



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



In the matter of:

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) ISCR Case No. 14-03986
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Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel

For Applicant: *Pro se*

01/11/2017

Decision

WHITE, David M., Administrative Judge:

Applicant regularly consumed alcohol to the point of intoxication from 1988 to May 2015. He was convicted of child cruelty in 2008 and driving under the influence of alcohol in 2012. He successfully completed an outpatient alcohol treatment program in February 2016, after relapsing following three previous programs. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on January 25, 2013, in connection with the periodic reinvestigation of a security clearance he has held almost continuously since 1989. On June 29, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on August 25, 2015, and initially requested a decision based on the administrative record, without a hearing. Applicant subsequently changed his mind and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 21, 2015. The case was assigned to me on January 21, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 12, 2016, scheduling the hearing for February 26, 2016. I granted Applicant's February 22, 2016 request for a continuance to enable him to retain an attorney to represent him. He subsequently chose not to retain legal counsel. DOHA issued another Notice of Hearing on April 13, 2016, setting the hearing for April 28, 2016, and I convened the hearing as scheduled. Department Counsel participated in the hearing via video teleconference. The Government offered exhibits (GE) 1 through 6, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant testified on his own behalf and offered exhibit (AE) A, which was admitted without objection. I granted the parties' request to leave the record open until May 12, 2016, for submission of additional documentary evidence and a potential Government motion to amend the SOR. Applicant submitted no additional evidence while the record remained open. Department Counsel submitted Government Exhibit 7, which had been identified on the record, but he did not move to amend the SOR. Government Exhibit 7 was admitted without objection and the record closed as scheduled. DOHA received the transcript of the hearing (Tr.) on May 23, 2016.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He is divorced, with one 16-year-old daughter. He earned a one-year vocational technical degree after graduating from high school, and has no prior military service. (GE 1; GE 2; Tr. 7, 55.) In his answer, Applicant admitted the truth of all factual allegations in the SOR and provided additional information about himself. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 3), are incorporated in the following findings.

Applicant admitted that he regularly consumed alcohol, at times to excess and to the point of intoxication, from approximately 1988 to at least May 2015, when he tested positive for alcohol. In March 2008, he was arrested for Willful Cruelty to a Child when he passed out on his couch while he was supposed to be supervising his daughter and her friend. The children left the house and went to a store to obtain candy. A Sheriff Department officer took or followed the children home and found Applicant unconscious after having consumed alcohol and medicine. Applicant served two days in jail, was sentenced to four years of probation, and fined. (AR; GE 1; GE 3; GE 5; Tr. 32-36.)

During the first half of 2012, Applicant's drinking became so excessive that he missed a lot of work, and his mother and brother often had difficulty trying to

communicate with him. His family members finally intervened on his behalf and convinced him to enroll in a detoxification and inpatient treatment program, where he was diagnosed with alcohol dependence by a duly qualified medical professional in July 2012. Following that month of treatment, he was enrolled in an outpatient program at a different facility where he was also diagnosed with alcohol dependence by a duly qualified medical professional in August 2012. (AR; GE 1; GE 3; Tr. 40-42.)

During October or November 2012, Applicant relapsed and resumed binge drinking. On December 22, 2012, he was arrested for Driving Under the Influence (DUI), and Operating without Insurance. He entered into a deferred prosecution agreement under which he was on probation for five years, fined \$1,600, and required to restart and complete alcohol treatment while remaining abstinent. On April 9, 2015, his probation officer reported to the court that Applicant had suffered two relapses and failed to comply with the terms of his probation. On about May 8, 2015, he tested positive for alcohol consumption and was discharged from that outpatient treatment program. His deferred prosecution agreement was vacated and he was convicted of, and sentenced for, the DUI offense. (AR; GE 3; Tr. 42-47, 61-67)

On May 20, 2015, Applicant entered another intensive outpatient alcohol treatment program, in which he was also diagnosed as alcohol dependent. He successfully completed that treatment program on February 12, 2016, with the recommendation that he continue regular participation in Alcoholics Anonymous (AA). He has remained sober since early May 2015 and has continued active AA participation. (AE A; GE 7; Tr. 47-52, 65-69.)

Applicant submitted neither evidence concerning his work performance, nor character references from those who know him. His testimony was forthright and sincere, and he appeared motivated to continue his sobriety.

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

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 conditions that could raise a security concern and may be disqualifying. The DCs raised by the allegations in the SOR and record evidence are:

(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;

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant admitted to habitual and binge consumption of alcohol to the point of intoxication on a regular basis from 1988 to May 2015, with a few periods of sobriety followed by relapses. He was convicted of committing the alcohol-related offenses of Willful Cruelty to a Child in 2008 and DUI in 2012. He completed inpatient and outpatient alcohol treatment programs in 2012, but relapsed shortly thereafter. He failed to complete his court-ordered treatment in 2015 when he violated the court order and program requirement to remain abstinent. These incidents raise security concerns under AG ¶¶ 22(a), (c), (d), (f), and (g).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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 has a lengthy history of alcohol-related problems, leading to a series of failed treatment programs and criminal charges under circumstances demonstrating bad judgment. Given his pattern of drinking in violation of treatment program requirements and a court order, and his relatively short period of sobriety, it cannot be determined that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Applicant failed to meet his burden to establish mitigation under AG ¶ 20(a).

Applicant successfully completed an intensive outpatient treatment program in February 2016. He said that he intends to continue abstaining from alcohol consumption, but offered no evidence of a favorable prognosis concerning future alcohol abuse. His successful treatment program completion and ongoing participation in AA provide a commendable start to establishing mitigation. However, this current period of abstinence follows multiple relapses and violation of a court order, and has occurred under the ongoing supervision of his probation officer. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d).

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 the applicant's conduct and all relevant 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.

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 pertinent facts and circumstances surrounding this case. Applicant appeared to be a sincere and earnest individual, but did not take the opportunity to introduce evidence of his good character, reliability, or trustworthiness. He is a mature individual who is accountable for his choices and actions. His history of alcohol-related misconduct dates back more than 25 years. Given that history, and his pattern of previous treatment failures, the completion of his latest treatment program is too recent to conclude that

recurrence of alcohol abuse is unlikely. The potential for exploitation or duress is undiminished. Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance, and such doubt must be resolved in favor of the national security. Although Applicant has begun to establish a recent record of responsible conduct, he did not meet his burden to mitigate the security concerns arising from his alcohol consumption.

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

Subparagraphs 1.a through 1.g: 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.

DAVID M. WHITE
Administrative Judge