applicant provided information for alcohol dependency treatment and a copy of his Completion Certification. (Ex. 4)

In March 2012, Applicant successfully completed his chosen center's treatment plan. Although he self-admitted for abusing alcohol, he has no recollection of specifically being told he had been given a diagnosis for alcohol dependence. (Tr. 32) He inferred he had a true alcohol dependence, however, when he was prescribed a period of time in Alcoholics Anonymous (AA). Applicant does not recall any diagnostic paperwork upon discharge. If he did, he does not recall reviewing it. (Tr. 48) After completing treatment and the center's prescribed course of 90 days in AA, he has been sober since February 2012, over five years. He still attends AA and remains in contact with his sponsor. Due to his current schedule, however, he only goes a few times a month. (Tr. 41)

Applicant did not know that he tested positive for THC or marijuana while in treatment or until this process began. He was not told he had tested positive for marijuana, that cannabis abuse was considered to be part of his treatment, or that he had been deemed cannabis dependent. (Tr. 25-26, 28, 30) He has no recollection of ever using marijuana. (Tr. 20) He knew testing would be a part of treatment. Had he knowingly used marijuana or known he had it in his system, he would have disclosed that fact during evaluation and treatment so that disclosure could be properly incorporated into his program. No aftercare for drug issues was mentioned or recommended by the program. (Tr. 31-32)

Applicant has never before tested positive for an illegal drug despite being subject to random testing at work. (Tr. 25) He concedes he may have used or been exposed to marijuana during a period of binge alcohol consumption, but does not specifically recall such a situation. (Tr. 21) Applicant does not socialize with anyone who uses the drug. He does not recall being in situations where it was being used. (Tr. 23)

The treatment center addressed substance dependence holistically, through group meetings; it was not highly personalized and was not necessarily broken down between alcohol abuse and drug abuse in terms of structure. (Tr. 30-31) All counseling used an AA model. (Tr. 34) As noted, Applicant was unaware until later that the treatment center where he tested positive for the drug diagnosed him with both alcohol dependence and cannabis dependence. He has been subject to drug testing since completing treatment, but has not tested positive. (Tr. 25)

Aside from continued AA participation and contact with his sponsor, Applicant maintains a support network. (Tr. 42) This includes his girlfriend, who is only

occasionally has a cocktail every six months or so. Commitment to AA and its principles were essential to Applicant's maintaining his sobriety. Entry into the treatment center in 2012 was the first time he realistically made a choice to stop drinking forever. (Tr. 44). Applicant keeps busy with work, work-related travel, and a full-time collegiate course load. He is helping co-parent his girlfriend's 13-year-old, who looks to Applicant as a role model. (Tr. 49) Applicant does not socialize with other co-eds from college. At his present age, he prefers socializing with older, professional peers. (Tr. 51)

In October 2013, Applicant completed a security clearance application (SCA). In response to Question 23, he denied having illegally used any drugs or controlled substances in the preceding seven years. In response to a different section under that question, he denied ever illegally using or otherwise being involved with a drug or controlled substance while possessing a security clearance. In regards to Defense Department Interrogatories signed on January 24, 2014, he denied any illegal drug use.

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. 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. Likewise, I have not drawn 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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline H, Drug Involvement

The security concern for this guideline is set forth in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Under AG ¶ 25, the following potentially applicable disqualifying conditions could raise a security concern:

- (a) any drug abuse.(see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;
- (g) any illegal drug use after being granted a security clearance.

Here, Applicant tested positive for marijuana in February 2012, years after he had been granted a security clearance. This occurred after he self-admitted to a treatment center for alcohol abuse. He was diagnosed with alcohol dependence and cannabis abuse, not cannabis dependence as noted in the SOR. Paperwork setting forth a diagnosis of cannabis abuse was signed by center staff, including a medical doctor. Therefore, AG ¶ 25(a)-(b), AG ¶ 25(d), and AG ¶ 25(g) apply

The Government's substantial evidence has thus raised security concerns under Guideline H. Under Directive ¶ E3.1.15, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. To that end, Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) applies.. There is no evidence that Applicant had ever before used illegal drugs. Unlike the situation with Applicant's past alcohol problems, there is no reference to actual incidents of, or problems related to, drug use in the clinical paperwork. In addition, there is no other evidence in the official case record indicating he has ever before abused illegal drugs. Had it been a past problem, however, it is more than probable that the center's proven success in terms of Applicant's alcohol dependence would have been equally effective addressing any drug issues.

Applicant's last and only evidence of illegal drug use was over five years ago. This is a significant amount of time in the life of a man in his mid-30s. He does not associate with people who use drugs, nor is he a habitué of venues where drugs are present. Applicant knows to avoid illegal drugs, a fact reinforced by this process. He knows the consequences of using drugs while maintaining a security clearance, and the embarrassment it would cause his family law enforcement officers. Given these factors and Applicant's maturation over the past several years, I find AG ¶ 26(b) applies.

Applicant self-referred himself to a treatment center only for alcohol abuse or dependence. His in-take and detoxification plans only reference alcohol. In the end, Applicant satisfactorily completed a prescribed drug treatment program. This included, but was not limited to, rehabilitation and aftercare requirements. There is no evidence indicating a subsequent incident of drug abuse. He was given a favorable prognosis by a duly qualified medical professional. Therefore, I find AG ¶ 26(d) applies.

Guideline G – 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 excess, and sometimes to the point of intoxication, from 1997, during his college years, until 2012. In 2001, he was charged with public urination and public intoxication. In February 2012, he missed at least one work meeting due to binge drinking. From February 2012 through March 2012, he attended a substance abuse treatment program, where a physician diagnosed him as alcohol dependent. These facts 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;
- (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; and
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

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;
- (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

(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.

Applicant has been sober for over five years. After many years of abandoning his educational aspirations, he is back in school and about to complete his bachelor's degree at a well-known and competitive university. He is in a committed relationship and helping co-parent a young teen. He is excelling at work. Under these and other facts, his five year period of sobriety demonstrates changed circumstances, maturation, and conduct sufficient to indicate a finding of reform or rehabilitation.

When told his drinking of alcohol was jeopardizing his employment, Applicant voluntarily self-referred himself for alcohol treatment. His treatment was conducted by multiple individuals, but overseen by a medical doctor. Applicant completed the program, earned a favorable prognosis, and completed his aftercare transition time with AA. Since then, he has put in place a support network, and he continues occasional contact with both AA and his AA sponsor. He is obviously proud of his maintained sobriety, but properly appreciative that it is a daily and lifelong challenge. Sobriety is not only a personal goal, but a status he is dedicated to continuing for his profession, girlfriend, and the young teen he is helping raise. I find AG ¶ 23(a), (b), and (d) apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant denied having used illegal drugs in the seven years preceding his completion of a 2013 SCA. He similarly denied having ever used or been involved with illegal drugs while maintaining a security clearance. In addition, he denied illegal drug use in a January 24, 2014, interrogatory. In citing to Applicant's February 2012 positive drug test, the SOR alleges that he falsified material facts in providing these answers.

Applicant's testimony was particularly credible and his stance consistent. Given Applicant's repeated insistence that he has not used drugs, the record evidence reflecting that his initial in-take to his treatment facility was only for alcohol issues, the fact there is no indication whether the facility ever double checked or conferred with Applicant about any marijuana use, and the lack of any evidence he has ever before used an illegal drug, leads me to believe Applicant never knowingly or purposefully ingest marijuana. This conclusion would fail to raise any disqualifying condition and end analysis here.

Given the existence of this one, isolated, positive test, however, were I to have found Applicant not credible, I would find AG ¶ 16(a), (b), and (e) apply. To so find would emphasize the unique circumstances presented in this case. It would also emphasize the highly unlikely chance Applicant would ever repeat the type of behavior he may have demonstrated several years ago again. Under such considerations, AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment

would apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(a). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past illegal drug involvement, alcohol consumption, and personal conduct, I considered his present life, candor at the hearing, and credible explanations.

Applicant is a 37-year-old software adjuster who has worked for the same entity for over six years. At work, he is well-regarded as an employee. Having abused alcohol throughout his late teens and early 20's while in and out of college, he continued that pattern until his early 30's. When his binge drinking jeopardized his job and his future, he self-referred into a qualified substance abuse program for alcohol treatment.

Unbeknownst to Applicant, his in-take lab tests reflected a positive finding for TCH. Accordingly, the center added cannabis dependence to his diagnosis, although it failed to explain its marijuana diagnosis (i.e., abuse versus dependence) aside from the presence of TCH in his lab results. It failed to relate any specific incidents or problems related to cannabis in its paperwork, providing a stark contrast to the well-documented history regarding Applicant's issues with alcohol. Applicant denied ever having been told of either the negative test result or the amended diagnosis. Given the spotty documentation by the center, it is not a stretch to find, especially given his credible testimony, that Applicant was as unknowing about the cannabis diagnosis as he was the TCH result.

Regardless, Applicant voluntarily completed the substance abuse program and its aftercare requirements. Five years later, he has remained sober and has changed his life. Given Applicant's continued sobriety after five years, it is logical to conclude that his success is due in large part to the center's holistic approach and 12-step methodology for addressing a variety of issues. Consequently, Applicant's substance abuse issues have been appropriately addressed and Applicant has demonstrated rehabilitation.

What remains are the concerns related to Applicant's possible use of marijuana after being granted a security clearance and his continued denial of past drug use. The case evidence has one piece of circumstantial evidence for alleging Applicant used an illegal drug at the time at issue. The one positive drug test sits in the middle of a poorly constructed report. The positive result is not shown to have been rechecked or confirmed in a near-contemporaneous manner, nor is there evidence indicating any checks were done to see if any other factors may have led to a false positive.

Applicant credibly testified he has no recollection of having used or having been exposed to marijuana. He similarly testified that he was not contemporaneously told that he had tested positive for TCH, and there is no conflicting evidence refuting this assertion. Reliance on this sole, isolated incident is, therefore, troubling. This is especially true given the facility's paucity of information underlying Applicant's diagnosis of cannabis dependence.

All of this stands in contrast to the credible testimony of a man who, at least in part, eschewed drugs because he was surrounded by family members in law enforcement. It also stands in isolation from a man who has an extensive record of alcohol abuse, including public drunkenness, with no other indicators of drug involvement, and whose statements on the matter have been generally consistent throughout. Given these unique facts, I find that personal conduct, as well as drug involvement and alcohol consumption security concerns have been mitigated.

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:

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| Paragraph 1, Guideline H: | FOR APPLICANT |
| Subparagraphs 1.a-1.c: | For Applicant |
| Paragraph 2, Guideline G: | FOR APPLICANT |
| Subparagraphs 2.a-2.d: | For Applicant |
| Paragraph 3, Guideline H: | FOR APPLICANT |
| Subparagraphs 3.a-3.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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge