



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



In the matter of:

ISCR Case No. 16-03049

Applicant for Security Clearance

Appearances

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

12/07/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the alcohol consumption security concerns. National security eligibility for access to classified information is denied.

History of Case

On November 24, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (Alcohol Consumption). 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 after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR in writing on December 8, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 27, 2017. DOHA issued a Notice of Hearing on May 16, 2017, setting the hearing for June 28, 2017. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. She also offered Hearing Exhibit 1 (HE 1), which was a Request for Administrative Notice of facts pertinent to the criteria and diagnosis of an alcohol use disorder.² GE 1 through 4 were admitted without objections. I took administrative notice of the facts contained in HE 1 without objection. (Tr. 15- 20.) Applicant did not submit any documents, but testified and called one witness. DOHA received the hearing transcript (Tr.) on July 10, 2017. The record remained open until August 4, 2017, for the submission of additional exhibits. Applicant timely submitted an exhibit, which I marked as Applicant Exhibit (AE) A and admitted without objection.

Findings of Fact

Applicant is 33 years old and unmarried. He earned a bachelor's degree in 2009 and began working for his current employer after graduation. He works as a financial analyst. His performance evaluations have been acceptable. His supervisor is aware of this proceeding. He is certified to train employees with disabilities and spends some work time doing that. He performs community service every year for a local agency. (Tr. 22-27.)

Applicant has a history of alcohol abuse. From approximately 2005 to 2011 (between the ages of 21 and 27), he consumed two to three mixed drinks a day while at home. From approximately 2011 to January 2015 (between the ages of 27 and 31), he consumed one liter of liquor a day. (Tr. 59; GE 2.)

In August 2009, Applicant was arrested and charged with driving while intoxicated (DWI) and obstructing a highway passageway. The DWI was dismissed, and he was convicted on the obstruction charge. He was sentenced to one year of probation. He was 25 years old at the time. (Tr. 29-31.)

In 2011, Applicant suffered a serious emotional breakdown after he broke up with his girlfriend. He subsequently became distraught and attempted to take his life with a gun. As a consequence, he was severely injured, which lead to seizure and epilepsy problems. (Tr. 34-35; AE A.)

In late January 2015, Applicant voluntarily entered a detoxification and alcohol treatment center because he was consuming too much alcohol. He was there for one week and was discharged in early February 2015. The treatment center recommended that he complete 28 days of residential treatment, which he would not do. In the alternative, it suggested that he attend Alcoholics Anonymous (AA) for 90 days. Applicant does not remember receiving that recommendation. After his discharge, he did not

² Attached to HE 1 was a copy of the pertinent sections of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

consume alcohol until March 2015. He stated he then resumed drinking in moderation, maybe one drink a day. (Tr. 36-37, 62; GE 2.)

On January 5, 2016, Applicant submitted a security clearance application (SF 86). Subsequently, DoD requested that Applicant participate in an alcohol screening evaluation. Applicant disclosed to the evaluating licensed chemical dependency counselor and advanced alcohol and drug counselor (counselor) that he had experienced symptoms related to alcoholism, such as drinking before noon on a regular basis; friends and family requesting that he stop consuming alcohol; and being unable to maintain sobriety. Applicant acknowledged that his drinking affected his work, family, relationships, health, and finances. At the time of this evaluation, Applicant stated he was consuming one drink a day. After administering screening tests and interviewing Applicant, the counselor submitted a report on August 10, 2016 (Report). The counselor found that Applicant has a "high probability of having a Substance Abuse Disorder." (GE 3.) The counselor stated that Applicant's drinking exacerbates his liver problems and aggravates his seizure disorder. The counselor recommended that Applicant attend an intensive outpatient treatment program, participate in weekly AA meetings, completely abstain from alcohol, and participate in aftercare for at least one year. (GE 3.)

To date, Applicant has not participated in any form of treatment or psychotherapy and continues to consume alcohol. He stated that he now has one drink occasionally. He does not want to completely stop drinking. (Tr. 64-65.) He does not think he has an alcohol problem anymore. (Tr. 42.) He does not believe he needs help in addressing his issues. (Tr. 52.)

Applicant's mother testified. She is supportive of her son, and concerned about his consumption of alcohol and medical conditions, which includes periodic short-term memory loss. She would like him to completely quit drinking, although she said he has decreased his consumption significantly. (Tr. 72-76.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the 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 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. 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 says that an “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 applying for national security eligibility 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 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 Executive Order 10865, “[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.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concerns 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 following two may potentially 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; 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.³

Applicant has a significant history of abusing alcohol. From 2005 to 2011, he consumed two to three mixed drinks a day. From 2011 to 2015, he habitually consumed alcohol to the point of inebriation and having impaired judgment. In 2009, Applicant was arrested for a DWI. The evidence is sufficient to establish the above disqualifying conditions.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline:

(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.

The evidence does not establish any of the above mitigating conditions. Applicant continues to consume alcohol. Applicant does not acknowledge that he has an alcohol problem and has not provided sufficient evidence of actions he has taken to overcome it. Although a treatment center recommended specific treatment modalities in February 2015 and a counselor suggested a similar program in August 2016, Applicant has not complied with any of those recommendations. He is not currently participating in a

³ I considered the disqualifying condition under AG ¶ 22(e): the failure to follow treatment advice once diagnosed. It does not apply. Both the treatment center where Applicant went for detoxification in January 2015 and the evaluating counselor who screened him in April 2016 indicated that Applicant has a serious substance abuse disorder. However, for purposes of establishing this disqualifying condition, there is no formal diagnosis in this record by a qualified medical or mental health professional, as defined in AG ¶ 22(d).

treatment program nor has he successfully completed one and demonstrated a clear pattern of abstinence.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an educated and articulate 33-year-old employee of a defense contractor for the past six years. He testified with candor and honesty. Since at least 2005, he has wrestled with alcohol abuse. In 2015, he acknowledged that he was consuming too much alcohol and sought detoxification treatment. Upon his discharge, the treatment center strongly recommended that he participate in an extensive rehabilitation program. Applicant refused their suggestions. After leaving the center, Applicant did not drink for about two months before resuming.

Subsequent to applying for a security clearance in January 2016, the DoD requested that Applicant participate in an alcohol screening evaluation. After performing that screening, the counselor unequivocally stated that Applicant, in all probability, suffered from an alcohol abuse disorder. He recommended a rigid treatment program to address Applicant's alcohol abuse and other medical conditions. Despite learning of the Government's concerns, Applicant has not implemented any of those recommendations or taken therapeutic steps to address his alcohol problems and the underlying issues. He believes that moderation of his drinking is sufficient treatment. Given these facts, there is insufficient evidence to mitigate the alcohol security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:

Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge