



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02756
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his long and significant history of alcohol and drug abuse. He also did not mitigate concerns raised by the false and misleading information he provided about his past drug use during the course of the security clearance process. Clearance is denied.

Statement of the Case

On May 10, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (alcohol consumption), Guideline H (drug involvement and substance misuse), and Guideline E (personal conduct). Applicant answered the SOR and requested a decision on the written record.

On August 10, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant eight exhibits, pre-marked Items 1 – 8, which the Government offers for admission into the record. Applicant received the FORM on August 16, 2017. (Appellate Exhibit I.) He was given 30 days to raise any objection to the material offered by Department Counsel and submit his own evidence in support of his request for a security clearance. He did not file any objections or submit a response. Without objection, Items 1 – 8 are admitted into the record.

On December 18, 2017, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance. (Appellate Exhibit

II.) Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 32, is employed as general laborer by a federal contractor. He has been with his current employer since April 2014. He submitted a security clearance application for his job in June 2015.

Applicant has a long history of substance abuse (alcohol and drugs). He began drinking alcohol at 13 and his use increased after his father passed away in approximately 2011. He was fired from a previous job for drinking while at work. He was arrested for drunk driving in 2013. He pled guilty to a lesser charge and was ordered to attend an alcohol course. In response to questions on a 2017 security clearance interrogatory, Applicant acknowledged that he had an alcohol problem. He noted that it takes him about 18 beers to get intoxicated and self-reported getting intoxicated about once a month. He stated that he planned on starting Alcoholics Anonymous once he began working, and claimed to have been sober for a month. (Item 5)

Applicant used marijuana from 2005 through April 2015. He falsely claimed on his 2015 security clearance application that he had not used illegal drugs in the past seven years. (Item 4) He also provided misleading information in response to questions on the 2017 security clearance interrogatory. He falsely claimed that he had only used marijuana once since 2007 and stated that the one use occurred in 2010. (Item 5) The record reflects that Applicant's last known use of marijuana occurred in April 2015. (Item 6) Applicant admits he deliberately provided false and misleading information about his past drug use during the course of the security clearance process. (Item 3)

With his mother's help, Applicant sought out mental health counseling in April 2014. The intake medical records from the mental health facility reflect that Applicant suffered from chronic depression and suicidal thoughts. He was also hearing voices. In February 2015, Applicant was diagnosed with alcohol abuse, chronic and continuous. He told the medical professionals about his marijuana use in April 2015, and the records reflect that this was Applicant's first drug use in about three months. He was diagnosed with nondependent cannabis abuse, episodic. (Exhibit 6 at 14, 18, 20)

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified

information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.¹

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). *See also* Security Executive Agent Directive 4 (SEAD-4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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

¹ However, a judge's mere disbelief of an applicant's testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

Analysis

Guideline G (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 ¶ 21.)

In assessing Applicant's case, I considered all the disqualifying and mitigating conditions under Guideline G, including:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence . . .;

AG ¶ 22(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment . . .;

AG ¶ 22(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;

AG ¶ 23(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;

AG ¶ 23(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

AG ¶ 23(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.

Guideline H, Drug Involvement and Substance Misuse

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an

individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

In assessing Applicant's case, I considered all the disqualifying and mitigating conditions under Guideline H, including:

AG ¶ 25(a): any substance misuse;

AG ¶ 25(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Security clearance assessments about a person require a judge to closely examine the individual's conduct and circumstances, both past and present. Here, Applicant has a long history of substance abuse issues involving both alcohol and drugs. Based on the record evidence, it does not appear he has obtained professional assistance to help him deal with and eventually overcome his substance abuse problems. The medical records included with the FORM, Item 6, reflect that Applicant received tobacco cessation counseling, but nothing beyond that. All of the above-listed disqualifying conditions under both Guidelines G and H apply. None of the mitigating conditions apply. Applicant's long history of substance abuse issues remains a security concern. See ISCR Case No. 14-05022 (App. Bd. Mar 9, 2016) (adverse decision supported by lack of evidence indicative of positive and permanent lifestyle changes).

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant admits he deliberately provided false and misleading information during the security clearance process. See Item 3 (Answer). His admissions are corroborated by the record evidence, notably, his medical records, Item 6, which show that Applicant provided false and misleading information about the extent of his past drug use during the security clearance process. Personal conduct security concerns remain.

Overall, the record evidence leaves me with serious doubts as to Applicant's eligibility for a security clearance.² Applicant's request for a security clearance is denied.

² In reaching this conclusion, I considered the whole-person concept, including the factors set forth at AG ¶¶ 2(d) and 2(f).

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.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a – 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant ³

Conclusion

In light of the record evidence, it is not clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

³ This allegation cross-alleges Applicant's history of substance abuse issues, which were properly addressed and considered under the other guidelines.