



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00698

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

10/09/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding his alcohol consumption and criminal conduct. Eligibility to access classified information is granted

History of the Case

On June 7, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 (AGs) implemented by the DOD on September 1, 2006.

The Director of National Intelligence, by SEA Directive 4, App. A, National Security Adjudicative Guidelines (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect when the SOR was issued would not affect my decision in this case.

Applicant responded to the SOR on June 27, 2017, and requested a hearing. The case was assigned to me on May 8, 2018, and scheduled for hearing on July 25, 2018. The Government's case consisted of two exhibits that were admitted without objection (GEs 1-2). Applicant relied on one witness (himself) and eight exhibits that were admitted without objection (AEs A-G). The transcript of the proceedings (Tr.) was received on August 3, 2018.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented completion of his 2014 court-ordered probation. (Tr. 73-76) For good cause shown, Applicant was granted ten days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant documented his completion of his 2014 court-ordered probation completion. Applicant's submissions was admitted without objection as AE I.

Summary of Pleadings

Under Guidelines G and J, Applicant allegedly was arrested and charged with four alcohol-related offenses between July 2007 and June 2014. Allegedly, he was charged with probation violation in connection with June 2014 incident and served approximately 14 days in jail and was placed on alcohol monitoring for approximately 19 days, and on probation for an additional three years following an alcohol monitoring violation.

In his response to the SOR, Applicant admitted each of the alcohol-related incidents with explanations. He claimed he changed his alcohol consumption habits following his June 14, 2014 DUI incident, and since January 2017 he drinks more responsibly (one to three servings a month). He also claimed that he does not drive a vehicle while under the influence since his last DUI and has successfully completed an 18-month DUI program that covers education, awareness, and prevention.

Applicant further claimed that his monitoring violation stemmed from his exceeding the time allotted for his leaving his home under the terms of his monitoring program while attending his son's Christening. Applicant claimed that he never received any notification, or other communication, from his monitoring staff that he committed a monitoring violation.

Findings of Fact

Applicant is a 34 year-old information systems security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never been married and has one child (age four) from a prior relationship. (GEs 1-2) He earned an associate's degree in June 2014 and is currently enrolled (beginning in January 2017) in a bachelor's program at the same university. (GEs 1-2 and AE D; Tr. 39-40) He has maintained a high grade average in school (twice added to the Dean's list) and expects to complete his academic requirements for a bachelor's degree in December 2018. (Tr. 39, 72)

Applicant enlisted in the Marine Corps in June 2006 and was honorably discharged in June 2010. (GEs 1-2 and AE H; Tr. 38, 55) His service included multiple deployments to Iraq and other areas of conflict. Between June 2010 and June 2014, he served in the Inactive Reserve of the Marine Corps. (GEs 1-2 and AE H)

During Applicant's years of military service, he held a security clearance. (Tr. 40) Decorations, awards, citations, and campaign ribbons he was awarded while in active-duty military service include a Sea Deployment Ribbon (2nd award), Iraq Campaign Medal, Iraq Global war on Terrorism Service Medal, National Defense Service Medal, Navy Unit Commendation, Certificate of Appreciation, Good Conduct Medal, and Rifle Marksmanship Badge. (AE H)

Since January 2015, Applicant has been employed by his current defense contractor. (GEs 1-2; Tr. 42) Between December 2012 and December 2014, he was employed by another security firm. (GEs 1-2) He reported unemployment between June 2010 and June 2012.

Alcohol history

Applicant was introduced to alcohol at the age of 18. (AE 2; Tr. 54) He consumed an average of one six-pack of beer a week for the first few years. (GE 2) Between 2005 and January 2014, he consumed an average of six to eight beers on a bi-weekly basis and sometimes two hard drinks monthly. He considered his consumption of alcohol to be moderate during these years. (GE 2)

Applicant maintained the same rate of alcohol consumption until June 2014, after which he cut back significantly on his alcohol use. He has never felt that he abused alcohol or developed a dependence on it. (GE 7) He has never received any alcohol counseling outside of the alcohol monitoring program he completed in November 2014. (AE F)

Alcohol-related incidents

Between July 2007 and June 2014, Applicant was arrested for alcohol-related incidents on four separate occasions. (GEs 1-2; Tr. 43-46) In July 2007, he was arrested, while serving in the Marine Corps, for DUI and open container. (GEs 1-2) Arresting police afforded Applicant the option of referring the incident to his command for disciplinary action, which Applicant accepted. Arresting police further advised Applicant that he would need to address the incident with his command once he returned from his scheduled deployment in Iraq. (Tr. 48-49) Based on this arrest, Applicant's command issued a written reprimand and counseled him, but did not refer him for non-judicial punishment. (Tr. 50-53)

Two years later (in January 2009), Applicant was awarded non-judicial punishment by his Marine Corps command for being drunk and disorderly in a local restaurant. (GEs 1-2; Tr. 53-55) He admitted to consuming 10 to 12 servings of mixed cocktails and beer. (Tr. 54) His awarded punishment included reduction in rank that was suspended for a period of six months and never imposed. (AE G; Tr. 36)

In January 2014, Applicant was arrested and charged with DUI after consuming three to four beers at dinner at a local restaurant. (GEs 1-2; Tr. 55-56) While driving home, he was stopped by highway patrol officers who administered a breathalyzer on him. (GEs 1-2; Tr. 56) He registered a .07 per cent blood-alcohol content (BAC) reading and was arrested for DUI. (Tr. 57-58)

Appearing in court to answer the January 2014 charges, Applicant pleaded no contest to a reduced wet reckless charge and was placed on probation for two years by the court with the following conditions: abstain from alcohol and attend and complete a six-week first offender alcohol program. (GEs 1-2; Tr. 58) Applicant documented his successfully completing his first offender program in June 2016. (AE C; Tr. 58-59)

In June 2014, Applicant was arrested and charged with DUI and probation violation for violating his monitoring requirements of his first offender program. The monitoring violation stemmed from his exceeding the time allotted for his leaving his home under the terms of his monitoring program while attending his son's Christening. (GE 2 and AE F; Tr. 64-65) Appearing in September 2014 for his sentencing following several pre-trial hearings, the court sentenced him to 14 days in jail (13 days of actual incarceration with one day of credit), placed him on alcohol monitoring for 19 days with an alcohol-monitoring bracelet, and extended his probation to three years. (GEs 1-2; Tr. 63-69)

Applicant has since completed his monitoring and probation requirements. (AE I and AEs C and I; Tr. 69-70) He has had no further incidents of alcohol abuse since his last incident in June 2014 and assures that he currently drinks responsibly and infrequently (i.e., two to three drinks a month). (Tr. 69-71) Applicant's assurances are credible and accepted.

Endorsements

Applicant provided letter from the dean of his business school attesting to reliability and trustworthiness as a bachelor's degree candidate. (AE A; Tr. 40) His documentation includes admission to an honorary fraternity while enrolled in his associate's degree program. (AE E; Tr. 39) He also provided certificates of appreciation from his employer and a certificate of admission to an honorary fraternity at his university. (AEs B and E)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Alcohol consumption

The concern: 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.

Criminal Conduct

The Concern: 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.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant presents with a considerable history of alcohol-related incidents (four in all) over an extended period of time spanning 2007 and 2014. Probation conditions

associated with his last alcohol-related incident in June 2014 comprised completion of an alcohol monitoring program and three years of extended probation. Principal security issues raised in this case center on Applicant's history of alcohol-related offenses.

Alcohol and criminal conduct concerns

Applicant's problems with recurrent alcohol-related incidents over a seven-year period raise concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, one disqualifying condition (DCs) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol abuse disorder."

Cross-referenced under Guideline J (criminal conduct) are each of Applicant's alcohol-related incidents. Applicable DCs under Guideline J are: DC ¶¶ 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," 31(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," and 31(d), violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program."

Applicant's completion of his court-ordered first offender alcohol program in June 2016 and probation (completed in September 2017) entitle him to application of MC ¶ 23(a) of Guideline G, "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." Applicant's completion of his ordered first offender alcohol program and probation associated with his last alcohol-related incident in June 2014, in addition to his maintenance of an infrequent rate of alcohol consumption for the past four years, are enough to facilitate safe predictions that he will avoid any abusive drinking in the foreseeable future. His assurances are sufficient to warrant the full application of MC ¶ 23(a).

Cross-referenced criminal conduct mitigating conditions are applicable as well. MC ¶¶ 32(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 32(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," apply to Applicant's situation. For the most part,

these cross-referenced criminal conduct allegations overlap the same allegations alleged under Guideline G and do not require separate discussion.

Whole-person assessment

Appellant is well-regarded by his supervisors and has been highly successful in his undergraduate studies. He is currently on track to earn his bachelor's degree and has earned contributed a good-deal to the nation's defense efforts with his completed military service. In recognition of his contributions to the Marine Corps, he was awarded numerous decorations, medals, citations, and campaign ribbons.

Taking into account Applicant's history of alcohol-related incidents away from work, his counseling initiatives, his avoidance of any recurrent alcohol-related incidents, his display of convincing probative evidence of a seasoned track record of generally infrequent drinking over the past four years, his educational successes, his military service contributions, the applicable guidelines, and a whole-person assessment of his reformed drinking practices, safe predictions can be made about his avoidance of alcohol-related incidents in the foreseeable future.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

GUIDELINE J (CRIMINAL CONDUCT) : FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

