



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01096

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

July 21, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated June 4, 2014. (Government Exhibit 1.) On November 14, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and G for Applicant. 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 Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 7, 2015, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on February 18, 2016. A notice of hearing was issued on March 22, 2016, scheduling the hearing for April 26, 2016. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. The Applicant presented no exhibits at the hearing, however, he testified on his own behalf. The record remained open until close of business on May 9, 2016, to allow the Applicant to submit additional documentation. Applicant submitted 33 Post-

Hearing Exhibits, which were admitted without objection. The transcript of the hearing (Tr.) was received on May 5, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 30 years old and is married a second time. He has a high school diploma and is currently working on his Associate's degree. He is employed by a defense contractor as a Field Applications Engineer and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant denied the allegation set forth under this guideline. Applicant joined the United States Army at the age of 21. He served honorably for 7 years before he was discharged in August 2013. During his military career, he served as an Army Ranger on five combat deployments to Afghanistan and one to Iraq. He received a number of awards and commendations, including a Good Conduct Medal with one knot signifying that he had good conduct with no military discipline for six consecutive years. He has three Army Commendations Medals, two Army Achievement Medals, Joint Service awards, a Parachute badge, and an Expert Infantry Badge, among others. (Applicant's Post-Hearing Exhibits 1 through 27.) He held a Top secret security clearance and SCI Classification access throughout his military career without incident. (Applicant's Post-Hearing Exhibit 28.)

In March 2010, while still in the military, Applicant was charged with filing a false police report, for which he served six months probation. He testified that he was going through a divorce at the time. (Applicant's Post-Hearing Exhibits 32 and 33.) His wife took his car and he could not locate her to get it back. He did not have the vehicle for about a year and a half, but continued to make his regular monthly payments and pay insurance for him and her. At some point, he decided that he needed to do something to get the car back. Without consulting with anyone, and being young and naive, he reported to the police that the car was stolen. He later learned that this was not the correct way to handle the matter, and that a warrant had been issued against him for filing a false report. He immediately turned himself in to law enforcement. Applicant spent 36 hours in jail, was required to pay a fine, and was placed on six months probation. He eventually got the car back by conferring with his attorney and hiring a private detective.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that Applicant is ineligible for clearance because he abuses intoxicants.

Applicant denied the allegations set forth in paragraph 2 of the SOR. (Applicant's Response to SOR.) Applicant began consuming alcohol at the age of 21. In the beginning, he was drinking about two or three beers on the weekends with friends. As time passed, his consumption grew to about a six-pack of beer a night. In 2009-2010, Applicant was on combat deployments where close friends lost their lives. Applicant was very distraught and consumed more alcohol. He excessive drinking caused him to be late for work on one occasion, friends noticed his change, and told him that he needed to calm his drinking down. From August 2010 through September 2010, Applicant entered a 28-day inpatient treatment program for his excessive drinking. In the program, Applicant was diagnosed as "Alcohol Dependent". (Tr. p. 38 - 39.) Applicant found the program to be very helpful. From the time he entered the treatment program until August 2013, he completely abstained from the use of alcohol. Following the in-patient treatment program, he attended about a month of Alcoholics Anonymous (AA) meetings.

Applicant explained that one of his passions is home beer brewing. It was something that helped him through therapy when he had surgery for a deployment-related injury. Applicant stated that, "I find it very soothing, and part of the by-product of making beer is you have to taste it." (Tr. p. 39.) Applicant testified that his beer brewing hobby gradually got him back into drinking alcohol. (Tr. p. 39.) He hopes to one day turn his hobby into a business. (Tr. p. 46.) He further testified that he now drinks a beer on the weekends, or bi-weekly. He usually has two or three drinks about once or twice a month. He will occasionally have spirits, such as whiskey on a special occasion. (Tr. p. 40.)

Applicant stated that he last consumed alcohol in March 2016, a month before the hearing. His wife also consumes alcohol. He may have five or six beers on a birthday. (Tr. p. 41). Applicant offered that his father is a recovering alcoholic and he knows what it can do. He states that he will not let himself get to the point where he was when he went in for treatment. (Tr. p. 43.)

Two letters of recommendation from Applicant's co-workers who know him well indicate that he has a strong work ethic, and always displays the highest level of professionalism on and off the job. He is considered reliable, loyal, and trustworthy, and is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibits 30 and 31.)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive set forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Condition that could raise a security concern:

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

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics that the person may not person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information.

Conditions that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

21. *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.

Conditions that could raise a security concern:

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;

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.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the administrative judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated

upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The administrative judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any 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.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an applicant for clearance may be involved in dishonesty and alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has engaged in dishonesty (Guideline E), and alcohol abuse (Guideline G). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government’s case under Guidelines E and G of the SOR.

In March 2010, the Applicant was young and naive and going through a divorce when he filed a false crime report for a car stolen. He knew that his wife had the car but did not know how to find her. Applicant acknowledged that after talking with his attorney and his command he realized he had done the wrong thing. He turned himself into authorities and paid the consequences.

The government relies on the representations of its defense contractors and must be able to trust them in every instance. Filing a false police report is a serious crime. This conduct by the Applicant shows immaturity, unreliability and untrustworthiness.

Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Condition 16.(b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative*; 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*; and 16.(d) *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

Equally as troubling is the Applicant's diagnosis of alcohol dependence. Even after completing an in-patient treatment program, and being diagnosed with alcohol dependence, he continues to consume alcohol. When asked if he was told to abstain from alcohol due to his diagnosis, Applicant does not remember any sort of advice like that. (Tr. p. 43.) Under Guideline G, Alcohol Consumption, Disqualifying Conditions 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*; and 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* apply. None of the mitigating conditions are applicable. Accordingly, I find against Applicant under this guideline.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Applicant is commended for his honorable and dedicated military service to our country. However, even so, he continues to show some defect in character that must be addressed. By continuing to consume alcohol after being diagnosed with dependence, and choosing a hobby of making alcohol at home, shows poor judgment, immaturity, and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply

with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against Applicant under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against Applicant.

Subpara. 1.a.: Against Applicant.

Paragraph 2: Against Applicant.

Subpara. 2.a.: Against Applicant.

Subpara. 2.b.: Against Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Darlene Lokey Anderson
Administrative Judge