



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



In the matter of:)
)
) ISCR Case No. 15-05134
)
Applicant for security clearance)

Appearances

For Government: Ross Hyams, Department Counsel
For Applicant: *Pro se*

07/28/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns raised under the guidelines for alcohol consumption and financial considerations. National security eligibility for access to classified information is denied.

History of the Case

On February 19, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 17, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline G, Alcohol Consumption, and Guideline F, Financial Considerations. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) in effect on September 1, 2006. On June 8, 2017, new AG were implemented and became effective that day. I considered both sets of guidelines in reaching this decision, and it would be the same under either set.

On February 18, 2016, Applicant responded to the SOR in writing and elected to have his case decided on the written record in lieu of a hearing. (Item 3.) On May 24, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed it to Applicant on May 27, 2016. He received the FORM on June

20, 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional documents or file objections to the Government's evidence; hence, Items 1 through 7 are admitted into evidence. On May 4, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Procedural Ruling

Based on Applicant's Answer to the SOR, Department Counsel moved to amend allegation 2.a, by striking the word Alabama, and replacing it with the word Georgia. Applicant did not file an objection to the motion. The Department's motion is granted.

Findings of Fact

Applicant admitted all allegations in the SOR. His admissions are incorporated into these findings.

Applicant is 40 years old and unmarried. He earned an associate's degree in 2011. He started working for a defense contractor in 2014. Prior to this position, he experienced periods of unemployment and worked for private companies. (Item 4.)

Applicant admitted that he consumed alcohol at times to excess and to the point of intoxication between 1999 and 2014. That history of consuming alcohol includes five arrests and convictions for driving under the influence (DUI) in 1999, 2000, 2001, 2010, and 2012. In 2002, he was arrested for driving with a suspended/revoked license and willful obstruction of a police officer.¹ (Item 3.) All crimes were misdemeanors. As a consequence, he has been placed on probation at least four times for periods of a year; placed in jail; ordered to perform community service; fined; and had his driver's licenses suspended several times. (Item 6.) Applicant did not submit evidence of alcohol abuse treatment or other evidence addressing his alcohol problems and rehabilitation.

When he completed "Section 26: Financial" in his 2015 e-QIP, Applicant disclosed that he had not filed federal or state taxes for 2013. He said he had not paid the taxes because he was the victim of theft and did not have enough money when the taxes were due. (Item 1.) He admitted that he has also not filed or paid federal or state taxes for 2012. (Item 3.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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. The entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge

¹ Applicant's driver's license was suspended as a consequence of a previous DUI.

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 national security eligibility 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 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. Directive ¶ E3.1.15 states that an “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.”

A person who applies for national security eligibility 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 national security eligibility. 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 sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol

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 two conditions that could raise a security concern and may be disqualifying in this case. They include:

(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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant has a long history of consuming alcohol to excess, which includes five arrests and convictions for DUI. The evidence raised the above disqualifying conditions.

AG ¶ 23 provides four conditions that could mitigate those security concerns. They include:

(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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant did not produce evidence to establish mitigation under any of the above conditions. His last DUI arrest occurred in 2012. Given his 15-year history of abusing alcohol and convictions for DUIs, insufficient time passed to conclude similar events will not recur. AG ¶ 23(a) does not apply. There is no evidence that Applicant acknowledged his problems or established a pattern of modified consumption or abstinence. AG ¶ 23(b) does not apply. Applicant did not provide evidence that he participated in any form of treatment or successfully completed a program. AG ¶ 23(c) and AG ¶ 23(d) do not apply.

Guideline F: Financial Considerations

AG ¶ 18 sets out the security concerns pertaining to financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other

issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.²

AG ¶ 19 describes a condition that could raise security concerns and be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant acknowledged that he failed to file federal and state income tax returns for 2012 and 2013. He did not present any evidence that he has filed the returns. He also has not paid taxes for either year. The evidence raised the above disqualifying condition.

AG ¶ 20 provides a condition that could mitigate those security concerns:

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

When he completed his e-QIP, Applicant's 2012 tax returns were almost three years overdue. By the time he answered the SOR they were almost four years late. His 2013 returns were about two years late when he submitted the e-QIP, and three years late when he answered the SOR. He did not provide evidence that he filed the returns, contacted the taxing authorities, established a payment plan, or is in compliance with any plan. AG ¶ 20(g) does not apply.

Whole-Person Concept

AG ¶ 2(a) requires an administrative judge to evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances, commonly referred to as the whole-person concept. Under AG ¶ 2(c) the ultimate determination of whether to grant eligibility for a security clearance must include

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The administrative judge should also consider the following nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant is a 40-year-old man, who has worked for a defense contractor since 2014. He has a long history of alcohol problems, including arrests and convictions. Other than the passage of four years from the date of his last arrest for a DUI, he has provided minimal evidence of mitigation pertinent to that history. Consequently, there is insufficient evidence from which to conclude similar problem will not recur. Additionally, he failed to file federal and state tax returns and pay taxes for 2012 and 2013, despite having knowledge of DoD's concerns. Overall, the record evidence leaves serious doubts as to Applicant's present national security eligibility. Applicant did not mitigate the alcohol consumption or financial considerations security concerns.

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
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to continue Applicant's eligibility for access to classified information. National security eligibility is denied.

Shari Dam
Administrative Judge