



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



In the matter of:

ADP Case No. 15-06473

Applicant for Public Trust Position

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

05/19/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant is participating in counseling for his alcohol issues and is demonstrating a pattern of abstinence or responsible use. He has mitigated the alcohol involvement trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On April 20, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline G, alcohol involvement. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On May 16, 2016, Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing. On July 11, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including Items 1

through 6. Applicant received the FORM on August 6, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM and did not object to the Government's documents. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence. The case was assigned to me on May 4, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.g, and 1.i. He neglected to answer SOR ¶ 1.h, probably due to oversight, so I will consider the allegation as if he had denied it. He denied SOR ¶¶ 1.j and 1.k. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 52 years old. He earned a bachelor's degree in 1988. He has never married and has no children. He is employed in information technology. Since about September 2013, he has worked for a defense contractor in the health care industry.¹ In connection with his employment, Applicant submitted an application for a position of public trust. He disclosed a 2001 arrest for driving under the influence of alcohol or while impaired (DUI/DWI), as well as counseling (2007-2013) and inpatient alcohol rehabilitation (2011).²

Applicant pleaded guilty to the DUI in May 2001. He was placed on six months of unsupervised probation and fined. (SOR ¶ 1.a). The SOR allegations otherwise concern his multiple periods of alcohol treatment in the years since (SOR ¶¶ 1.b - 1.i), a diagnosis of alcoholism or alcohol dependence in 2011 (SOR ¶ 1.j) and his continued consumption of alcohol despite that diagnosis (SOR ¶ 1.k). Applicant admitted the DUI and the various treatments, but denied allegations ¶¶ 1.j and 1.k, as he referenced "alcohol abuse" rather than "alcohol dependence" in his answer.

In response to an interrogatory, Applicant disclosed several periods of inpatient and intensive outpatient alcohol treatment between 2002 and 2012. This included inpatient treatment from February 9 to April 8, 2002 (SOR ¶ 1.b); outpatient treatment from October 28, 2003 to January 8, 2004 (SOR ¶ 1.c); inpatient treatment from October 14 to November 8, 2005 (SOR ¶ 1.d); inpatient treatment from March 12 to April 2009 (SOR ¶ 1.f); inpatient treatment from June 17 to July 8, 2011 (SOR ¶ 1.h); and inpatient treatment from November 15 to December 28, 2012 (SOR ¶ 1.i).³ This list did not include alcohol treatment in 2007 and 2010 (SOR ¶¶ 1.e and 1.g), both of which Applicant "admitted" but which are not otherwise supported by record evidence.

¹ Items 2, 3.

² Item 2 at pp. 26, 27, 30.

³ Item 5 at 10.

Applicant first attended Alcoholics Anonymous (AA) after his 2001 DUI. According to his October 2013 background interview, he has participated in AA regularly, once or twice a week, since November 2004.⁴ Applicant was a moderate social drinker between 2001 and 2007. During this period, he also voluntarily sought alcohol counseling and treatment on multiple occasions. (SOR ¶¶ 1.b, 1.c and 1.d.)⁵

Between June 2007 and June 2011, his drinking increased due to work-related stress. During this period, he consumed alcohol two to three times a week, and he would consume five or six beers as well as three or four shots of jaegermeister or tequila at meals or in social situations. As a result, his family encouraged him to seek alcohol counseling.⁶

Applicant attended inpatient alcohol treatment in June and July 2011. He completed it successfully and began reducing his alcohol consumption. In November 2011, he was notified by his employer that his position would be relocated to another state. He had recently purchased a home, so he chose to accept a severance package rather than move.

Most recently, Applicant voluntarily entered inpatient alcohol treatment from November 19 to December 28, 2012. At the time, he had been drinking six shots of tequila and six beers once or twice a month for several months. He was considered a “binge drinker.” He was diagnosed both on intake and at discharge as suffering from alcohol dependence.⁷

Applicant detailed his alcohol use and rehabilitation efforts in his July 2015 interrogatory response. He disclosed that he consumed alcohol once or twice a week, on days when he was not working. He had most recently consumed alcohol the week before. He noted that he consumed alcohol upon learning that his mother had a heart condition, and when his father passed away in January 2013. He acknowledged that his drinking problem stems from a family history of alcoholism. He noted that he was attending AA two or three times a week, and had a sponsor to help him work on his recovery goals. He also said the following:

My recovery is and will continue to be a 1-day-at-a-time process. Help from my higher power, my sponsor and family help me stay connected

⁴ Item 3 at 3, 5.

⁵ Item 3 at 3-4.

⁶ Item 3 at 4.

⁷ As detailed in Item 6, Applicant was diagnosed with alcohol dependence, 303.90 under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), which contained the criteria for alcohol dependence and alcohol abuse. The DSM-IV-TR has been replaced by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which was published in May 2013. The DSM-5 replaced alcohol dependence and alcohol abuse disorders with alcohol use disorder, with severity levels of mild, moderate, and severe.

and aware of my disease. Recently, I have had relapses that take me off my recovery goals. I am motivated and communicate with my psychologist [name omitted], my issues and my coping skills dealing with cravings and consequences. I have a strong awareness of untreated alcoholism and would like to continue working with my sponsor . . .”⁸

Applicant began seeing a licensed professional counselor (LPC) in September 2008. Records show Applicant had fairly regular counseling regular sessions in 2008 and 2009, then again from fall of 2012 until spring of 2014.⁹

Applicant’s answer included a May 2016 letter from the LPC. She indicated that she has been seeing Applicant “intermittently” since September 2008. She noted that he had voluntarily entered treatment for alcohol abuse several times in the past. She noted his diagnosis as alcohol dependent but questioned it given what she knew of his drinking pattern. She noted that Applicant rarely drank more than two or three beers and did not drink and drive. She noted that his drinking had not led to either legal trouble and had not interfered with his employment. She noted that he was continuing to participate in AA as well as another recovery program. She noted that Applicant had not had a drink since summer of 2015 and did not turn to alcohol as a coping mechanism during periods of family stress. Applicant was “doing well in maintaining his abstinence and staying involved with his support networks.”¹⁰

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair,

⁸ Item 4.

⁹ Item 5.

¹⁰ Item 1.

impartial, and commonsense decision. According to AG ¶ 2(c), 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 [sensitive] 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 favorable trustworthiness decision.

A person who seeks access to sensitive information enters 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline G, Alcohol Consumption

The trustworthiness concern for alcohol consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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;

(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; and

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

Applicant has had one DUI, in 2001 (SOR ¶ 1.a). AG ¶ 22(a) applies to that conduct, as it is old and has not been repeated. Since then, he has had numerous periods of alcohol treatment and counseling, both inpatient and intensive outpatient, between 2002 and 2012. He entered many of these treatments voluntarily. These treatment periods are alleged in the SOR (¶¶ 1.b - 1.i), as Guideline G security concerns. Applicant either disclosed them in his interrogatory response, admitted them in his answer, or both. However, participation in alcohol counseling or treatment is not disqualifying conduct under Guideline G. Indeed, such participation is mitigating.

Applicant last completed alcohol treatment in 2012. He was found to be a binge drinker and diagnosed as suffering from alcohol dependence (SOR ¶ 1.j). There is evidence of some relapses since then (SOR ¶ 1.k), though all of Applicant's subsequent alcohol consumption has been moderate. AG ¶¶ 22(c), 22(e) and 22(f) apply.

Conditions that could mitigate alcohol consumption trustworthiness concerns are provided under AG ¶ 23. The following are potentially applicable:

(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); 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 single DUI, which occurred 16 years ago. He has never had any alcohol incidents at work. Since then, while he has struggled with alcohol and will continue to do so, he has been involved in Alcoholics Anonymous, and has pursued both inpatient and outpatient alcohol treatment on numerous occasions. To his credit,

he has recognized for many years that he has a problem with alcohol and has developed a long track record of taking steps to deal with it. He has continued in counseling with a treatment provider who has seen him for many years. Though he has had instances of relapse, he was abstaining from alcohol as of May 2016, and his most recent alcohol consumption was moderate. He supplemented his AA with an additional recovery program. AG ¶¶ 23(a), 23(b) and 23(c) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a position of public trust. For all these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising under Guideline G, alcohol involvement.

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

Conclusion

In light of all of the circumstances it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Braden M. Murphy
Administrative Judge