



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



In the matter of:

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ISCR Case No. 16-00351

Applicant for Security Clearance

Appearances

For Government: Nicole Smith, Esq., Department Counsel

For Applicant: Shirin Shokrollahi, Esq.

03/01/2018

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the drug involvement security concern, but failed to mitigate the alcohol consumption security concern. Clearance is denied.

Statement of the Case

On June 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, and Guideline G, alcohol consumption, explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue security clearance eligibility. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On July 18, 2016, Applicant answered the SOR allegations, admitting all of the allegations except subparagraphs 2.a through 2.c. He requested a hearing before an

administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 25, 2017, the case was assigned to me, and on December 1, 2017, a hearing was scheduled for December 20, 2017. At the hearing, I received two Government Exhibits (GE 1- GE 2) and four Applicant Exhibits (AE A – AE D). Also, I took administrative notice of the discovery letter mailed from Department Counsel to counsel for Applicant on August 10, 2016 (Hearing Exhibit I). The transcript (Tr.) was received on January 9, 2018.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing 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 AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Findings of Fact

Applicant is a 27-year-old single man. He graduated from college in 2013. Since June 2015, he has been working in the field of sales and customer support. (Tr. 14) He is well-respected on the job. (AE D at 1)

Applicant used marijuana with varying frequency from approximately 2008, when he began college, to February 2015. His most frequent use was during summers and spring breaks, or during semesters with lighter work loads. At the peak of Applicant's use, he smoked marijuana daily. (Tr. 17) After relocating to the area where he currently lives, he no longer associates with his former marijuana-abusing friends. (Tr. 18)

During Applicant's sophomore year in college (2009-2010), he used cocaine. The SOR alleges that he used it 12 to 24 times, but Applicant testified that his use may have been double the alleged frequency. (Tr. 19) He stopped because it was adversely affecting his grades. (Tr. 20) Applicant used hallucinogenic mushrooms five to seven times between July 2009 and February 2015. (Tr. 22; GE 2 at 7) They typically made him queasy. The last time someone offered some to him, he refused. (Tr. 22) Applicant used methamphetamine once in 2012. He characterized the experience as "the worst 36 hours of [his] life." (Tr. 24)

Applicant has not used any illegal drugs since obtaining his current job. He does not intend to abuse any illegal drugs in the future. He has seen drug culture firsthand, and "doesn't want any part of it." (Tr. 40)

Applicant has a history of consuming alcohol, at times to excess and to the point of intoxication. He began drinking alcohol, at age 21, in 2011. He has a history of arrests and citations that correspond with his alcohol abuse. Specifically, in May 2011, Applicant was arrested and charged with public intoxication. (Tr. 32) Before the arrest, he and a friend had been at a bar drinking alcohol "like fish." (Answer at 4) When Applicant decided to

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

leave, he got into his car and began backing out of the parking space. Upon realizing that he was “three sheets to the wind,” he parked the car and returned to the bar to ask the bartender to call a cab for him. (Answer at 4) The bartender refused. Applicant then walked outside of the bar and encountered a police officer in the parking lot and asked him to call a cab. The officer refused. Applicant then asked the officer if he could return to the bar to use the bathroom. The officer refused to allow him to return to the bar. Applicant then urinated in front of the police officer. Consequently, Applicant was arrested and charged with public intoxication. He pleaded no contest and was fined. (GE 2 at 6) Applicant blames the bartender for his arrest, contending that she should not have continued serving him alcohol when he was visibly intoxicated, and that she should have called him a cab. (Answer at 4)

In June 2012, Applicant was arrested and charged with driving while intoxicated (DWI), after the police pulled him over for a broken tail light. (Tr. 29) He pleaded guilty, was sentenced to three days in jail, and his license was revoked. Applicant denied the allegation, characterizing himself as a victim of “targeted policing,” questioning the calibration of the breathalyzer, and the competence of his public defenders. (Tr. 41 – 42; GE 2 at 6)

In April 2014, Applicant was arrested and charged with DWI, and driving with a suspended license. He was fined \$1,200 and ordered to spend 30 days in jail. (Tr. 33) He served time from February 2015 to March 2015. (GE 2 at 6)

Applicant has never been diagnosed with alcohol abuse or dependence. (Tr. 53) Currently, he typically consumes two to three alcoholic beverages per night, on average. (Tr. 52-53) He seldom drinks outside of his home. When he does drink at a restaurant or bar, he either takes a cab or uses public transportation. (Tr. 27) Other than this most recent DUI, Applicant takes no responsibility for his history of criminal charges, characterizing them as “unfounded, unnecessary, and baseless.” (Answer at 6)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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. According to AG ¶ 2(a), the entire process is an evaluation 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline H, Drug Involvement

The security concern under this guideline is as follows:

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. (AG ¶ 24)

Applicant’s history of illegal drug abuse triggers the application of AG ¶ 25(a), “any substance abuse.” The majority of Applicant’s drug use occurred while he was in college. Since then, he has obtained a steady job and relocated from the town where his drug-using, former friends lived. His last use of an illegal drug occurred three years ago. I conclude AG ¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” and AG ¶ 26(b)(1), “disassociation from drug-using associates and contacts,” apply. Under these circumstances, a recurrence of illegal drug use is unlikely. I conclude Applicant has mitigated the drug involvement security concern.

Guideline G, Alcohol Consumption

Under this guideline, “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’s history of alcohol-related arrests and citations triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving while under the influence . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” and 22(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.”

The following mitigating conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such individual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use. . .

Applicant's testimony about the negative repercussions of his drug abuse was contrite and introspective. In contrast, Applicant's testimony about his alcohol abuse reflected a lack of comprehension of its nature and seriousness. With the exception of the most recent DUI conviction, Applicant repeatedly deflected blame on others for his alcohol-related legal problems, from the bartender who served him in 2011, to the police department in the town where he attended college, and to the attorneys who represented him after his 2012 DUI arrest. Under these circumstances, none of the mitigating conditions apply.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).² Applicant deserves credit for obtaining a full-time job and staying out of trouble since April 2014. However, I have lingering concerns about his attitude towards his history of alcohol consumption and alcohol-related arrests, as discussed in the alcohol consumption section of the decision. Consequently, it is too soon to conclude that he has mitigated the security concern.

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 H:

FOR APPLICANT

Subparagraph 1.a – 1.d:

For Applicant

² The factors under AG ¶ 2(d) are as follows:

(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.

Paragraph 2, Guideline G:

AGAINST APPLICANT

Subparagraph 2.a – 2.d:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge