



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



In the matter of:)
)
) ISCR Case No. 16-01839
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

06/11/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On February 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. The action was taken 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 1, 2018, and requested a hearing before an administrative judge. The case was assigned to me on March 27, 2017. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018. I convened the hearing as scheduled on April 16, 2018. The Government offered exhibits (GE) 1 through 5. Applicant testified and did not offer any documents. There were no objections to the Government's exhibits, and they were admitted into evidence. DOHA received the hearing transcript on April 24, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.c, and 2.a through 2.c, with explanations. He denied SOR ¶ 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 27 years old. He graduated from high school in 2008 and college in 2012, earning a bachelor's degree. He is currently enrolled in a master's degree program. He is not married and has no children. He began working for his employer, a federal contractor, in 2012.¹

DOD CAF requested and Applicant agreed to participate in an independent psychological evaluation paid for by the Government. An evaluation was conducted in November 2017 by a licensed psychologist. Applicant became aware of the results of the evaluation when he received the SOR. During the evaluation, Applicant disclosed that he began consuming alcohol at home with his parent's permission when he was between 15 and 16 years old. He would consume a beer or glass of wine at family dinners. Later in high school, he would drink alcohol from his parent's liquor cabinet about once a week, as well as beer at parties. He consumed alcohol every other weekend while in high school.²

Applicant continued to consume alcohol in college. He would drink every weekend and consume six to eight beers each time he drank. He would occasionally drink during the week as well. His heaviest drinking occurred in his sophomore and junior years of college. Since graduating from college, he drinks with his friends on weekends and occasionally has a couple of drinks at happy hour during the week. He drinks to intoxication once every couple of months and occasionally drinks six to eight beers during the day on weekends if he is attending a party or outdoor event. He does not drink and drive, but rather takes an Uber if he plans to drink while he is out. He experienced a black out one time since graduating from college. While at college, he blacked out about once a month.³

Applicant testified that alcohol has never interfered with his work. He told the psychologist that several times he needed to work from home because he was too hungover to go into the office and did not want his client to see him. Applicant explained

¹ Tr. 16-18.

² Tr. 40-44; GE 5.

³ GE 1, 2, 3, 5.

that these issues occurred in 2013, after he had moved to a new city. He explained he had the flexibility to work from home.⁴

Applicant experienced several alcohol-related incidents while in college. In 2008, he was arrested for speeding (going 103 miles in a 70 mph zone), operating a motor vehicle without a license, and possession of alcohol by a minor. Applicant explained that he was driving, and there were others in the car with him that were also underage. They were not drinking when they were stopped by police, but there was alcohol in the vehicle. His license had automatically expired when he turned 18. He was ordered to attend an alcohol awareness class and the charge of minor in possession was dropped. He paid a fine for speeding and renewed his license.⁵

In October 2010, during a Halloween party Applicant consumed an alcoholic punch. He drank too much and blacked out. The campus security was called, and he was placed in the college holding facility. Applicant attempted to escape by running away. He was tackled and arrested by the city police. He spent 48 hours in jail and was released on bail. His blood alcohol content was .18%. He hired an attorney who recommended he attend an alcohol treatment center before his court date, which he did. He was placed in a pretrial diversion program. He was subsequently placed on probation, required to do community service, and submit to alcohol testing. Applicant told the psychologist that after the resisting arrest charge, he was required to attend 90 Alcoholics Anonymous (AA) meetings in 90 days. He told the psychologist that he believed that he attended every day for one week and decided it was not for him, due to the religious undertones of the class, and stopped attending.⁶

On Applicant's August 2012 security clearance application under section 24, which inquired if he had ever been ordered, advised, or asked to seek counseling or treatment as a result of his alcohol use, Applicant responded "yes." He stated in his SCA:

I decided to participate in the Intensive Out-Patient program in hopes that I would learn to control myself around alcohol. I learned more than I had ever imagined about substance abuse, addiction, myself, and more. As part of the program, I attended 90 Alcoholics Anonymous meetings in 90 days, which proved to be another eye opening experience.⁷

His statement in his SCA is contrary to what he told the psychologist in November 2017. When asked by the psychologist about this discrepancy, Applicant told her that he lied on his background information form because he thought the investigators would want to

⁴ Tr. 53-54; GE 5.

⁵ Tr. 30-33; GE 1, 2, 3, 5.

⁶ Tr. 33-37; GE 5.

⁷ GE 1.

hear that he completed the program, rather than stopping after one week. He told the psychologist that he had completed the probation and its terms.⁸

Applicant was interviewed by a government investigator in July 2015. During the interview he stated that he attended AA for four months. The first month he went five times a week; the second month he attended three times a week; and the third month, he attended twice a week. He told the investigator he had attended 60 meetings over four months. He testified that after he attended AA daily for the first week, his attendance tapered off to once a week, but he stood by his statement that he attended 60 meetings in four months.⁹

As part of a follow up interview with the government investigator in August 25, 2015, Applicant confirmed he completed 90 days of AA meetings over four months.¹⁰

Applicant testified that counselors wanted him to participate in 90 AA meetings in 90 days after he was charged with resisting arrest in October 2010 to help with the pretrial diversion. He was disillusioned with the whole process. He did not attend every day after a week, but said he attended periodically. He stopped attending when he felt the program pushed a religious aspect. He did not identify with the people attending or with his sponsor. He noted the AA meetings were not court-ordered. He did not understand the process. He stated he disclosed information that was based on truth, but he misrepresented it. He admitted that when he thought his job depended on him obtaining a clearance, he lied because he wanted to look better. He said he was younger at the time, but old enough to know the truth. He said he is now more responsible and level headed and understands the seriousness of the process.¹¹

Applicant testified that in May 2011, he was arrested for public intoxication. He was still on probation from the October 2010 resisting arrest incident. He and friends had gotten "liquored up" and went downtown to try and sneak into a bar. His friends had fake identification. Applicant was underage and tried to bribe the bouncer to gain entrance into the bar. His friends went into the bar and left Applicant outside on his own. He called a friend and asked for a car ride. Before his friend arrived, he was stopped by police and arrested for public intoxication. The charge was dropped when the police officers did not appear for court. He never reported the incident to his probation officer. He explained that his attorney told him if it does not come up, then do not say anything.¹²

⁸ Tr. 26-27; GE 2.

⁹ Tr. 26-28.

¹⁰ Tr. 62-63; GE 3.

¹¹ Tr. 20-26.

¹² Tr. 37-40; GE 5.

Applicant described to the psychologist an incident that is not alleged in the SOR, where he attempted to drink 21 beers on his 21st birthday. He testified that he had 24 beers and was hospitalized after this incident. His blood alcohol content was either .399 or .4%. He was subsequently asked to leave the dorm where he was drinking, and was required to live off campus because of this incident.¹³

Applicant disclosed to the psychologist that he smoked marijuana daily during his sophomore and junior years of college. He told her he smoked marijuana on the weekends during his freshman and senior years of college, but has not smoked marijuana in five years. The psychologist questioned him about his failure to disclose this information during on his background check. He told her that he believed his marijuana use automatically disqualified him from receiving a security clearance. Applicant testified that he used marijuana about once a week starting late in his freshman year of college until he was arrested in October 2010. He purchased it from drug dealers on campus.¹⁴

Applicant testified that when he completed the SCA in 2012, he did not understand how the clearance process worked. He thought by admitting his marijuana use he would not get a security clearance. He stated he thought he could pretend it never happened. When Applicant was interviewed by a government investigator in July 2015, he was asked to confirm his SCA response that he had not used illegal drugs. He confirmed to the investigator that he had not used illegal drugs in the past. While testifying Applicant denied that he failed to disclose his drug use during his July 2015 interview. He stated: "I do not recall denying any illegal use of drugs. I assume if they wrote that down, then that must have been their interpretation, but I don't remember specifically talking to them about the use."¹⁵ Applicant was then asked: "So you're saying you disclosed it, you disclosed in 2015 during your interviews that you used drugs." He answered: "yes."¹⁶ When questioned during cross-examination, Applicant stated when the investigator interviewed him in July 2015, he was confirming that he responded "no" on the drug use questions on his 2012 SCA. He explained: "I think there is a difference between having denied illegal use of drugs in that interview and confirming that I had said that I had not on the actual form, because we definitely discussed it immediately afterwards."¹⁷

Applicant completed government interrogatories in April 2016. He disclosed his past marijuana use and reiterated that the reason he failed to disclose the information

¹³ Tr. 55; GE 5. I will not consider any unalleged derogatory information for the disqualifying purposes. I may consider this information when analyzing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

¹⁴ Tr. 45-46; GE 5.

¹⁵ Tr. 29.

¹⁶ Tr. 18-20, 28-29, 64; GE 4.

¹⁷ Tr. 64-65.

was because he believed he would not be granted a security clearance. The interrogatory questions specifically asked him why he failed to disclose his marijuana use during his November 2012 and his July 2015 subject interview. He stated as to both: "I stuck to what I put in the original clearance application."¹⁸ That answer contradicts his testimony when he said he disclosed his use in his July 2015 interview.

In the same interrogatories, Applicant disclosed that he used marijuana from November 2008 to November 2010 and his frequency of use was twice a week. He disclosed that he decided to stop using marijuana during his sophomore year of college after he was arrested (for an alcohol offense) and was placed on probation. He did not intend to use illegal drugs in the future. He testified that he stopped using marijuana after his October 2010 arrest. Applicant's interrogatories' disclosures regarding the frequency of his marijuana use and when he ceased using it are inconsistent with his statements to the psychologist.¹⁹

The psychologist diagnosed Applicant with Alcohol Use Disorder, Moderate. She noted:

It is the evaluator's opinion that [Applicant's] judgment, reliability, and trustworthiness is impaired, as evidenced by his tendency to be evasive and dishonest about his alcohol use history and his mental health history. Although some of the information he provided was consistent with his medical record and with information contained in his background information, he appeared to selectively fail to disclose details of certain events and often failed to disclose pertinent information in general until he was confronted with information the evaluator read in his background information. [Applicant] continues to consume alcohol on a regular basis, including the night before this evaluation, despite his consumption clearly causing difficulties for him in the past.²⁰

The psychologist recommended Applicant begin treatment with an individual therapist regarding his anxiety and transient depressive symptoms and seek counseling regarding his problematic alcohol use. She found that "[Applicant] currently displays behaviors that suggest his judgement, reliability, and trustworthiness are impaired."²¹

Applicant disputed the diagnosis, believing it is based on his conduct prior to 2012. He denied that he was evasive or dishonest about his alcohol use history because he talked about each alcohol incident.²²

¹⁸ Tr. 28-29; GE 4.

¹⁹ GE 4, 5.

²⁰ GE 5.

²¹ GE 5.

²² Tr. 56-58.

In Applicant's 2012 SCA he disclosed that in 2010 he was told by the college's judicial affairs to attend an alcohol education class and to seek counseling with regard to his alcohol use. He participated in a one-day class. He was also advised by family and friends to attend treatment as a result of his alcohol use. His disclosure that he attended 90 AA meetings in 90 days was in response to his family and friends advising him to seek treatment.²³

Applicant was initially interviewed by a government investigator in November 2012. He disclosed to the investigator that he participated in grief counseling which transitioned into alcohol counseling after his October 2010 arrest. It was individual counseling and the counselor provided him advice on how to control his drinking. Applicant stopped the counseling when his criminal charges were dropped. After he was arrested for public intoxication in May 2011, his lawyer and friends recommended he seek counseling. He told the investigator that he was diagnosed as alcohol dependent. He attended individual counseling, some group sessions, and AA meetings. He said he complied with all the requirements while attending therapy.²⁴

Applicant testified he did not remember telling the government investigator that he had been diagnosed as alcohol dependent. He admitted it was possible that he told the investigator, but could not remember.²⁵

Applicant testified he continues to drink alcohol socially. After college he moved to a new city and went to a happy hour once or twice a week. After making new friends, his drinking tapered off. In 2013, he had a more stable group of friends and continued to drink socially. It takes 6-7 drinks for him to become intoxicated. Every two to three months he consumed more than a couple of drinks, which he said is an aberration. He moved back to his home city in September 2015. He stated he does not believe he has an alcohol problem. When asked when he last consumed alcohol he stated he had two drinks the night before his hearing.²⁶

Applicant has been promoted twice in last five years. He is in a stable relationship with his girlfriend of 18 months.²⁷

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory

²³ GE 2.

²⁴ Tr. 60-61; GE 2.

²⁵ Tr. 58-59.

²⁶ Tr. 46-51.

²⁷ Tr. 70.

explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 access to classified information will be resolved in favor of 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 not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a nation security eligibility determination, or other official government representative.

There is sufficient evidence to conclude Applicant deliberately failed to disclose on his August 2012 SCA that he used marijuana from November 2008 to November 2010. The evidence also proves that Applicant lied on the same SCA when he reported that he attended 90 AA meetings in 90 days, when in fact he participated in AA for about a week before sporadically attending. He admitted in his interrogatories and to the psychologist that he lied because he thought the investigators would want to hear he completed the program. Applicant falsified facts during his background interviews with government investigators in July 2015, when he said he had completed 60 AA meetings over four months, when in fact he only attended AA for sporadically. He also denied to government investigators that he had illegally used drugs, when in fact he had used marijuana. The above disqualifying conditions apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant prove mitigation. Two mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct the omissions or falsifications he made when completing his SCA or the statements he made to investigators before he was confronted with the facts. He repeatedly had opportunities to do so and did not until he was presented with interrogatories in April 2016 when he finally admitted his drug use. As he stated in the interrogatories, he "stuck to what I put in the clearance application." There is insufficient evidence to conclude Applicant made a prompt good-faith effort to correct the omissions, concealment, and falsifications before being confronted with the facts. AG ¶ 17(a) does not apply.

Applicant's omissions and falsifications are not minor. Applicant had several opportunities to disclose his past transgressions and chose not to do so. I did not find his explanation that he misunderstand the process to be persuasive, as he also admitted he knew he was being untruthful. His omissions and falsifications are serious and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) does not apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for 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. I find the following to be potentially applicable:

(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

(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.

Applicant was arrested in 2008 for possession of alcohol by a minor; in October 2010 he was arrested for resisting arrest after consuming alcohol; and in May 2011 he was arrested for public intoxication. He was diagnosed in November 2017 by a licensed psychologist with Alcohol Use Disorder, Moderate. The evidence supports the application of the all of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under 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;
- (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.

None of the above mitigating conditions apply. Applicant participated in some alcohol counseling in college, but the extent of that participation is questionable based on his inconsistent and dishonest statements about his attendance in AA, and his discontinuation of counseling when the criminal charges were dropped. The alcohol-related criminal incidents alleged happened when he was in college, and there have been no additional alcohol-related criminal conduct since then. Applicant does not believe he has a problem with alcohol. However, he has been diagnosed with Alcohol Use Disorder, Moderate, which diagnosis he denies. I am not confident that Applicant has been honest and forthcoming about his current use of alcohol based on his history of minimizing and being evasive about it, and other derogatory information about his past. He did not provide any independent evidence about actions he has taken to address his problem or sufficient corroborating evidence of modified consumption. No evidence was presented that he is participating in counseling or treatment, or that he successfully completed a treatment program. Although there may be some mitigating evidence, it is not sufficient to overcome the concerns that have been raised by his alcohol consumption.

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 Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 27-year-old college graduate. He had alcohol-related incidents while in college and subsequently participated in counseling. More recently, an independent psychologist diagnosed him with Alcohol Use Disorder, Moderate. He falsified information on his 2012 SCA when he said he had participated in 90 AA meetings in 90 days. He continues to consume alcohol. He was deliberately untruthful about his past drug use. Applicant's history of alcohol abuse, deliberate omission and falsification of information to the Government raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the personal conduct and alcohol consumption guidelines.

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:

AGAINST APPLICANT

Subparagraphs 1.a-1.d:

Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a-2.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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge