



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



In the matter of:)
)
) ISCR Case: 16-01640
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esquire, Department Counsel
For Applicant: Sean M. Bigley, Attorney At law, Bigley Ranish, LLP

June 11, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 10, 2012, Applicant submitted a security clearance application (e-QIP). On September 30, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G (Alcohol Consumption). 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* (AG), effective within the DoD after September 1, 2006.

The Applicant answered the SOR in writing on October 20, 2016, and requested a hearing before an Administrative Judge. DOHA received the request on January 4, 2018, and the case was assigned to the undersigned Administrative Judge that same day. DOHA issued a notice of hearing on January 12, 2018, scheduling the hearing for

February 8, 2018. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (TR) on February 20, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 41 years old and is unmarried. He holds the position of Field Technician. He is seeking to obtain a security clearance in connection with his employment.

Guideline G – Alcohol Consumption

The Government alleged that Applicant is ineligible for a clearance because his excessive use of alcohol led to the exercise of questionable judgment or the failure to control impulses, and raised questions about his reliability, trustworthiness and ability to protect classified information.

Applicant began consuming alcohol between the ages of 15 and 17. Although he did not like the taste, he consumed it anyway. By the age of 21, he started going out with friends to drink at social settings, and occasionally at bars. As time passed, his alcohol consumption increased. In November 1997, he moved to Las Vegas where he lived until May 1998, and consumed alcohol about two to three times a month. In May 1998, he then moved back to California where he has worked for various government contractors in various capacities on a military base. Applicant has been working on base for his current employer since 2015.

Over the past eight years, as a result of his abusive drinking, Applicant has been arrested on three separate occasions, twice for Driving Under the Influence (DUI) and

once on a Domestic Violence charge. His first arrest for DUI occurred in January 2010. Applicant explained that he drove some friends to a bar for drinks. While at the bar, Applicant consumed about three beers and a shot or two of whiskey. After four or five hours, and after drinking a couple glasses of water, Applicant felt slightly "buzzed," but believed that he could drive. Applicant was subsequently pulled over by the police, arrested, and taken to jail. He only spent enough time in jail in order to allow the officer to do his paperwork, and was released. Applicant was charged with (1) Driving Under the Influence of Alcohol, and (2) Driving While Having a BAC of .08% or higher. The charge was reduced to a wet and reckless. Applicant was placed on two years probation, was ordered to refrain from consuming alcohol for six months, and ordered to attend three months of alcohol/drug counseling. Applicant continued to consume alcohol.

In August 2014, Applicant got into an altercation with his girlfriend at home. He left his residence, went to a bar, and started drinking. Applicant states that at the bar, he consumed six beers and possibly a shot of liqueur over a period of five or six hours. Again, he felt slightly "buzzed" before he drove that evening. Applicant then drove to another get-together with people he did not really know. There he drank at least six more beers and a couple more shots of liqueur. Applicant was very upset that evening, as he had just learned that his grandmother was diagnosed with cancer. Applicant explained that by consuming alcohol, it helped him deal with the pain. Applicant stated that he remembers having his keys and getting into the car to drive. He started the car, drove, and then blacked out. (Tr. p. 74.) His next memory was when he came to, he learned that he ran off a curb and the car's airbag was deployed. Applicant had also totaled the car. He was charged with (1) Driving Under the Influence of Alcohol, (2) Driving While Having a .08% or Higher BAC, and (3) Hit and Run Driving. Applicant was arrested and taken to jail. He was placed on 3 years probation, was ordered to refrain from drinking for three years, and ordered to stay out of bars and liquor stores. This time, he was sentenced to 90 days in jail, but was granted alternative sentencing requiring him to wear an ankle monitor for about 26 days. He was required to pay restitution of \$1,885, and ordered to complete an 18 month DUI program. Applicant was also required to have a Breathalyzer blow machine installed in his vehicle to remain until October 2017. Applicant was on probation at the time the SOR in this matter was issued. The hit and run charge was dismissed. Applicant stated that, at that time, he had no future intent to use alcohol, yet he continued to drink. (Tr. p. 77.)

In March 2015, Applicant was charged with Corporal Injury to Spouse/Cohabitant/Child's Parent, a felony. Applicant explained that he and his girlfriend had dinner at home that evening and then took a taxi to a bar for drinks. While at the bar, Applicant consumed a couple of beers. They both left and then went to another bar to drink more. Applicant drank a few more beers. Applicant saw that his girlfriend was flirting with another guy, and he and his girlfriend left the bar and went home. At home, they started a verbal argument and then a physical altercation ensued. At some point, Applicant's girlfriend fell to the floor, and he fell on top of her. Applicant stated that he held her down to prevent her from hitting him. When he let her up, she called the police and went to the backyard. Applicant was arrested, and a five-day

temporary restraining order was imposed. Following the arrest, Applicant tried to reconcile with his girlfriend and attended couple counseling with her from May through July 2015. In August 2015, Applicant pled no contest to a misdemeanor domestic violence charge. Applicant stated that it was at this point that he finally realized that the environment was not a good one for him and so he ended the relationship. On February 6, 2018, just days before the hearing in the matter, Applicant motioned in court for an early termination of probation. The order was granted. (Applicant's Exhibit E.)

Applicant states that since this last arrest, besides completing all of the court requirements, he has voluntarily attended some Alcoholic Anonymous meetings. (Tr. p. 116.) He has also gone to a few counseling sessions. He claims that he has completely abstained from alcohol since August 2015.

Testimony was obtained from a close friend and past base co-worker, who is also a retired police officer. The witness knows Applicant's girlfriend and has witnessed her erratic behavior. He described another incident that occurred sometime after the 2014 incident, which resulted in another verbal altercation over jealousy, not discussed in the SOR. He further testified that in his opinion, the relationship between the Applicant and his girlfriend was not healthy. He does not believe that Applicant has ever had a drinking problem. He allows the Applicant around his children, and has never witnessed alcohol abuse on the part of the Applicant. Furthermore, he does not believe Applicant has a drinking problem because he had a breathalyzer in his vehicle for almost three years. (Tr. pp. 23-64.)

Letters of recommendation from Applicant's Facility Security Officer on base, his mother, his couples' counseling instructor, and the girlfriend with whom he had these problems, attest to the fact that Applicant is a responsible individual. From his company, he is said to be a valuable asset to the mission; from his mother, he is described as becoming more mature and has grown from his mistakes; from his girlfriend, he is said to be innocent of any domestic violence charges and that she alone was the aggressor and lied to the police because she was intoxicated and on drugs; and from his attorney, Applicant is said to have successfully followed every order of the court including completion of Batterers Treatment, and continues to be a productive member of society. Each of these individuals is of the general opinion that Applicant is trustworthy, honest, and forthcoming. (Applicant's Exhibits A, B, C, and D.)

Policies

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 to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[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."

A person applying for access to classified information 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 access to classified information. 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 information.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern 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 conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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;

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant was convicted of Driving Under the Influence of Alcohol in 2010, and again in 2014. He was also convicted of Domestic Violence in 2015, where alcohol was a contributing factor. These incidents raise security concerns under AG ¶¶ 22(a), 22(b), and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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 good 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;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; 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's three alcohol-related incidents are spread over recent years. Admittedly, he has completed all of the court's sentencing requirements, and he states that he no longer consumes alcohol. He further states that he no longer has a relationship with the woman who contributed to his excessive drinking. These are all positive things to assist him in maintaining sobriety. However, given the long period of time that he has abused alcohol, and the fact that he has only recently begun to change his life to address the issue, more time in sobriety is necessary to show that he can control his life without alcohol and that he will not return to his old ways. Had his attorney not filed the motion for early termination, Applicant would still remain on probation for the domestic violence offense. Furthermore, no real prognosis of Applicant's alcohol problem was ever offered into evidence. Applicant failed to meet his burden to mitigate the alcohol-related concerns.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 have incorporated my comments under Guideline G in my whole-person analysis. Applicant's history of alcohol consumption shows that it has been a regular and habitual part of his life since a teenager. Alcohol has not only caused him many legal problems, but has caused problems with his relationships. He has completed the court-ordered alcohol classes. He states that he has stopped drinking and has been sober since August 2015, about two and a half years. Applicant is commended for this effort and encouraged to continue a sober life style, in order to become eligible for access to classified information sometime in the future. However, at this point, he has failed to present enough evidence of rehabilitation to overcome his heavy burden to mitigate his alcohol abuse. Applicant has a recent history of multiple criminal arrests and convictions that

include two DUI's and one arrest for Domestic Violence. These offenses give rise to concerns about Applicant's judgment and reliability, both because of the nature of the offenses and the quantity of criminal offenses.

Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guideline.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge