



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



In the matter of:)
)
) ISCR Case No. 16-00531
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant disclosed his three alcohol-related incidents in his 2015 SCA. He learned from his mistakes, has matured, and is now a more responsible adult who consumes alcohol in moderation. He has not been involved in any additional alcohol-related misconduct since January 2015. The record evidence supports a determination of increased maturity, reliability, and trustworthiness. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 17, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on July 31, 2016, alleging security concerns under Guideline G (alcohol consumption). Applicant answered the SOR on July 18, 2016, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated September 16, 2016. Applicant received the FORM on October 12, 2016. He was

allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. The case was assigned to me on October 1, 2017. Applicant did not respond to the FORM, and I admitted the proffered FORM evidence.

Findings of Fact

Applicant admitted the three SOR allegations. His SOR admissions are incorporated as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a federal contractor. He graduated from high school in 2007, and received his bachelor's degree in May 2011. He has never been married and has no children.

Applicant's employment history indicates that he has been working, mostly part time, since he was in high school. After graduating from college, he worked for a private company from October 2011 to February 2015. His current employer and clearance sponsor hired Applicant in February 2015. He has been fully employed since.

In his response to Section 22 (Police Record) of his 2015 SCA, Applicant disclosed that he was arrested in July 2008, and charged with underage possession of alcohol and public intoxication. He was found guilty of public intoxication and sentenced to six-months' probation and to perform community service. The underage possession of alcohol charge was dismissed. Applicant was 18 at the time of his arrest.

In April 2009, Applicant was charged with possession of alcohol under 21, littering, and obstructing justice. He was on his college campus' lawn drinking beer with friends. College security officers approached him, and he threw away the beer can. Applicant received a ticket that required him to appear in court. He was found guilty of possession of alcohol under 21. He was sentenced to six months of probation and 50-hours of community service.

In January 2015, police officers observed Applicant swaying while walking out of a bar. He was arrested, spent the night in jail, and was release the next morning on his own recognizance. He was charged with drunk in public, and paid a \$100 fine.

In October 2015, a government investigator interviewed Applicant concerning the above alcohol-related incidents. Applicant told the investigator that he was currently drinking four beers once a week with friends. It takes four beers for Applicant to become intoxicated, and he was drinking to intoxication once a week. He stated he intended to continue his current alcohol consumption or maybe decrease his alcohol use.

In May 2016, Applicant answered a set of DOHA interrogatories. He indicated his alcoholic beverage of choice was beer. He was consuming beer twice a week, and he intended to continue doing so in the future. Applicant had not participated in any alcohol

rehabilitation program or alcohol-support group. There is no evidence to show Applicant has been involved in any additional alcohol-related misconduct since January 2015.

Applicant believes the 2008 and 2009 alcohol-related incidents should be considered as isolated incidents caused by his young age (he was a minor) and inexperience. He believes that he has matured, learned from his mistakes, and is now a responsible adult who consumes alcohol in moderation. As evidence of his maturity, he noted his stable employment, the purchase of his home, and that he has not been involved in any alcohol-related misconduct since January 2015.

Policies

The SOR was issued under Executive Order 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.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective 8 June 2017, which replaced the 2006 AG. I decided this case under the AG implemented by SEAD 4 in June 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Alcohol Consumption

AG ¶ 21 articulates the security concern relating 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

Between 2008 and January 2015, Applicant was involved in three alcohol-related incidents that resulted in law enforcement intervention. AG ¶ 22 provides a disqualifying condition that could raise a security concern and may be disqualifying 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.” The record established the above disqualifying condition, requiring additional inquiry about the possible applicability of mitigating conditions.

Two 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 unusual 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, 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Both AG ¶¶ 23(a) and 23(b) apply. The 2008 and 2009 alcohol-related incidents happened when Applicant was a minor attending college. There were no more issues of concern until six years later when he was found guilty of drunk in public. There is no additional evidence of any alcohol-related incidents or issues of concern since January 2015. It has been almost three years since Applicant's last alcohol-related incident.

Applicant disclosed his alcohol-related incidents in his 2015 SCA and admitted his mistakes. He has learned from his mistakes, has matured, and is now a more responsible adult who consumes alcohol in moderation. Applicant's stable employment, the purchase of his home, and having no involvement in any additional alcohol-related misconduct since January 2015 support a determination of increased maturity, reliability, and trustworthiness.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline G in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 28-year-old employee of a federal contractor. He presented sufficient evidence of responsible consumption of alcohol to dispel reliability, trustworthiness, or judgment concerns. The alcohol consumption security concerns are mitigated.

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.c:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge