



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



In the matter of:)
)
) ISCR Case No. 15-00116
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guidelines I, psychological conditions, and G, alcohol consumption. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 20, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions, and Guideline G, alcohol consumption. The DOD acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

On January 10, 2018, Applicant answered the SOR and requested a hearing. The case was assigned to me on May 10, 2018. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on June 12, 2018, and the hearing was held on August 9, 2018. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. Although Applicant did not request to have the record remain open after the hearing, he submitted an email to Department Counsel which contained substantive information that I will consider. The email is marked as Applicant exhibit (AE) A. DOHA received the hearing transcript (Tr.) on August 17, 2018.

Findings of Fact

In Applicant's answer, he admitted all the SOR allegations, with explanations. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 58 years old. He is married and has four adult children. He has worked for his current defense contractor-employer since December 2008. He served honorably in the Army for 20 years before retiring as a sergeant first class (E-7) in 2004. He served in Iraq in 2003 where he was awarded the Bronze Star for valor. He holds a bachelor's degree.¹

The SOR alleged Applicant: (1) was diagnosed with unspecified trauma related disorder and alcohol use disorder (moderate) in October 2017, which are conditions that may impair judgment, stability, reliability, or trustworthiness; and (2) continues to consume alcohol despite his alcohol use disorder diagnosis. (SOR ¶¶ 1.a and 2.a).

In 2003, while deployed to Iraq, Applicant was involved in a combat mission where his vehicle convoy was exposed to a mine field. The vehicle behind Applicant's vehicle was directly exposed to an explosion and casualties resulted. Applicant risked his life to remove some of the survivors from the area. This is the act for which he received his Bronze Star. During this same deployment, Applicant also witnessed other unit casualties including the loss of his commander. All these incidents had a profound effect on Applicant, especially with him dealing with the survivor's guilt that he felt.²

Applicant testified that he was given a Department of Veteran's Affairs (VA) disability rating of 70 percent for post-traumatic stress disorder (PTSD). He received some counseling for his PTSD in late 2004 or early 2005 when he was ordered by a court to attend counseling after an arrest for animal cruelty when he killed some pet rats that his wife had in their house. He attended six sessions of counseling. Since then, he has not attended any further counseling for his PTSD or otherwise.³

¹ Tr. 5, 16, 19; GE 1.

² Tr. 19-20, Answer (including attachments).

³ Tr. 17-18, 23-24, 29, 31-32.

Applicant disclosed his alcohol history, including three alcohol-related incidents, early in his Army career. He admitted that during his younger days in the Army that alcohol use was part of the culture. He stated that his use of alcohol has decreased as he has gotten older. He described his current alcohol use as drinking about three nights a week where he may have up to three beers a night. On weekends he will consume a 12-pack of beer (unclear if he meant each day of the weekend or for the whole weekend). He further admitted drinking to intoxication at least once a week. He has not had any alcohol incidents (arrests or work-related incidents) since 1989.⁴

In June 2017, Applicant consented to participating in a psychological evaluation requested by the DOD Consolidated Adjudications Facility (CAF). In October 2017, Dr. N, a licensed psychologist, conducted an independent assessment and prepared a written report, which reflected his findings, diagnosis-prognosis, and conclusions. When asked about his current alcohol use, Applicant stated that he drinks between one and four drinks per night, rarely to the point of intoxication. Dr. N found that Applicant's PTSD was the underlying cause of the 2005 incident in which Applicant killed his spouse's pet rats. Applicant was diagnosed with "Unspecified Trauma Related Disorder (provisional)" and "Alcohol Use Disorder, Moderate." His prognosis is "Guarded." Dr. N's report concluded as follows:

Based upon his clinical interview, the subject is motivated to maintain a successful career and reach retirement. These intentions are evidenced by his decreased alcohol use and absence of domestic abuse and neighborhood conflict reports. However, to date, the subject still experiences symptoms related to military trauma, and is not receiving mental health treatment. Because of these symptoms, I have concerns about the subject's capacity to maintain good judgment and impulse control in the face of potential life stressors. To be clear, with bona fide mental health treatment, I believe that the subject could resolve residual trauma symptoms, learn coping skills to help manage his alcohol consumption and help ensure that he does not have future incidents like those in his record. Without treatment, however, it seems as though the patient's alcohol use, impulse control and judgment could all be threatened by serious life stressors in the future.

Applicant did not produce evidence of any current "bona fide mental health treatment."⁵

An attachment to Applicant's answer was a letter from his former brigade combat team commander who described Applicant as "a consummate professional and having outstanding leadership traits. He also described Applicant's heroic action when he

⁴ Tr. 22, 24-25, 34; GE 2; Any reference to alcohol incidents not alleged in the SOR will only be considered by me as they may relate to judging Applicant's credibility, or weighing mitigating conditions, and in applying the whole-person factors.

⁵ GE 3-4.

provided first aid to a wounded soldier. Applicant also assisted in the construction of a church while in Iraq.⁶

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. According to AG ¶ 2(a), the entire process is a careful weighing 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.

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. 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

⁶ Answer (attachment); AE A.

concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I, Psychological Conditions

The security concern for psychological conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. One is potentially applicable in this case:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Dr. N expressed concern about Applicant’s capacity to maintain good judgment and impulse control because of his untreated diagnoses of unspecified trauma related disorder and alcohol use disorder, moderate. AG ¶ 28(b) applies.

The adjudicative guidelines also include examples of conditions that could mitigate security concerns, as set forth in AG ¶ 29, but since Applicant has an ongoing medical conditions and has not sought treatment for his diagnosed conditions, none of the mitigating conditions apply.

Guideline G, Alcohol Consumption

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 conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

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

(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.

Applicant's regular consumption of alcohol to the point of weekly intoxication and his diagnosis of alcohol use disorder support the application of the above disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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 established a 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.

Although Applicant claims he has reduced his alcohol input, his current use of alcohol is multiple times per week and to the point of intoxication at least once a week. Applicant presented no evidence of treatment programs attended. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

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(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 the facts and circumstances surrounding this case. I considered Applicant's honorable and heroic military service, and the recommendation from his former commander. However, I also considered that he has two significant diagnosed medical conditions that, without treatment, could impair his judgment. Applicant failed to provide sufficient evidence to mitigate the psychological conditions and alcohol consumption security concerns. If Applicant were to receive proper medical treatment for his diagnosed conditions in the future, that action would certainly be positively viewed were he to submit a reapplication.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines I and G.

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 I:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline G:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge