



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-01844

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns by his financial problems and his abuse of alcohol. His request for access to classified information is denied.

Statement of the Case

On November 6, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. During his background investigation, Applicant was interviewed on June 2, 2014, by a Government investigator. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On September 28, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption).² On December 16, 2015, Applicant responded to the SOR and requested a decision without a hearing. On March 2, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA)

¹ Required by Executive Order 10865, as amended, and by the Directive.

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on April 2, 2016, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed after Applicant did not submit additional information before the May 2, 2016 deadline. The case was assigned to me on February 10, 2017.

Findings of Fact

Under Guideline F, it was alleged that Applicant owes \$21,875 for 11 delinquent or past-due debts (SOR 1.a - 1.k). Under Guideline G, it was further alleged that Applicant has consumed alcohol, at times to excess and to the point of intoxication between 2005 and 2014 (SOR 2.a); that in 2012, while a uniformed member of the military, Applicant was disciplined for failing to report for duty because he did not wake up after drinking heavily the night before (SOR 2.b); that based on alcohol treatment or counseling in March and April 2010, Applicant was diagnosed as alcohol dependent and was advised to abstain from alcohol (SOR 2.c); and that Applicant continues to consume alcohol (SOR 2.d). Applicant admitted, with remarks, all of the allegations.

As to the Guideline F allegations, Applicant disclosed some of his debts in his e-QIP. The remaining debts are documented in the credit reports produced by the Government. Applicant also discussed his debts with a Government investigator during his June 2014 interview. As to the Guideline G allegations, Applicant admitted SOR 2.a - 2.d. He also disclosed his alcohol-related military misconduct and a period of outpatient treatment in his e-QIP. Despite Applicant's admission to the SOR 2.c allegation that he was diagnosed as alcohol dependent and advised to stop drinking, there is no support for that allegation in the record. At most, Applicant was diagnosed with "minor alcohol abuse." SOR 2.c is resolved for Applicant. (FORM, Items 1 - 7) In addition to the facts established by the foregoing, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor, where he has worked since October 2013. He served on active duty in the United States Air Force from December 2001 until being honorably discharged in May 2011. He first received a security clearance early in his military career. In early 2010, after a night of excessive drinking, Applicant overslept the next morning and failed to report for work as required. He received non-judicial punishment for violating Uniform Code of Military Justice (UCMJ) Article 86 (Unauthorized Absence). He was reduced in rank (suspended) and given 15 days extra duty. In March 2010, Applicant self-referred for outpatient alcohol treatment through April 2010. (FORM, Items 2 and 7)

Applicant started drinking alcohol in 2005 (about age 21). He claims to drink to the point of intoxication once a year, but also claims it takes at least 10 drinks to become intoxicated. In his June 2014 interview, Applicant stated that his alcohol use has not adversely affected his personal or professional circumstances. He continues to consume alcohol. (Answer; FORM, Items 2 and 7)

Applicant attributed his financial problems to periods of unemployment and underemployment after he was discharged from the military. He did not submit any information about the current state of his finances. He also did not demonstrate that he has acted to resolve any of the debts alleged in the SOR. Available information also does not show that he has obtained any financial counseling or other professional help in resolving his debts. (FORM, Items 2, 4 - 7)

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven exhibits (Items 1 - 7) proffered in support of the Government's case.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*).

By contrast, the record does not support any of the mitigating conditions listed at AG ¶ 20. Applicant's debts are recent and ongoing. Applicant has not acted to pay or otherwise resolve his past-due debts. He also has not shown that his current finances are sound. The security concerns about Applicant's finances remain unresolved.

Alcohol Consumption

Aside from SOR 2.c, the Government met its burden of production in support of the SOR allegations under this guideline. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 21 as follows:

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.

More specifically, the facts established through SOR 2.a, 2.b, and 2.d require application of the following AG ¶ 21 disqualifying conditions:

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(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.

Applicant's non-judicial punishment while in the Air Force was an alcohol-related incident at work. His own description of his drinking history suggests episodic binge drinking. It is not plausible that Applicant does not have a problem with alcohol if he must drink at least 10 drinks to become intoxicated. This more accurately suggests a high tolerance for alcohol attained through a long period of excessive alcohol consumption.

By contrast, the record does not support any of the AG ¶ 22 mitigating conditions. Although Applicant received some measure of alcohol counseling or

treatment, he continues to drink and does not acknowledge that alcohol has had an adverse effect on his life. Security concerns raised by the Government's information about Applicant's use of alcohol remain.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines F and G, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). This record raises significant doubts about Applicant's suitability for access to classified information. Applicant has not produced any information that addresses the doubts about his suitability for access to classified information that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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 F: AGAINST APPLICANT

Subparagraphs 1.a - 1.k: Against Applicant

Paragraph 2, Guideline G: AGAINST APPLICANT

Subparagraphs 2.a, 2.b, 2.d: Against Applicant

Subparagraph 2.c: For Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge