



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



In the matter of:)
)
) ISCR Case No. 15-07947
)
Applicant for Security Clearance)

Appearances

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

05/31/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Sober four years, Applicant has mitigated concerns raised by his alcohol use disorder and history of alcohol-related criminal conduct. Clearance is granted.

Statement of the Case

On March 25, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and criminal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on July 26, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on September 20, 2016. He did not respond. Given the age of this case, I reopened the record to allow the parties to submit updated information. Applicant timely submitted a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7, Applicant's submission is admitted as Applicant's Exhibits (AE) A through G, without objection.

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 55, has worked for his employer, a federal contractor, since August 2006. He has held a security clearance since at least 2005. Applicant retired from twenty years of active duty military service in 2006. He completed his most recent security clearance application in January 2015, disclosing five arrests.³

Based on Applicant's disclosures and the information from his background investigation, the SOR alleges that Applicant was arrested in 2002 for assault and resisting arrest and in 2008 for driving with a suspended license. Applicant's alcohol use was a factor in both arrests. The SOR also alleges that Applicant was arrested in 2007, 2010, and 2013 for driving under the influence of alcohol (DUI). During the 2013 arrest, Applicant was also charged with driving on a suspended or revoked license and an ignition interlock violation. He admits each of the SOR allegations.⁴

Applicant pleaded guilty to each of the alleged criminal charges. After the 2007 DUI conviction, Applicant completed a court-ordered alcohol assessment. He was diagnosed with alcohol abuse, but was not ordered to attend further treatment. After the 2010 conviction, the court sentenced Applicant to 20 days in jail, imposed five years of unsupervised probation, ordered Applicant to attend a six-month, outpatient alcohol treatment program for alcohol abuse, and ordered Applicant to attend Alcoholics Anonymous (AA). He completed the terms of his sentence.⁵

² GE 1.

³ GE 2.

⁴ GE 1-2, 4, 6.

⁵ GE 1-3.

Applicant remained sober until the November 2013 DUI, which occurred days after his wife of 25 years died after a brief illness. He received deferred adjudication for the incident. Under the terms of the deferred adjudication agreement, Applicant agreed to complete a two-year alcohol treatment program, attend AA meetings twice each week, and pay court costs. Upon completion of the requirements and five years without any additional criminal incidents, the court agreed to dismiss the DUI charges. Applicant completed the court-ordered treatment program in February 2016. He then began participating in a 36-month after-care program. Applicant is in compliance with the licensing, insurance, and interlock device requirements of his sentence.⁶

Applicant admits that he has an alcohol use disorder. He acknowledges that he made bad choices about his use of alcohol after separating from the military and after the death of his wife. Applicant's employer is aware of his alcohol problem and related criminal issues, including his deferred adjudication status. According to Applicant's supervisor, Applicant is a well-respected employee and member of the workplace community. Applicant has been sober for four years. He continues to attend AA on a weekly basis and he regularly attends sober lifestyle events.⁷

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 to be 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, administrative judges apply the guidelines 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(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 national security eligibility 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

⁶ GE 1; AE B, D-G.

⁷ GE 1; AE A, C.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the 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.

Section 7 of 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

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. The record establishes the Government's *prima facie* case. Applicant admits to involvement in five alcohol-related incidents away from work. However, only the three DUI arrests in 2007, 2010, and 2013, which resulted in two convictions and one deferred adjudication were alleged under this guideline.⁸ Applicant's DUI arrests are also disqualifying as evidence of habitual or binge consumption of alcohol to the point of impaired judgment.⁹

Applicant has presented sufficient information to mitigate alcohol consumption concerns. He has acknowledged his alcohol use disorder and the negative impact it has had on his personal life. Although Applicant relapsed after completing a court-ordered treatment program in 2010, he did so after the sudden death of his wife in 2013. Applicant has been sober since that one-time lapse four years ago. Applicant has since completed a second treatment program. He continues to engage in sobriety management programs, including AA and sober lifestyle social events.¹⁰ He is actively managing his alcohol-use disorder and it seems to be under control.

Criminal Conduct

⁸ AG ¶ 22(a).

⁹ AG ¶ 22(c).

¹⁰ AG ¶¶ 23(b) and (d).

Applicant's "criminal activity creates doubt about [his] judgment, reliability, and trustworthiness [because] it calls into question his ability or willingness to comply with laws, rules and regulations."¹¹ Applicant has been arrested five times between 2002 and 2013, resulting in three convictions for driving under the influence of alcohol.¹² He is currently under court supervision in a deferred adjudication program.¹³

Applicant's criminal conduct is related to his alcohol use disorder. Sober four years and actively engaged in a sobriety management program, Applicant has demonstrated rehabilitation and reform.¹⁴ Although he remains under court supervision, he has completed all the terms of his sentence and is in compliance with the licensing, insurance, and driving restrictions. Despite his legal troubles, Applicant has remained in good standing with his employer who reports that Applicant's alcohol issues have not negatively affected his work performance.

Whole-Person Concept

Applicant has mitigated the alcohol consumption and criminal conduct concerns regarding his continued security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant's history of alcohol dependency and his associated criminal record is extensive. He does not minimize the seriousness or extent of his problem. Given the nature of alcohol use disorder, it is impossible to predict whether or not an individual will relapse, but in this case Applicant has an effective support network and made positive lifestyle changes, which decreases the likelihood of recurrence.

¹¹ AG ¶ 30.

¹² AG ¶ 31(b).

¹³ AG ¶ 31(c).

¹⁴ AG ¶ 32(d).

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, Alcohol Consumption	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Criminal Conduct	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge