



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



In the matter of:)
)
) ISCR Case No. 16-03915
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

11/29/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines G and J. Eligibility for access to classified information is denied.

Statement of the Case

On March 10, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and J (criminal 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) implemented by the DOD on September 1, 2006.¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on March 29, 2017, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 28, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 5, 2017. Applicant did not respond to the Government's FORM. The case was assigned to me on October 1, 2017. The Government's documents identified as Items 1 through 9 are admitted in evidence without objection. Other than his Answer to the SOR, admitted into evidence as Item 2, Applicant failed to submit any additional documentation.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.f, and neither admitted nor denied the allegation in SOR ¶ 2.a. He is 46 years old. He obtained a high-school diploma in June 1989. He has worked as an engineering technician for a defense contractor since June 2008. He was granted a DOD security clearance in May 2009. As of October 2016, he had never been married and did not have any children.²

Applicant has consumed alcohol, at times in excess and to the point of intoxication, from 2004 to June 2016. He was arrested in April 2004 and charged with driving while intoxicated (DWI). He was arrested in March 2006 and charged with misdemeanor assault and battery, which stemmed from an alcohol-related incident. The charges were subsequently dismissed after he paid a \$66 fine. He was arrested in July 2009 for misdemeanor drunk in public. He paid a \$97 fine.³

In October 2014, Applicant was arrested and charged with misdemeanor driving under the influence (DUI), reckless driving, and failure to stop at the scene of an accident. He consumed an unrecalled number of jaeger bombs while at a sports bar with friends, watching an afternoon football game. He drove home after the game, but realized he was hungry when he arrived at his home. He then drove to a café to buy food, and then to a grocery store to buy soda and ice cream. Upon arriving back home, the police were waiting for him. They administered a field sobriety test, and Applicant registered a .18% blood alcohol content (BAC). An eyewitness observed Applicant hit a house, and the police determined Applicant's address after they found his front license plate in the house's yard. Applicant did not recall the specifics of this incident, but he pieced the details together from the information told to him by his sister who lived with him, eyewitness testimony, and police records.⁴

In January 2015, he was convicted of DUI 1st offense, BAC .15-.20%. He was sentenced to 30 days in jail with 25 days suspended; he was placed on unsupervised

² Response to the SOR; Item 4.

³ Items 5, 6, 8.

⁴ Items 4-9.

probation for two years; his driver's license was restricted for six months to one year, and he was administered an ignition interlock breathalyzer for the first six months. He was also ordered to enter into an alcohol safety action program for 12 months and fined \$481. The remaining charges were *nolle prossed*. As of July 2016, he had complied with the court's sentence. He self-reported this incident to his supervisor. His employer did not permit him to drive the company car while he was in the alcohol safety action program. This incident is common knowledge among his family, friends, and coworkers.⁵

In June 2016, Applicant was arrested and charged with DWI 2nd offense within a 5-year period, with a BAC between .15-.20%; reckless driving for endangering life, limb, or property; and hit and run for failure to stop. Applicant consumed ¼ of a gallon bottle of rum and decided to drive to a restaurant because he was hungry. While waiting for his food, he drank an unrecalled number of jaeger bombs at the restaurant's bar. He then drove to another restaurant for seafood, and consumed an unrecalled number of jaeger bombs there. While driving back home, he missed his turn, bumped a car, and kept driving. At a red light intersection, he decided he would not wait for the light to turn green, so he drove his car, and bumped and pushed another car out of the way. Applicant also did not recall the specifics of this incident, but he pieced the details together from eyewitness testimony and police records.⁶

As of July 2016, Applicant was awaiting his trial date. The court placed him on probation and restricted his driver's license for 60 days. He was to abstain from alcohol while awaiting trial. He stated that this incident is also common knowledge among his family, friends, and coworkers.⁷

Applicant admitted that he drank heavily before his October 2014 DUI conviction. He abstained from alcohol between February 2015 and February 2016, while he was enrolled in the court-ordered alcohol safety action program. After the program, he did not want to resume his same level of alcohol consumption. However, he began drinking again in March 2016. He did so while at home, watching television by himself. Initially, he drank two to three beers a couple of nights weekly. Then, he consumed six to eight beers daily after work. In April 2016, he began consuming hard liquor to achieve the same effect because he had grown tired of drinking beer. From April to June 2016, he drank a liter bottle of hard liquor every three to four days.⁸

He stated that his alcohol consumption does not interfere with his work, he has never consumed alcohol at work, and his employer has never referred him to alcohol counseling. He concluded that jaeger bombs makes him have memory blackouts, and he needs to find a hobby to fill his time instead of drinking. He has not tried to abstain

⁵ Items 4-9.

⁶ Item 9.

⁷ Item 9.

⁸ Item 9.

from drinking on his own. While he did not recall if he was ever diagnosed with alcohol dependence, he considered that he might be a binge drinker which sometimes gets out of control.⁹

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 list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

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 the 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 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 EO 10865 provides that adverse 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).

⁹ Item 9.

Analysis

Guideline G, Alcohol Consumption

The security concern 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 notes conditions that could raise security concerns under AG ¶ 22. The disqualifying conditions potentially applicable in this case include:

(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.

Applicant has a pattern of excessive alcohol consumption and alcohol-related incidents. AG ¶¶ 22(a) and 22(c) are applicable.

AG ¶ 23 provides the following conditions that could mitigate security concerns:

(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.

Applicant's pattern of excessive alcohol consumption and alcohol-related incidents did not happen under unusual circumstances that are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and judgment. His DUI conviction in January 2015, and his arrest and charge for DWI 2nd in June 2016, are recent and not mitigated by the passage of time. While he acknowledged that he might be a binge drinker that sometimes gets out of control, he has not demonstrated a clear pattern of modified consumption, and he failed to provide evidence of actions he has taken to overcome his problem. Though he successfully completed the court-ordered alcohol safety action program in connection with his January 2015 DUI conviction, he subsequently resumed consuming alcohol. He was drinking a liter bottle of hard liquor every three to four days as of June 2016, and he was also arrested and charged with DWI 2nd in June 2016. AG ¶¶ 23(a) through 23(d) are not applicable.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

(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; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant has a pattern of alcohol-related incidents from 2004 through June 2016. He was recently convicted of DUI in January 2015, and arrested and charged with DWI 2nd in June 2016. AG ¶¶ 31(a) and 31(b) are applicable.

AG ¶ 32 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(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.

Applicant's pattern of excessive alcohol consumption and alcohol-related incidents did not happen under unusual circumstances that are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and judgment. His DUI conviction in January 2015, and his arrest and charge for DWI 2nd in June 2016, are recent and not mitigated by the passage of time. While he acknowledged that he might be a binge drinker that sometimes gets out of control, he failed to provide evidence of successful rehabilitation. Though he successfully completed the court-ordered alcohol safety action program in connection with his January 2015 DUI conviction, he subsequently resumed consuming alcohol. He was drinking a liter bottle of hard liquor every three to four days as of June 2016, and he was also arrested and charged with DWI 2nd in June 2016. AG ¶¶ 32(a) and 32(d) are not applicable.

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(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.

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 J in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the alcohol consumption and criminal conduct security concerns.

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.f:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge