



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



In the matter of:

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ISCR Case No. 16-03430

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

02/08/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant consumed alcohol at times to excess to as recently as March 2017 despite multiple drunk-driving incidents and alcohol treatment. He has abstained from alcohol since March 2017 and is currently involved in Alcoholics Anonymous (AA), but it is too soon to conclude that his alcohol abuse is unlikely to recur. Clearance is denied.

Statement of the Case

On July 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G, alcohol consumption. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.

Applicant answered the SOR allegations on July 21, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 12, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 12, 2017, I scheduled a hearing for November 15, 2017. At the hearing, six Government exhibits (GEs 1-6) were admitted in evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on November 22, 2017.

Summary of Pleadings

The SOR alleges under Guideline G that Applicant pleaded nolo contendere to a March 2007 driving under the influence (DUI) charge (SOR ¶ 1.a); that he was convicted of an April 2012 chemical test refusal charge and ordered to receive alcohol counseling (SOR ¶ 1.b); that he was convicted of a March 2015 DUI and placed on 18 months of probation (SOR ¶ 1.c); that he was diagnosed with alcohol dependence in 2012 and 2013 and with alcohol use disorder in 2015 (SOR ¶ 1.d); and that he consumed alcohol to at least March 2017 despite being diagnosed with alcohol use disorder (SOR ¶ 1.e). When he responded to the SOR, Applicant admitted the allegations without explanation.

Findings of Fact

Applicant's admissions to the alcohol-related offenses, to the diagnoses, and to drinking alcohol to at least March 2017 are accepted and incorporated as factual findings. After considering the pleadings, exhibits, and transcript, I make additional findings of fact as follows.

Applicant is a 30-year-old machinist with some community college credits but no degree. He has never been married and has no children. He has served in the Army National Guard (ARNG) since April 2009 and was granted a DOD secret clearance for his duties in the ARNG in June 2009. Applicant was deployed from 2010 to 2011, and for nine of those months, he was stationed in Southwest Asia. He received some awards for his service in the Global War on Terror. Applicant has been employed by a defense contractor since October 2014. He owns his home, which he purchased in June 2014. (GEs 1-2; Tr. 19-22, 33.)

Applicant consumed alcohol from an early age with periods of abusive drinking culminating in multiple drunk-driving offenses and a diagnosis of alcohol dependency. He first tried alcohol in 2002 when he secretly took a beer from a cooler at a family party. Between 2003 and 2007, he surreptitiously consumed two beers five times a year. Every couple of months, he consumed six beers underage at high school parties with three friends.

While working as a machine operator and taking classes at a local community college, Applicant continued to drink alcohol to socialize. In March 2007, Applicant consumed 12 beers over six hours at a party. He was with his friends and celebrating the

purchase of a new car. Applicant was stopped for speeding in route home, and he failed a field sobriety test. He was arrested for DUI/first offense/.15%. Applicant believes he blacked out from drinking in that he has no recall of his interaction with the police. He indicates that he had a blood alcohol level of .22%. In early May 2007, he pleaded nolo contendere to the DUI charge. He was sentenced to pay fines and court costs totaling \$1,225; to serve 20 hours of community service; to attend driving while intoxicated (DWI) school; and to three months suspension of his driving privileges. (GEs 2-3; Tr. 23-24.) Applicant received weekly outpatient alcohol counseling from March 2007 to May 2007. (GE 2.)

Applicant continued to consume alcohol, about ten beers to intoxication, on a monthly basis until May 2009. He abstained completely from alcohol while in military training with the ARNG from May 2009 to October 2009. From October 2009 to September 2010, he consumed four to five beers every couple of weeks at bowling parties with the friends involved in his previous drinking. (GE 2.)

Applicant abstained from alcohol while on his year-long deployment starting in September 2010. He resumed drinking on his return from deployment, initially four to five beers every few weeks. Starting in December 2011, his drinking "took more of an aggressive turn." Over the next four months, he consumed six beers and a couple of shots per week. In late April 2012, his then girlfriend broke up with him temporarily. Still distraught a few days later, Applicant went to a local bar where he consumed 12 to 15 mixed drinks. Despite knowing that he was too intoxicated to operate a vehicle safely, Applicant chose to drive. He was stopped for speeding and swerving. Applicant denied to the police that he had been drinking, but he failed field sobriety tests and was insulting to the police. He was arrested for DUI, second offense, chemical test refusal, speeding, and some lane violations. In late August 2012, Applicant was convicted in state traffic court of chemical test refusal. He was ordered to attend alcohol counseling, complete ten hours of community service, and pay \$935. His driver's license was suspended for 12 months. The DUI charge was dropped in return for his plea to the chemical refusal charge. (GEs 2, 4; Tr. 24-25.)

Following his April 2012 arrest for DUI, Applicant abstained from alcohol until September 2012. He received 15 sessions of counseling from April 2012 to June 2012, which apparently fulfilled the court order for treatment. (GE 2.) Applicant admits that he was diagnosed with alcohol dependency at that time, although no medical records were submitted that could confirm the diagnosis. He also began attending AA meetings in 2012. (Tr. 25.)

From September 2012 to October 2013, Applicant consumed six beers at a sitting twice a month "to get drunk." Concerned about his drinking, Applicant voluntarily underwent alcohol detoxification treatment for three or four days. At the recommendation of the substance abuse treatment facility, Applicant then completed an intensive outpatient program from November 2013 to December 2013. (GE 2.)

Applicant relapsed in June 2014, when his then girlfriend ended their relationship. Applicant turned to alcohol and drank in quantity of six beers and one pint of whiskey a couple days a week at home alone. After he began his defense contractor employment in October 2014, he stopped drinking whiskey but continued to drink six beers a week in his home. (GE 2.)

In early February 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He disclosed his March 2007 and April 2012 alcohol-related offenses and his attendance at court-ordered counseling because of those offenses. (GE 1.)

In late March 2015, Applicant consumed four to five beers and three or four shots of liquor at a bar. He was stopped in route home for failing to use his turn signal and a lane violation. The officer observed signs of alcohol about Applicant, who denied he had been drinking. Applicant failed sobriety tests and was arrested for DUI, failure to maintain a proper lane, and failure to give a proper signal.¹ He pleaded guilty to the DUI charge in June 2015 and was sentenced to serve 18 months of supervised probation, obtain alcohol treatment, complete 100 hours of community service, and to pay a fine of approximately \$500. His driver's license was suspended for 45 days and a breathalyzer device was ordered installed on his vehicle. (GEs 2, 5; Tr. 23-26.) Applicant met with his supervisor on a monthly basis. Because he had "one hit" on the breathalyzer device, he had to serve the full 18 months. (Tr. 26.)

Applicant consumed six beers and a pint of whiskey a couple of times a week from May 2015 to June 2015. In June 2015, Applicant received inpatient detoxification and three or four days of inpatient treatment before beginning counseling with a therapist in July 2015. He attended weekly therapy sessions until November 2015, when the frequency was reduced to once every two to three weeks. Applicant maintained abstinence from alcohol from July 2015 through at least late December 2015, when he was interviewed by an authorized investigator for the Office of Personnel Management (OPM). During that interview, Applicant detailed his history of alcohol consumption and alcohol-related arrests. He denied any consumption of alcohol since July 2015 because he realized that he gets in trouble when he drinks. He had previously thought that he could control his drinking but now considers himself to be an alcoholic. Applicant denied any intention to drink any alcohol in the future. He indicated that he was taking naltrexone, which helps reduce cravings for alcohol, and disulfiram (Antabuse), which interacts adversely with alcohol. Additionally, he was attending AA meetings three times a week. (GE 2.)

Sometime after his interview, Applicant relapsed into drinking despite his counseling with his therapist. He described his drinking as "a roller coaster" in that he would abstain for three to eight months and then drink for a month. He drank primarily at home. From early February to mid-March 2017, Applicant had a "hard time." He went

¹The police officer checked Applicant's criminal history, which revealed no prior arrests. (GE 5.) Applicant's 2007 and 2012 DUIs were in his home state. He lived with his parents until June 2014, when he bought his current residence in the state where his March 2015 DUI occurred. (GE 1.)

through his vacation time at work because he was drinking two to three times a week. After consuming 6 to 12 drinks (beer and whisky) to intoxication on March 20, 2017, he realized that he needed help. Applicant admitted himself into a partial inpatient substance abuse treatment program four days later. Over the ten days, he had therapy sessions with psychiatrists and counselors and attended classes to gain coping skills. Applicant is not certain whether he was diagnosed with alcohol use disorder. He was discharged in early April 2017 to continue with his AA meetings. (GE 2; Tr. 27-28, 30-32, 35-36.) It was also recommended that he attend an intensive outpatient program but his work schedule on second shift conflicted. (Tr. 39-40.) When Applicant returned to work with the defense contractor, he reported his voluntary treatment. (GE 6.)

In response to interrogatories from DOHA, Applicant indicated in mid-June 2017 that he had not consumed any alcohol since he drank to intoxication on March 20, 2017, or been involved in any alcohol-related incidents since his 2015 DUI. Concerning lifestyle changes, Applicant stated that he was attending AA; taking medication to help him abstain from drinking; becoming more involved with work, exercising, and other non-drinking activities; and being honest and open about his drinking habits. He added that he had cut ties with his drinking associates. As for his future intentions, Applicant listed abstinence from alcohol, maintain a healthy lifestyle, surround himself with like-minded individuals, remain accountable, continue his spiritual growth in AA, and build a positive reputation at home, work, and in the military. (GE 2.)

Applicant continued his individual counseling with his therapist until he received the SOR in mid-July 2017. He was upset and nervous that he could lose his security clearance eligibility because he had sought treatment for his alcohol problem, so he stopped going to therapy. (Tr. 28-29, 41.) Applicant believes he needs more time with the therapist to address some issues of hypervigilance related to post-traumatic stress. (Tr. 27, 38.) He intends to return to his therapy, regardless of what happens with his security clearance. (Tr. 43.)

Applicant has attended AA meetings consistently since early April 2017. He attended a minimum of three AA meetings a week initially. As of November 2017, he was trying to attend two meetings a week, depending on his schedule and the availability of meetings. He does not presently have a home group or an AA sponsor. He had an AA sponsor in the past. He has not seen this sponsor since 2015 because he has not attended the same AA meetings. Applicant intends to continue with AA. He also takes naltrexone and disulfiram daily under the management of his primary care physician. (Tr. 30-32, 37-44.)

Applicant has been dating his present girlfriend since June 2017. About a month into their dating relationship, he told her that he has a drinking problem. Applicant lives alone, but not far from his family. His girlfriend and family are supportive of his recovery. (Tr. 31, 33-34, 37.)

Applicant considers himself to be "a recovering alcoholic." He has learned through his treatment to take responsibility for his actions and to accept the consequences. He

understands that his recovery is not a short-term process and that he has to make a lifestyle change. He does not keep alcohol in his home, and anyone who comes to his house does not consume alcohol there. Applicant avoids bars and events around drinking. He is also keeping his distance from those friends involved in his past drinking. (Tr. 31, 34-36, 43.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 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 G: Alcohol Consumption

The security concern for alcohol consumption is articulated 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.

Applicant began drinking alcohol when he was only a teenager. He committed his first DUI in March 2007 at age 19. An April 2012 DUI was dismissed in return for his guilty plea to chemical refusal, but he was intoxicated after consuming 12 to 15 mixed drinks at a bar. Despite completing court-ordered alcohol treatment for admitted alcohol dependence and going to some AA meetings, he struggled to maintain control of his drinking problem. He relapsed in September 2012 and drank six beers at a sitting twice a month "to get drunk" until October 2013. After completing voluntary treatment from November 2013 to December 2013 and eight months of abstinence, Applicant turned to alcohol in June 2014 after his ex-girlfriend ended their relationship, and his drinking culminated in another DUI in March 2015. He drank six beers and one pint of whiskey a couple of times per week from May 2015 to June 2015. With detoxification treatment and ongoing counseling with a therapist, he stopped drinking in July 2015 only to return sometime after December 2015 to his "roller coaster" pattern of drinking on and off through March 20, 2017.

Applicant's three drunk-driving offenses establish AG ¶ 22(a), which provides:

(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 an individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

The evidence of AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder," is limited. He was not a daily drinker, although he may well have engaged in binge drinking on the occasions of his DUIs.² He recollects drinking 12 beers over six hours in March 2007, but also blacking out from drinking on that occasion. Before his April 2012 DUI, he consumed 12 to 15 mixed drinks within six hours. In March 2014, he consumed four to five beers and three to four shots of liquor within three to four hours.

There are no clinical records in evidence. The Government's case for AG ¶ 22(d), "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical

² Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. This definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>.

psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder,” rests largely on Applicant’s admission that he was diagnosed with alcohol dependence in 2012. Applicant expresses uncertainty about whether he was diagnosed with alcohol use disorder by his therapist in 2015, however. Applicant describes himself as a “recovering alcoholic,” and his struggles to control his drinking suggest a serious alcohol problem. It is likely that he was advised by his treatment providers in 2012 and 2013 to abstain from alcohol or at least to avoid intoxication. His March 2015 DUI could trigger AG ¶ 22(e), “the failure to follow treatment advice once diagnosed,” or AG ¶ 22(f), “alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder,” but there is scant information in the record about treatment recommendations. Applicant was in counseling with a therapist from July 2015 until July 2017, but there are no records from the provider in evidence that could shed light on his advice or Applicant’s prognosis. Applicant testified about a clinical recommendation from a therapist in his 2017 partial inpatient program that he follow up in an intensive outpatient program. Yet, it is unclear whether the outpatient program was considered essential to his recovery. His failure to participate in that outpatient program falls short of implicating AG ¶ 22(e). AG ¶ 22(g), “failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence,” is established in one aspect. Applicant candidly volunteered that he had to fulfill his entire 18 months of probation for his March 2015 DUI because he violated the breathalyzer device on his vehicle on one occasion.

Applicant engaged in a pattern of maladaptive alcohol use that persisted after multiple DUIs and alcohol treatment. Three DUI offenses within eight years cannot be considered infrequent. Applicant drank to intoxication as recently as March 2017 despite ongoing counseling since July 2015. 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 good judgment,” does not apply in mitigation.

Mitigating conditions AG ¶ 23(b) and AG ¶ 23(d) are partially applicable because of Applicant’s recognition of his alcohol issues, his efforts to address his alcohol problem, and his abstinence since March 2017 with an intention to remain alcohol free. AG ¶¶ 23(b) and 23(d) provide:

(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; 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 acknowledges his drinking problem. In his favor, he voluntarily completed a partial inpatient alcohol treatment program in April 2017. Although he did not follow up

with the recommended outpatient program, he has attended AA with some consistency since April 2012. He made lifestyle changes conducive to his recovery by disassociating himself from those friends involved in his drinking; avoiding establishments and activities involving drinking; strengthening his ties with his family and others supportive of his sobriety; and not having alcohol in his residence or allowing others to drink in his home. He has become more open about his drinking problem. However, as of November 2017, Applicant had abstained from alcohol for only eight months. It is not long enough to enable a safe predictive judgment that his alcohol abuse is not likely to recur for several reasons. He had abstained for six to eight months at times in the past only to relapse into drinking at times to excess. Applicant has not had an AA sponsor since 2015 and the frequency of his AA attendance has declined from three meetings per week to about one meeting per week as of November 2017. Out of a mistaken assumption that alcohol treatment was jeopardizing his clearance eligibility, Applicant ceased his counseling with his therapist in July 2017 when he received the SOR. Voluntary treatment is certainly viewed positively.³ However, as Applicant acknowledged, recovery is not a short-term process. He candidly admitted that he needs more therapy and, to that end, he intends to resume his counseling, irrespective of the decision about his security clearance eligibility. There is no assessment from a medical provider or substance abuse treatment clinician that could perhaps assuage the concerns raised by Applicant's recent abusive drinking. Applicant presented positive evidence in mitigation, but it is not enough to fully mitigate the alcohol consumption security 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).⁴ In making the overall commonsense determination required under AG ¶ 2(a), Applicant did not allow his alcohol consumption or the adverse legal consequences of his drinking to adversely affect his work with the defense contractor or his duties with the ARNG.

Even so, the Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or

³ The DOD encourages treatment, as evidenced by AG ¶ 23(c), which provides for mitigation when "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." Applicant's history of maladaptive drinking after treatment precludes consideration of AG ¶ 23(c).

⁴ The factors under AG ¶ 2(d) are as follows:

- (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.

revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). At some future date, Applicant may be able to show reform for a sufficiently sustained period to safely conclude that his maladaptive use of alcohol is safely in the past. For the reasons discussed, it would be premature to continue Applicant's security clearance eligibility at this time.

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.e: Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge