



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



In the matter of:

ISCR Case No. 15-06690

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: Ryan C. Nerney, Esq., Applicant's Counsel

August 3, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On June 6, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on July 14, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 27, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2016, scheduling the hearing for December 1, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 and 2, which were

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

admitted without objection. Applicant testified on his own behalf and called one witness. Applicant presented eight documents, which were marked Applicant's Exhibits (AppXs) A through H and admitted without objection. DOHA received the transcript of the hearing (TR) on December 13, 2016.

Findings of Fact

Applicant admitted to all the allegations in SOR, with explanations. (TR at page 38 lines 20~25.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 52-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since September of 2014. (GX 1 at page 10.) He is retired from the U.S. Navy, and held a security clearance until his retirement in 2010. (GX at pages 12~15 and 34.) He has been married to a U.S. citizen for over 30 years. (GX 1 at pages 18~19, see also TR at page 20 line 7 to page 22 line 22.)

Guideline G - Alcohol Consumption

1.d.² In November of 1987, while on a break in service from the Navy, Applicant was charged with, and subsequently pled guilty to, Driving Under the Influence (DUI). (TR at page 23 line 9 to page 24 line 13, at page 42 lines 19~25, and at page 43 line 19 to page 44 line 21.) As a result of this conviction, his driver's license was suspended; and in order to get his license reinstated, Applicant completed a "two or three-day classroom-type" alcohol awareness course. (TR at page 43 line 19 to page 44 line 21.)

1.c. From May of 1996 to June of 1996, Applicant attended a 28-day in-patient alcohol treatment program. (TR at page 24 line 14 to page 27 line 4.) He was diagnosed as suffering from Alcohol Dependency. (*Id.*) As the result of this diagnosis, Applicant stopped consuming alcohol for "about nine years." (TR at page 25 line 13 to page 26 line 4.) However, in 2005, he started to again consume alcohol. (TR at page 26 line 5 to page 27 line 24.)

1.b. In December of 2009, Applicant self-referred to a Substance Abuse and Rehabilitation Program. (TR at page 27 line 25 to page 28 line 9.) He was again diagnosed as suffering from Alcohol Dependency, and advised to attend four Alcoholics Anonymous meetings each week. (TR at page 28 lines 10~17.) He attended about "a dozen" meetings over a period of about three weeks, but did not find the meetings effective. (TR at page 28 line 18 to page 29 line 19.) After about a year of sobriety, Applicant began again to consume alcohol. (TR at page 29 line 24 to page 30 line 13.) From 2011~2014, Applicant describes his consumption of alcohol in the following terms: "I was drinking pretty steadily. Three to five times a week, and sometimes we'd get drunk and sometimes we'd just drink without getting too drunk . . ." (TR at page 30 lines 14~20.)

² The allegations will be discussed in chronological order.

1.a. In November of 2013, Applicant retired from the Navy. (GX 1 at pages 15~16.) He had difficulties transitioning to civilian life. (TR at page 30 line 25 to page 31 line 18.) This, coupled with some family issues, led Applicant to seek counseling at a mental health clinic to address his perceived depression. (*Id.*) In February of 2014, he was diagnosed, a third time, in part, as suffering from Alcohol Dependency. (TR at page 31 line 19 to page 32 line 16.) He has not consumed alcohol since January of 2014, more than three years ago, and participates in a program called “Rational Recovery.” (TR at page 32 line 17 to page 34 line 22.)

In January of 2015, Applicant was diagnosed, in part, with “Alcohol Induced Depressive Disorder – resolved,” and with “Alcohol Use Disorder, severe, in remission.” (TR at page 35 lines 4~19, and AppX B at page 5.) In July of 2016, Applicant signed a Statement of Intent, averring, in part, an “intent to never abuse alcohol again.” (AppX C.) He further testified that the terms “never ‘abuse alcohol again’” . . . “means to never use.” (TR at page 46 lines 14~21.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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. 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 national security eligibility will be resolved in favor of the 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. Under Directive ¶ E3.1.15, 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 seeks access to classified 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 classified information. 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 classified information.

Section 7 of Executive Order (EO)10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G - Alcohol Consumption

The security concern relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

(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;

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

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant has a 1987 DUI, and has been diagnosed as being Alcohol Dependent in 1996, 2010, and 2014. In 2015, that dependency was found to be in remission.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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; 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.

While Applicant's Alcohol Dependency may currently be in remission, I cannot overlook the fact that he returned to the consumption of alcohol after unfavorable diagnoses 1996 and 2010. It is too soon to say that he will not return to its consumption again.

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 relevant circumstances. The administrative judge should consider the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a laudatory history of now working in the defense industry, and is respected by those who know him in the work place. (AppX F.) He performs well at his job. (AppXs E and H.)

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption 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 the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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 interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge