



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01119

Appearances

For Government: Robert Blazewick, Esq., and
Julie Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He did not present sufficient evidence of reform and rehabilitation to explain, extenuate, or mitigate the security concern stemming from a well-established pattern of failure to conform his behavior to the law, as shown by multiple arrests, charges, and convictions for alcohol-related incidents during 2010-2015. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 17, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on July 30, 2016, after reviewing the application and the information gathered during a background investigation, the

¹ Exhibit 1.

Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline G for alcohol consumption and Guideline J for criminal conduct.

Applicant answered the SOR on August 25, 2016; he admitted the factual allegations in the SOR; and he requested a hearing. His answer to the SOR included a one-page memorandum in explanation. His case was assigned to me December 7, 2016. The hearing took place as scheduled on March 17, 2017. The hearing transcript (Tr.) was received March 27, 2017.

Findings of Fact

Applicant is a 30-year-old employee who requires a security clearance for his job as an engineer technician in the field of aviation maintenance for a federal contractor. His educational background includes an associate's degree, and he is currently pursuing a bachelor's degree.² His first marriage ended in divorce, and he has a daughter born of that marriage. His employment history includes honorable service in the U.S. Marine Corps during 2006-2011, which included two overseas deployments.³

Applicant admits a history of five alcohol-related incidents during 2010-2015. First, he was arrested and charged with driving while impaired in April 2010. He pleaded guilty in state court and was ordered to complete 24 hours of community service. He also received non-judicial punishment from the Marine Corps, which resulted in reduction in rank and pay grade and other punishment.

Second, Applicant was arrested and charged with driving while impaired, driving while license revoked, and civil revocation driver license in 2011 while he was on terminal leave from the Marine Corps. He pleaded guilty and was sentenced to 30 days in jail for the driving while impaired offense and received probation or a suspended sentence on the other matters.⁴

Third, Applicant was arrested and charged with driving or attempting to drive a vehicle while impaired in 2013. This incident occurred when Applicant was driving home after attending a bachelor's party. He pleaded guilty in exchange for receiving the disposition of probation before judgment on the primary offense.⁵ The sentence included 20 days in jail (suspended), a \$185 fine, and court costs.

² Exhibits F and I.

³ Exhibit D.

⁴ Exhibit 3.

⁵ Exhibit 4.

Fourth, Applicant was arrested and charged with spinning tires, driving or attempting to drive a vehicle without a license, driving or attempting to drive a vehicle while under the influence, and driving or attempting to drive a vehicle while under the influence per se in 2014.⁶ He pleaded guilty to an amended charge of reckless driving and was ordered to pay a \$485 fine and court costs, while the other charges were *nolle prossed*.⁷

Fifth, Applicant was arrested and charged with two counts of second-degree assault stemming from a fight outside a bar in March 2015. Although not alleged in the SOR, he explained it was alcohol-related as he had two to three beers before the fight. He also explained that his involvement resulted from stepping in to defend his brother from an aggressor, the aggressor threw a punch, and he responded. One charge was *nolle prossed*, and he pleaded guilty to the other assault charge in exchange for receiving six months of unsupervised probation before judgment, which ended on January 1, 2016.⁸

Applicant has had a valid driver's license issued by his state of residence since February 2017.⁹ Before that, his license was suspended for more than three years (since about October 2013). He was largely compliant during that time, but there were occasions when he drove without a license, such as the 2014 alcohol-related incident discussed above.

Applicant presented evidence of reform and rehabilitation. In 2013, he attended a 26-week alcohol-treatment program and was discharged as successful.¹⁰ His enrollment in the program stemmed from the 2013 alcohol-related incident discussed above. Likewise, in 2015, he underwent a substance-abuse evaluation and was then enrolled in a 12-week treatment program.¹¹ It is noted that the March 2015 fight discussed above occurred while he was enrolled in this program. He successfully completed the program; his breathalyzers were negative for alcohol use, and his urinalysis screens were negative for illegal chemical substances; and he demonstrated motivation for non-drinking behavior in the future. He also completed a driver-improvement program a few months later in 2015.¹² He has a good employment record as shown by a favorable

⁶ Exhibit 5.

⁷ Exhibit A.

⁸ Exhibit 7.

⁹ Tr. 48-51.

¹⁰ Exhibit H.

¹¹ Exhibit B.

¹² Exhibit E.

letter of recommendation from his direct supervisor.¹³ He also presented a highly favorable letter of recommendation from a retired Marine noncommissioned officer.¹⁴

At the hearing, Applicant made no excuses for his misconduct and recognized that he made poor decisions when he was drinking alcohol. He stated he has been sober and has abstained from alcohol since April 2015, the month after the last alcohol-related incident,¹⁵ and he stated that he is “done drinking.”¹⁶ He stated that sobriety has improved his life dramatically; he no longer hangs out or associates with people who he used to drink with; he volunteers for a veterans’ organization; and he is more focused on his parental duties being a good father to his daughter.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁷

It is well-established law that no one has a right to a security clearance.¹⁸ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁰ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

¹³ Exhibit C.

¹⁴ Exhibit G.

¹⁵ Tr. 41, 66, and 80-81.

¹⁶ Tr. 78.

¹⁷ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁹ 484 U.S. at 531.

²⁰ 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷

Discussion

The alcohol consumption and criminal conduct matters are discussed together because they based largely on the same set of facts and circumstances. In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent under Guidelines G and J, respectively:

AG ¶ 22(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 has been diagnosed with alcohol use disorder;

AG ¶ 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 23(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;

AG ¶ 23(b) the individual acknowledges [their] pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem,

²² Directive, ¶ 3.2.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

AG ¶ 31(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

AG ¶ 31(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;

AG ¶ 32(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

AG ¶ 32(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.

The evidence supports a conclusion that Applicant has a history of five alcohol-related incidents away from work ending with arrests, charges, and convictions during 2010-2015. Taken together, his alcohol-related incidents constitute a well-established pattern of failure to conform his behavior to the law, which suggests he is not a good candidate for eligibility for access to classified information.

Turning next to mitigation, I considered the mitigating conditions noted above and none are sufficient to resolve this case in Applicant's favor. Applicant was a problem drinker who exercised poor judgment when he was under the influence of alcohol. This is readily established by multiple alcohol-related incidents over a period of several years. In other words, this was not an isolated incident, and this wasn't a problem for a limited period of time. Although he presented a decent case in reform and rehabilitation, it is simply too soon to tell if his days of being a problem drinker are truly behind him. On this point, I note that he completed unsupervised probation from the last incident on January 1, 2016, a period of less than two years ago, and he only recently obtained a valid driver's licence in February 2017, a month before the hearing in this case. Given his well-established pattern of alcohol-related misconduct, additional time is necessary in order for Applicant to show that he can consume alcohol in a responsible fashion and be a law-abiding person. He's on the right path, but he is yet to arrive at the destination.

Applicant's history of alcohol-related incidents away from work creates serious doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole

and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline G:	Against Applicant
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge