



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07791

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

03/28/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 23, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In his SOR response from March 15, 2016, Applicant admitted seven of the eight allegations raised and requested a determination based on the written record in lieu of a hearing. On May 6, 2016, the Government issued a File of Relevant Material (FORM) containing 10 attachments ("Items"). Applicant timely responded to the FORM with additional material. The case was assigned to me on March 21, 2017. Based on my review of the case file and submissions, I find Applicant failed to mitigate alcohol consumption security concerns.

Findings of Fact

Applicant is a 54-year-old senior systems engineer who has worked for the same employer since 2007. In 30 years of service as a Federal Government contractor, he has never been cited for a security violation. Applicant is excellent at his job and in his field. He writes that he attends Alcoholics Anonymous (AA), received a coin for 18 months of sobriety, and undergone other counseling. Applicant has earned a high school diploma and a bachelor's degree. Divorced, he is the father of three sons over the age of 18. His children live with him while he helps see them through college

From approximately 1979 through 2000, then again from 2007 through 2014, Applicant consumed alcohol, at times to excess and to the point of intoxication. In 1980 and in 1987, Applicant was charged with driving under the influence. He was convicted in both incidents. In about May 1989, he was determined to be an alcohol abuser while attending a state alcohol safety action program (ASAP), which he successfully completed.¹ In about August 1992, Applicant was arrested for public intoxication, after demonstrating "foolish" behavior before the birth of a child. (Applicant's SOR Response at 2) From 2000 through 2007, he remained sober until his wife left the home and took their children. This triggered a period of difficult times and, with regard to his alcohol abuse, a relapse.

In about October 2009, Applicant was charged with driving under the influence and convicted of the charge in approximately March 2010. He was also sentenced to 60 days of imprisonment, with the sentence suspended. In approximately December 2011, he was charged with driving under the influence and resisting arrest. Applicant noted that during the arrest he was accosted by one of the officers and beaten to the ground, resulting in an ethics investigation against the officer, but he provided no corroborating official documentation. He further noted that the case was adjudicated *nolle prosequi*.

In approximately August 2014, Applicant was charged with driving under the influence after his work team had lost a significant contract. He was convicted and sentenced to one year of probation and 180 days of imprisonment, of which he served 20 days. He has practiced abstinence since October 2014.

Applicant loves his job and working in support of the United States military armed services. He has completed numerous trainings, received multiple certifications, and has received several recruitment offers. His resume reflects a man who has held significant positions throughout his career.

Applicant has sought help for his alcohol issues and provided certificates related to alcohol awareness and counseling from September 2015 and April 2015, as well as an attendance record for ASAP, reflecting sessions attended between October 24, 2014, through April 2015.

¹ In the state at issue, not all ASAP training includes treatment with a licensed substance abuse counselor.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under 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.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Section 7 of Executive Order 10865 provides that 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.

Applicant has a troubled history with alcohol, including an ASAP finding and his admission that he suffers from alcohol abuse, although it is unclear whether that finding was made by a qualified medical provider or a licensed clinical social worker (LCSW). Regardless, he was charged with driving under the influence in 1980 and 1987. During that period he was also charged with public intoxication in 1992. Then, following a period of abstinence (between 2000 and 2007) interrupted by domestic upset, he was again charged with driving under the influence in 2009, 2011, and 2014.

The following Disqualifying Conditions are available under AG ¶ 22:

- (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;
- (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;
- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (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;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Under these facts, disqualifying conditions AG ¶ 22(a), (c), and (f) apply.

The following mitigating conditions are available under 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;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant reinitiated sobriety in October 2014. Consequently, he has abstained for over two, but less than three years. Although he is now older and more mature, it cannot be dismissed that his 2000-2007 attempt at sobriety failed after six years of controlled alcohol consumption. However, there is no red line as to how long is appropriate in these cases. Other factors must be considered, as noted below.

What is particularly worrisome here is the frequency of the very serious alcohol-related offenses, offenses that not only reflect poor self-control, but demonstrate reckless behavior toward both himself and others. It can only be hoped five charges for driving under the influence and two separate sentences to imprisonment, including 20 days in confinement, have proved to be a wakeup call. It is in his favor that despite a relapse after his earlier therapy, he now continues with AA, is sustaining abstinence, and openly acknowledges his alcohol abuse. Although there are insufficient facts to raise AG ¶ 23(a) and (d), AG ¶ 23(b) applies.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a), where available, were addressed under that guideline, but some warrant additional comment.

Applicant is a 53-year-old defense contractor with a long history of meritorious work in support of the defense industry. In no manner is his loyalty or work performance at issue. He has received considerable advanced training and success. He is divorced, but housing and helping his three adult sons as they matriculate through college.

In disclosing that he maintained sobriety for six years between 2000 and 2007, Applicant reduced the number of years at issue in terms of alcohol abuse. At the same time, he also highlighted the fact that upset and turmoil can trigger relapse. There, the situation was dramatic, including his wife leaving him and taking their children. However, even the loss of a work contract contributed to his reckless driving of a car under the influence and being charged with the appropriate offense.

Applicant is to be congratulated for his success with AA and his recent period of sobriety. It helps to some degree overcome concerns related to his earlier relapse after treatment and lack of a subsequent, successful repeat of treatment. However, in light of a nearly 35-year span, albeit interrupted, period of alcohol abuse, more time is needed to establish a record of sustainable abstinence or responsible alcohol use. This is particularly true absent a positive prognosis by a qualified medical practitioner or LCSW. At present, I find alcohol consumption security concerns remain unmitigated.

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:

AGAINST APPLICANT

Subparagraphs 1.a-1.h:

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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge