



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



In the matter of:

ISCR Case No. 16-02221

Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

October 20, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

This case alleges security concerns raised under Guidelines G (Alcohol Consumption); and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 5, 2015. (Item 3.) On October 14, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and E. (Item 1.) The DOD CAF acted 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 2, 2016 (Item 2), and requested a decision on the record without a hearing (Answer). Department Counsel submitted the Government's written case on November 28, 2016. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 7. He was given an opportunity to file objections and submit material to

refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 8, 2016, and did not respond. Items 1 through 7 are admitted into evidence. The case was assigned to me on October 1, 2017.

On June 8, 2017, the DOD implemented new AG.¹ Accordingly, I have applied the June 2017 AG.² However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

Findings of Fact

Applicant admitted to the alcohol consumption allegations in SOR ¶¶ 1.a and 1.b. He failed to specifically admit or deny SOR allegation ¶ 2.a, which refers to the allegations set forth in SOR ¶¶ 1.a and 1.b, and alleges that that same conduct raises additional security concerns under personal conduct. In the absence of a clear admission, the failure to respond will be deemed a denial. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant, age 36, is married and has one child. He earned a master's degree in 2010. He has worked for his current employer since November 2015. (Item 3.)

Applicant was arrested in Virginia in January 2012 and charged with Public Intoxication. Applicant explained:

The night in question I went out to watch the game and had one too many drinks. I was walking home and urinated outside. I was embarrassed to wake up in jail realizing that I had chosen to consume too much alcohol that night. I did not intend to get as inebriated as I did, and I accept full responsibility for my actions. (Item 2.)

Applicant reported he paid a fine of \$114, and was released on his own recognizance. He did not have to appear in court and was not court ordered to attend any alcohol treatment or counseling. (Item 2; Item 5.)

Applicant was employed by a Federal contractor from March 2014 to July 2015. His employment was terminated by his employer on July 16, 2015, because he, "came

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

to work intoxicated and behaved inappropriately.” (Item 3.) Applicant explained he was under a great amount of pressure and stress at work.

After leaving the client site on July 16th [he] went home. [He] had a few drinks, and [he] had forgotten that [he] was supposed to go to the [employer’s] office that afternoon. Rather than reschedule the appointment, [he] chose to come in to work under the influence and it was the worst mistake [he] could have made. (Item 2.)

An incident report reflects Applicant arrived at his employer’s office between 1:00pm and 1:30pm on July 15, 2015. A colleague reported to the employer that Applicant was “in her personal space at her cubicle, slurring and repeating his speech and eventually kissed her on the cheek, which was not invited and made her very uncomfortable.” (Item 7.) Applicant was confronted by his manager and was excused from work the rest of the day. He refused a taxi and insisted he was able to drive. (Item 7.) His employment was terminated the next day. As a result of his termination, he was unemployed for four months. (Item 2; Item 3; Item 7.)

Applicant claimed that he no longer engages in alcohol consumption on his SCA. (Item 3 at 34.) However, his Answer implied that he continues to consume alcohol, but in moderation. He stated in his Answer, “I am now 35 years old, and have come to the realization that I am no longer in a position where I can afford to make poor personal choices that reflect unfavorably in my holding a security clearance. I no longer drink if I’m stressed or worried as I have found that the consequences are far too great.” (Item 2.) He has become more involved with his church. (Item 3 at 34.)

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 (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, “Any 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. Directive ¶ E3.1.15 states, “The 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 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 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 EO 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions may apply:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder; and

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

Applicant had two alcohol-related incidents in 2012 and 2015. The first was a 2012 arrest for public intoxication, after Applicant consumed too much alcohol watching a sports event. The second incident caused his termination from his employment in July 2015, after Applicant over imbibed during the workday after leaving his client's site and prior to returning to his place of work. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Two conditions may apply:

(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.

Applicant's alcohol incidents were recent and continue to cast doubt on his current reliability and trustworthiness. While he acknowledged he had a problem with self-medicating with alcohol to overcome stressful situations, not enough time has passed to be sure that his claimed pattern of modified consumption will be sustained. Initially, when completing his SCA in 2015, he indicated he was completely abstaining from alcohol use. In his 2016 Answer, he indicated he stopped "excessive alcohol consumption" and no longer drinks when he is stressed. The evidence presented does not support full mitigation of the Government's concerns.

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 notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

Applicant's excessive alcohol consumption has led to one arrest and his termination from employment. This conduct creates a vulnerability to exploitation, manipulation, or duress and could affect his personal, professional, and community standing. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has taken steps to reduce his alcohol consumption, and thereby reduce his vulnerability to coercion, but not enough time has passed to be sure that he will not over imbibe in the future. His two alcohol-related incidents continue to cast doubt on his reliability, trustworthiness, and judgment. It is too soon to say whether Applicant will engage in further inappropriate behavior. He failed to present sufficient information to overcome the Government's concerns under Personal Conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines G and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines G and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant failed to mitigate the security concerns raised by his 2012 arrest for public intoxication and his 2015 termination. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1 Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraphs 1.a – 1.b: Against Applicant

Paragraph 2 Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. Clearance is denied.

Jennifer I. Goldstein
Administrative Judge