



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



In the matter of:)
)
) ISCR Case: 16-00623
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

11/14/2017

Decision

WHITE, David M., Administrative Judge:

Applicant committed four alcohol-related criminal offenses from 2005 to 2014, the most recent of which resulted in conviction for Driving Under the Influence. He was diagnosed as Alcohol Dependent, but failed to complete the prescribed treatment program and resumed regular alcohol consumption. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On February 20, 2015, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 2.) On July 18, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). (Item 1.) The action was taken 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* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on August 29, 2016, and September 21, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On October 5, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on October 6, 2016, and received by him on October 11, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. Items 1 through 5 are admitted in evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions¹ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

Findings of Fact

Applicant is 30 years old, has never married, and has no children. He is a high school graduate and has taken some college classes. He has held his present employment as a technician with a defense contractor since March 2013; and is seeking to renew his security clearance in connection with that position. He was honorably discharged in paygrade E-5 after serving in the Navy from 2006 to 2012, and held a security clearance during that enlistment. (Item 2; Item 3.)

Applicant admitted all of the allegations in the SOR, with some explanations. (Item 1.) His admissions are incorporated in the following findings.

Applicant was arrested for, and charged with, Minor in Possession of Alcohol on January 27, 2005.² He was 18 years old, and drank five beers while attending a concert with a friend. He was subsequently fined and ordered to serve 50 hours of community service. (Item 1; Item 3; Item 5.)

¹ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

² The SOR incorrectly listed the date of this offense as, "January 2006."

While serving in the Navy, Applicant was awarded non-judicial punishment in March 2008, and again in August 2009, for alcohol-related violations of the Uniform Code of Military Justice. The first offense was for underage drinking (he was 20 years old at the time), and the second offense was for failing to report for duty after drinking heavily the previous night and sleeping through his alarm clock. As a result of these offenses he was restricted to his ship, ordered to perform extra duties and, for the second offense, reduced in rank. (Item 2; Item 3.)

On April 10, 2014, Applicant was arrested for, and charged with, Driving Under the Influence of Alcohol or Drugs (DUI), a second degree misdemeanor. On September 30, 2014, he was convicted of that offense and sentenced to pay a \$500 fine and \$556 in court costs, to complete two alcohol education programs, and to perform community service. In his August 2016 answer to the SOR, Applicant claimed (without providing corroboration) that he had paid this fine, and admitted that he had not completed the remaining court-ordered requirements under this sentence. Applicant formerly, but no longer, resides in the state where this DUI arrest and conviction occurred. (Item 1; Item 2; Item 3; Item 4; Item 5.)

Applicant admitted that he voluntarily entered and participated in a counseling program for treatment of his diagnosed Alcohol Dependence from September through December 2014. He failed to complete the program, which he left about half way through because he felt that he had himself under control and was comfortable with what he had learned. Applicant said that he continues to consume alcohol “in moderation at home [which] does not exceed 15 drinks/week.” (Item 1; Item 2; Item 3.)

Applicant offered no evidence concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 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 concerns pertaining 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.

AG ¶ 22 describes four conditions that could raise security concerns and may be disqualifying:

- (a) alcohol-related incidents away from work, such as driving 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 is diagnosed with alcohol use disorder;
- (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;
- (e) the failure to follow treatment advice once diagnosed; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant committed, and was punished for, increasingly serious alcohol-related criminal incidents in 2005, 2008, 2009, and 2014. In 2014 he was diagnosed as Alcohol Dependent³ while participating in an alcohol counseling treatment program that he failed to complete. He failed to follow the court order to complete two alcohol education programs after his 2014 DUI. He continues regular alcohol consumption notwithstanding his diagnosis and treatment for Alcohol Dependence.⁴ These facts support security concerns under the disqualifying conditions cited above.

AG ¶ 23 describes two conditions could provide mitigation of the security concerns in this case, considering that Applicant admittedly is not participating in, and has not successfully completed, an alcohol counseling or treatment program:

- (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 a pattern of modified consumption or abstinence in accordance with treatment recommendations.

³ Alcohol Dependence was the terminology used at the time to describe one type of what is now called an alcohol use disorder.

⁴ The record does not support independent security concerns under AG ¶ 20(f) because there is no direct evidence that Applicant's treatment recommendations included abstention from alcohol. His failure to comply with and complete the counseling program he entered in 2014 is addressed under AG ¶ 20(e).

Appellant's pattern of increasingly serious alcohol-related misconduct spanned more than nine years, and he cited no unusual circumstances that would suggest recurrence is unlikely. The most recent offense was his DUI in 2014, only ten months before he submitted his e-QIP, and his continued regular consumption of up to 15 drinks per week after being diagnosed Alcohol Dependent casts continuing doubt on his reliability, trustworthiness and judgment. He failed to demonstrate a clear and established pattern of responsible compliance with treatment recommendations concerning his alcohol use. Accordingly, mitigation of security concerns under this guideline was not established under AG ¶¶ 23 (a) or (b).

Guideline E: Personal Conduct

The security concern relating to the guideline for personal conduct is set out in AG ¶ 15:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline at AG ¶ 16 contains no disqualifying conditions that would support security concerns in this case that are independent of those comprehensively addressed under Guideline G and Guideline J. The SOR merely alleges, by reference to the Guideline G allegations, Applicant's four alcohol-related crimes and his continued alcohol consumption. While any conduct involving questionable judgment or unwillingness to comply with rules and regulations can theoretically fall under Guideline E, as well as other guidelines, no value is added to the evaluation of Applicant's national security eligibility by doing so in this case.

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two of those conditions were established by the evidence in this record:⁵

⁵ Applicant admitted that he failed to complete court-ordered alcohol education classes after his DUI conviction, which was addressed above under AG ¶ 22(g). There is insufficient record evidence to

(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 individual was formally charged, prosecuted, or convicted.

Appellant's multiple alcohol-related criminal offenses occurred between 2005 and 2014. Several of them would be considered minor standing alone. Taken together, however, they cast significant doubt on Applicant's judgment, reliability, and trustworthiness, particularly considering the pattern's duration and increasing severity. His 2014 DUI conviction is both recent and serious, and would independently support security concerns under this guideline.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

As discussed above under Guideline G, Appellant's pattern of criminal misconduct is lengthy, recent, and casts continuing doubt on his reliability and judgment. His failure to complete the 2014 alcohol counseling program and court-ordered requirements following his DUI conviction preclude a finding of successful rehabilitation in the absence of other evidence. Applicant admitted all of the offenses alleged in the SOR, and offered no evidence that he was pressured to commit them. The evidence does not mitigate security concerns under any of the foregoing conditions.

establish that these classes qualify as a "court-ordered rehabilitation program," or that the counseling program he failed to complete was court-ordered. Accordingly, AG ¶ 32(d) concerns were not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices. He continues regular alcohol consumption despite increasingly severe criminal punishments for a pattern of alcohol-related offenses spanning more than nine years and a diagnosis of Alcohol Dependence. He failed to complete an alcohol counseling program and other court-ordered requirements after his 2014 DUI conviction. The likelihood of recurrence and potential for pressure, exploitation, or duress are substantial. Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the Alcohol Consumption and Criminal Conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT (Duplicative) ⁶
Subparagraph 2.a:	For Applicant (Duplicative)
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge

⁶ Paragraph 2 is duplicative of Paragraphs 1 and 3. It supports no separate findings of security concern.