



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 16-02879
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin J. Dorsey, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

09/07/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case.¹ I grant Applicant's clearance.

On 19 September 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA).

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1 and 3-6, and Applicant exhibits (AE A).

²DoD acted 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 (AG) effective within the DoD on 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the original AG, but I have examined the new AG to ensure that I would not reach a different result if I issued this decision under the new AG. I would not rule differently under either set of AG.

DOHA assigned the case to me 5 June 2017, and I convened a hearing on 12 July 2017. DOHA received the transcript 20 July 2017, and the record closed.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.c.³ He is a 43-year-old audio-visual technician employed by a defense contractor since February 2014. He has been intermittently employed previously by different defense contractors from November 2008 to November 2012. He was granted a clearance in April 2009, and granted access for a public trust position in February 2014. Apparently, he now requires a clearance for his employment. Applicant reported his alcohol-related issues on his 14 June 2014 clearance application (GE 1).

Applicant abused alcohol to the point of intoxication from 2009 to late November 2014 (SOR 1.a), resulting in four incidents indicative of poor judgment. In April 2012, he was charged with driving/attempting to drive while impaired (SOR 1.b), when he was sitting in his car 100 yards from his house with the key in the ignition, but the engine off. On 6 June 2012, he was awarded probation before judgment (GE 3), and ordered to attend an alcohol awareness program and Alcohol Anonymous (AA) meetings.⁴ He complied with those orders, completing an intensive weekend intervention program in May 2013 (Answer, Exhibit I).⁵ However, his probation was later revoked when he was charged with driving under the influence of alcohol or drug in March 2013 (SOR 1.d). He paid a fine to resolve the April 2012 charges (GE 3). The May 2013 charge was later dismissed for want of prosecution (GE 5).

In the meantime, on 2 November 2012 Applicant was fired from his job as a Government contractor when the contractor perceived that Applicant was intoxicated at work on 1 November 2012 and unable to perform his job (SOR 1.c)(GE 4). Applicant disputed that he was intoxicated at work, but acknowledged (Tr. 21) that his supervisor took him home that day and that he was fired the next day. He also acknowledged drinking on 31 October 2012, Halloween.

Finally, in November 2014, Applicant was charged with driving under the influence of alcohol per se (SOR 1.e), when he was found asleep in his car in a convenience store parking lot with his engine off. His blood alcohol level was .22%. In

³He asserts that he was not intoxicated at work when he was dismissed for being intoxicated at work.

⁴On his June 2014 clearance application, Applicant reported two instances of counseling under the mental health question: March to July 2013 with one health care professional and March 2013 to January 2014 with a second health care professional. Under the alcohol use question, he reported the adverse work impact alleged at SOR 1.c and some adverse marital issues under alcohol use, but also reported court-ordered counseling: March to October 2012 and the March to July 2013 counseling previously listed under mental health.

⁵Applicant states that he was told during this program that he was an alcoholic. However, no records corroborate that claim.

May 2015, he was sentenced to jail, with all but four days suspended, fined, and placed on two-years' probation. He was ordered to install an ignition interlock on his vehicle, and attend a victim impact panel. He attended the victim impact panel in June 2015 (Answer, Exhibit J). He also attended an intensive outpatient program between 8 December 2014 and 3 February 2015, during which he was subject to random urine and breath tests—all of which were negative (Answer, Exhibit N).

Applicant's work and character references (AE A; Answer, Exhibit A), which include current and past work references from both his employer and the user agency contacts he deals with daily, the employee assistance program manager from his company, the supervisor who hired him, and work references from the volunteer groups that he supports all consider him to have outstanding character and work ethic. He has received work recognition (Answer, Exhibits B, L), and recognition for his volunteer work (Answer, Exhibit C).

Applicant has not consumed alcohol since late 2014. He entered the employee assistance program (EAP) in December 2014, and was an active participant at the time of his Answer (Exhibit A). He had already consulted a doctor in late 2014, a doctor Applicant continues to see (Answer, Exhibit G).⁶ The doctor prescribed an anxiety drug and a drug to curb his desire for alcohol. The doctor states that Applicant is stable in his work and personal life, has been compliant with the doctor's treatment recommendations, and has an excellent prognosis.⁷

In February 2016, Applicant was discharged from the ignition interlock program (Answer, Exhibit M). He has executed a statement—similar to that contemplated by the mitigating conditions for drug involvement and substance misuse—consenting to automatic revocation of his clearance if he is again involved in alcohol abuse (Answer, Exhibit O). The SOR cross alleged the alcohol arrests at SOR 1.b, 1.d, and 1.e as criminal conduct under Guideline J.

Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant

⁶A board certified psychiatrist and addictionologist.

⁷Applicant sees his doctor about every two months for progress updates and medicine adjustments. Applicant no longer attends AA, because he finds the same kind of support at the community theater organizations where he volunteers. He says his doctor has not objected to this substitution..

adjudicative guideline is Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct), .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁸

Analysis

The Government established a case for disqualification under Guideline G, by demonstrating Applicant's five-year history of alcohol abuse between 2009 and November 2014, punctuated by four alcohol-related incidents between April 2012 and November 2014. Although the record does not reflect a formal diagnosis of alcohol use disorder, such diagnosis is not required to raise a security concern.⁹ Nevertheless, I find that Applicant has mitigated the security concerns.

Applicant has adopted abstinence as his approach to his alcohol problems, and has had no alcohol for nearly two and a half years, about the same amount of time covered by Applicant's alcohol-related incidents. Thus, ¶23(a) partially applies, in that I concluded that enough time has passed and the conduct is unlikely to recur. However, while ¶22(d)-(g) do not fully apply because there has been no documented diagnosis, and ¶23(c)-(d) do not fully apply because of questions about the nature of Applicant's treatment programs and whether Applicant's return to alcohol use in March 2013 and November 2014 constitutes relapse, ¶23(b) fully applies.¹⁰ Moreover, after his

⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹¶ 22(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 . . .; (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (c) habitual or binge consumption of alcohol to the point of impaired judgment . . .; (d) diagnosis by a duly qualified medical professional or mental health professional. . . of alcohol use disorder;

¹⁰¶ 23(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;

November 2014 charge, Applicant took a different approach to his alcohol use problem. In addition to fully complying with the court requirements for treatment, Applicant began consulting with a doctor in late 2014, following his treatment recommendations, undertook a counseling program that was not court-ordered, and began participating in programs sponsored by his company's EAP beginning in December 2014 and continuing through at least October 2016.

Further, despite the November 2014 incident, Applicant's character references find his reliability and work ethic to be exceptional. He remains under medical supervision and has developed off-duty interests that keep him away from alcohol. Finally, although not offered as a mitigating condition under the guidelines, Applicant has made himself subject to immediate dismissal if he is involved in another alcohol-related incident. I conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G for Applicant.

The Government established a case for disqualification under Guideline J, but Applicant mitigated the security concerns. Applicant admitted that his three alcohol-related arrests also constituted criminal conduct. However, in this case, even the combination of offenses does not raise any security concerns beyond those considered under Guideline G, and while Applicant violated his probation on his April 2012 arrest, he otherwise satisfactorily completed the court-ordered requirements for that arrest as well as the other two arrests.¹¹ Moreover, even if I concluded that the disqualifying conditions were fully applicable, the corresponding mitigating conditions remove any security concerns.¹² Applicant completed all his sentencing requirements, has an excellent employment record, and is well involved in his community. Accordingly, I resolve Guideline J for Applicant.

Formal Findings

Paragraph 1. Guideline G:	For Applicant
Subparagraphs a-e:	For Applicant
Paragraph 2. Guideline J:	For Applicant
Subparagraph a:	For Applicant

¹¹¶31.(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; . . . (d) violation or revocation of parole or probation, or failure to complete a court-ordered rehabilitation program;

¹²¶32.(a) so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individuals' reliability, trustworthiness, or good judgment; (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.

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge