



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



In the matter of:)
)
) ISCR Case No. 15-08513
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Keith Williford, Esq.

01/18/2018

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption, and Guideline J, criminal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on January 16, 2015. On May 6, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and J.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006. These guidelines were revised on June 8, 2017, and are applicable to all decisions issued thereafter.

Applicant responded to the SOR on September 23, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on March 8, 2017, and the hearing was convened on April 4, 2017. Government Exhibits (GE) 1 through 6, and Applicant's exhibit (AE) A were admitted in evidence.³ DOHA received the hearing transcript (Tr.) on April 13, 2017.

Findings of Fact

The SOR alleges under Guideline G, that Applicant has a history of excessive alcohol consumption and had various alcohol-related arrests, including: 1990 for driving while intoxicated (DWI); 1994 DWI; 1997 DWI and felony child endangerment; and 2014 DWI. The SOR cross-alleged these incidents under Guideline J, criminal conduct. In Applicant's answer, he explained the allegations and provided supporting documents. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 74 years old. He has been married since 2014 and has six adult children. He was previously married in 1967 and divorced in 1991, and again married in 1997 and divorced in 2012. He has worked for his current employer and other defense contractors since 1984. He earned an associate's degree in 1967 and a bachelor's degree in 1971. He currently holds a DOD security clearance.

Applicant admitted being arrested in 1990 for DWI, but the case was dismissed at trial. In 1994, Applicant was arrested for DWI as a result of a traffic stop and a failed field sobriety test. His blood alcohol level was tested at .15%. He was convicted of misdemeanor DWI and was sentenced to probation and community service.

In 1997, Applicant was arrested for child endangerment and DWI after drinking at a hotel bar while his children were left in his car after he picked them up from a sitter. Applicant was arrested for DWI and child endangerment, but prosecutors decided not to pursue criminal charges due to insufficient evidence. Applicant attributed his loss of judgment in this incident to his divorce and depression.

Applicant was again arrested for DWI, second offense, in November 2014. He pleaded guilty to misdemeanor DWI, and was sentenced to probation for 18 months in lieu of confinement and ordered to utilize an ignition-interlock device and attend substance abuse and victim impact programs. The device was placed on the vehicle in November 2014, and remained until April 2016. Applicant had no violations, and his probation ended in April 2016.

Applicant noted that he stopped drinking at the end of 2014, when his ignition device was installed, and has abstained from any alcohol use since. There is no evidence of resumption of drinking or additional alcohol-related offenses. He successfully

³ Applicant objected to GE 4, a 1997 sheriff's office arrest report. The objection was overruled and the exhibit was admitted.

completed a 30-hour DWI intervention program, a victim-impact panel, and a substance-abuse program. His counselor and psychotherapist indicated in a letter of support, that Applicant was an active client in group and individual counseling from November 2015 to April 2016. He noted Applicant never missed a group or individual session, and was a model client. He stated Applicant addressed his alcohol issues successfully, and his prognosis for abstaining from drinking and driving was “very good.” During this period, Applicant excelled at his employment and received multiple performance awards. His manager provided a letter in support, and Applicant’s neighbor, who previously drank at social gatherings with him, noted Applicant’s consistent abstention from drinking and attending social gatherings with alcohol. Since November 2016, Applicant voluntarily and regularly attends Alcoholics Anonymous (AA) meetings. He was able to stop drinking without difficulty, and considers his drinking problems to be in the past.

Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

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 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.

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

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern for 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. Three are potentially applicable in this case:

(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; and

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

Applicant's drinking history, which includes four alcohol-related arrests and two convictions, meets the conditions set forth in AG ¶¶ 22(a) and 22(c).

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

(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.

Applicant successfully complied with all court-mandated requirements after his 2014 DUI arrest and his counselor diagnosed his prognosis to abstain from drinking and driving as "very good." Since completing probation and formal counseling, he voluntarily and regularly participates in AA. He has abstained from alcohol since 2014, completed an ignition-interlock program for 18 months without a violation, and has not had any further alcohol-related incidents since 2014. His exceptional work performance has been recognized by his employer since he stopped drinking. He changed the circumstances of his life through counseling and dedicated abstinence, and has shown over the past several years that those changes have been effective. His previous alcohol-related arrests should have been a strong sign of a significant drinking problem, but no counseling ever ensued and he was able to avoid significant consequences for his actions. Since the 2014 arrest, Applicant has awoken to the mounting consequences of his actions and finally received counseling that has aided him in controlling his behavior. I find that sufficient time has passed since his last alcohol-related incident, and as long as he continues to abstain from all alcohol use and attend counseling, his life changes serve to mitigate his past behavior. Applicant's alcohol-related issues no longer cast doubt on his current reliability, trustworthiness, or good judgment in view of his changed lifestyle. I find AG ¶¶ 23(a), (b), and (d) apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in

combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, prosecuted or convicted.

Applicant's alcohol-related arrests, regardless of convictions, constitute a pattern of criminal conduct. I find that both disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's history of arrests, all related to alcohol consumption, resulted in two convictions. Applicant's last criminal incident occurred in November 2014. Since then, he has actively participated in group and individual counseling with a positive prognosis, completed an 18-month ignition-interlock device program without violation, successfully completed probation, and has completely abstained from alcohol use. He has used his last arrest as a wake-up call to change his behavior that led to criminal activity, and recognizes the impact that alcohol abuse has had on his life and his family. He continues to attend AA meetings, and believes his alcohol use and resultant criminal conduct is behind him. I conclude that Applicant has shown successful rehabilitation through the actions he has taken to regain control over his life, and as long as he continues to completely abstain from further alcohol use, additional criminal activity is unlikely to recur. His past criminal behavior no longer casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and (d) 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 stellar work performance since his last arrest, and his alcohol-abuse treatment and follow-on assistance through active participation in AA. Although Applicant should have been aware of the consequences of his alcohol abuse long ago, I believe his 2014 arrest and subsequent conviction with court-mandated counseling was the first opportunity to explore his behavior in a meaningful way, and he has shown a renewed understanding of the consequences of his behavior. Applicant's complete abstinence has resulted in an improved lifestyle and no further alcohol-related issues. I am convinced that Applicant has sincerely changed his behavior, has learned from his last arrest and conviction, benefited from counseling and the prolonged use of the ignition-interlock device, and is committed to complete abstinence now and in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline G, alcohol consumption, and Guideline J, criminal conduct.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge