



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



In the matter of:)
)
) ISCR Case No. 15-02206
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his history of alcohol abuse and alcohol-related arrests. Clearance is granted.

Statement of the Case

On November 9, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, alcohol consumption, and J, criminal conduct. 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).

In an answer dated December 18, 2015, Applicant admitted all of the allegations except subparagraphs 1.d and 1.j, and requested a decision on the written record rather than a hearing. On February 24, 2016, DOHA designated the case for a hearing upon

Department Counsel's request, and on June 6, 2016, the case was assigned to me. The hearing was originally scheduled for July 19, 2016. I granted a continuance upon Applicant's request after he contacted me on the date of the hearing and informed me that he was sick. I then rescheduled the hearing for August 31, 2016. The hearing was held as rescheduled. At the hearing, I received nine Government exhibits marked as Government Exhibit (GE) 1 through 9, and I considered the testimony of Applicant. DOHA received the transcript (Tr.) on September 8, 2016.

Findings of Fact

Applicant is a 32-year-old single man. In 2008, he earned a bachelor's degree in the field of quantitative finance, and he is currently studying for a master's degree. Since 2012, he has worked for a federal contractor.

Applicant has a history of alcohol abuse that has led to several alcohol-related arrests and the issuance of several alcohol-related citations. In April 2003, Applicant was arrested and charged with driving while intoxicated (DWI) after he failed a breathalyzer test that the police administered after discovering him sleeping in the driver's seat of his car with the keys in the ignition (subparagraph 1.b). (Answer) The disposition of this charge is unknown from the record.

In the fall of 2003, during the first semester of Applicant's freshman year of college, he was issued citations twice for being drunk in public after the police discovered him and several classmates playing drinking games in their college dormitory (subparagraphs 1.e and 1.f). (Tr. 17)

In November 2006, the police stopped Applicant after he fell asleep at the wheel of his car and he ran a red light (subparagraph 1.c). He was arrested and charged with DWI after he refused to take a breathalyzer. (Tr. 19) Applicant contends that he had not consumed alcohol before running the red light, and had, instead, suffered a temporal lobe seizure. After presenting medical evidence supporting his contention to the court, the charge was reduced to reckless driving.

In November 2008, Applicant was drinking alcohol at an outdoor house party when the police arrived and told the partygoers to "wrap it up." (Tr. 20) The partygoers remained, whereupon the police returned and issued each of them, including Applicant, citations for being drunk in public. Applicant paid an \$80 fine.

One night in August 2010, Applicant, intoxicated after an evening of drinking with friends, decided to drive to a nearby residential neighborhood, park the car, and go to sleep in the car. In an effort to avoid a DWI charge similar to the one he received in 2003, Applicant took the car key out of the ignition before going to sleep. A concerned neighbor called police who arrived and arrested and charged Applicant with public intoxication (subparagraph 1.h). (Tr. 23) The disposition of the charge is unknown from the record.

In November 2010, Applicant was arrested and charged with DWI when he failed a sobriety test after the police stopped him for driving down a part of the road that was blocked off for construction. (subparagraph 1.d, as duplicated in subparagraph 1.k). (Tr. 24) In April 2011, he pleaded guilty, and received one year of supervised probation, which included the restriction of his driver's license. (GE 2 at 4; GE 6)

Applicant considered the November 2010 arrest to be "a wake-up call," and "the last straw." In January 2011, he voluntarily enrolled in a clinic where he received group counseling three days per week. (Tr. 25; GE 2 at 4) At or about the time Applicant enrolled in the clinic, he retained a therapist to provide individual counseling services, and he began attending Alcoholics Anonymous (AA) meetings. (Tr. 27, 39) In sum, Applicant attended approximately 100 counseling sessions over an 18-month period. While enrolled, a clinician stated that Applicant "demonstrated alcoholic tendencies." (Tr. 37) Applicant has not drunk any alcohol since 2011. (GE 2 at 5) He no longer socializes with his old friends who abused alcohol.

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(a), 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a security clearance.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, "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). Applicant's history of alcohol-related criminal offenses triggers the application of AG ¶¶ 22(a), "alcohol-related incidents away from work, such as driving 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.” Applicant’s recollection that a staff member at the clinic where he received treatment told him that he has alcoholic tendencies is insufficient to trigger the application of AG ¶ 22(d) “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence), or AG ¶ 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.” The remainder of the disqualifying conditions set forth in AG ¶ 22 are not relevant.

Applicant has not committed an alcohol-related crime in six years. After his most recent alcohol-related offense in 2010, he voluntarily enrolled in group and individual therapy, and began attending AA meetings. He has not drunk any alcohol since 2011. 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,” and AG ¶ 23(b), “the individual acknowledges his or her . . . issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . .” Given the length of time that has elapsed since Applicant’s last alcohol-related offense, his lengthy period of abstinence and the extensive rehabilitation, I conclude Applicant has mitigated the security concern.

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations” (AG ¶ 30) The same conduct in the alcohol consumption section is cross-alleged under the criminal conduct guideline. Applicant mitigated this security concern for the same reasons as set forth, above.

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 the 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.

Applicant's alcohol-related offenses between 2003 and 2008 were attributable to college-age immaturity. By the time he committed the two offenses in 2010, however, he had been out of college for two years. Applicant had the presence of mind to recognize that his drinking was getting out of control, and he voluntarily enrolled in a group program, and began seeing a therapist for individual treatment. Since then, he has quit drinking alcohol and has had no additional run-ins with the law. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concerns.

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:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge