



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



In the matter of:)
)
) ISCR Case No. 17-01077
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/06/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline G, alcohol consumption. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 15, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The DOD acted 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 June 8, 2017.

On July 12, 2017, Applicant answered the SOR and requested a hearing. The case was assigned to me on October 11, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2017, and the hearing

was held on January 18, 2018.¹ The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through C, which were admitted into evidence without objection. The record remained open until February 16, 2018, and Applicant submitted AE D through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 26, 2018.

Findings of Fact

In Applicant's answer, he admitted all the SOR allegations. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 41 years old. He is divorced and has two children. He has worked for a defense contractor since October 2017. He served in the Air Force as an officer for 13 years before he was administratively separated due to his alcohol incidents. He was a major (O-4) at the time of his involuntary separation. He holds a master's degree.²

The SOR alleged Applicant: (1) was arrested for driving under the influence (DUI) of alcohol in June 2000, for which he received nonjudicial punishment; (2) was charged and convicted of DUI in September 2011; (3) received detoxification treatment, attended inpatient alcohol treatment from November 2011 to January 2012, where he received an alcohol dependence diagnosis, and attended a 21-week outpatient treatment program completed in April 2012; (4) was administratively separated from the Air Force in October 2013 because of the two DUI offenses, and; (5) was charged with DUI in September 2016, for which he was found guilty and was sentenced to 70 days confinement, two years supervised probation, community service, and completion of an alcohol education course. (SOR ¶¶ 1.a-1.e).

During his hearing testimony, Applicant admitted responsibility for all the alcohol incidents alleged in the SOR. In May 2000, Applicant graduated from college and was commissioned as a second lieutenant in the Air Force. In June 2000, he was apprehended for operating a vehicle while impaired at the Air Force Base where he was stationed. His blood alcohol content (BAC) was .18. He accepted nonjudicial punishment from his commander, which resulted in his forfeiture of pay and a reprimand. As a result of this offense, he attended alcohol education classes over the course of six months. He did not attend Alcoholics Anonymous (AA).³

¹ The hearing was originally scheduled for January 16, 2018, but due to an administrative error, Applicant believed the hearing was set for January 18, 2018. The hearing was held on January 18, 2018.

² Tr. 7, 19, 28, 30, 32; GE 1.

³ Tr. 19-20, 24-25; GE 1-2.

In September 2011, Appellant was arrested for DUI. He was a major in the Air Force at the time of this incident. He was stopped by law enforcement for following another vehicle too closely. He was given a BAC test, which indicated .20. In 2012, he pleaded guilty to the DUI charge and was sentenced to two years probation and he was required to have an interlock device placed on his car. He also accepted nonjudicial punishment from his commander. Through the Air Force, he received the following alcohol treatment: 30 days of inpatient detoxification, 60 days of in-patient alcohol treatment programs, and 21-weeks of outpatient alcohol treatment programs. He was diagnosed as alcohol dependent during this time. He claimed he began attending AA meetings after this offense and continued that effort for about 18 months. He stopped attending because he did not find it helpful any longer. He was involuntarily separated by the Air Force in 2013. He received a general discharge under honorable conditions.⁴

On September 17, 2016, Applicant had physical custody of his daughter for the weekend. She texted him that evening telling him she would be staying with a friend that night and he did not need to pick her up. Applicant drank approximately 10 shots of vodka thereafter to help him sleep. His daughter called later in the evening and stated she needed a ride home. Applicant decided to go get her. He admitted not thinking about having someone else pick her up. During his trip to pick up his daughter, Applicant hit another car in a parking lot. Law enforcement became involved and Applicant was given a BAC test which registered at .23. He was arrested for DUI. He pleaded guilty and was sentenced in April 2017 to two years probation, 70 days confinement with work release, monitored sobriety enhanced outpatient treatment program, level 2 alcohol education, 86 hours of alcohol therapy, community service, attending a victim impact panel, and fines. His probation does not expire until April 2019. However, his probation officer supports easing his probation requirements effective April 2018. In 2016, Applicant was seen by a licensed professional counselor (LPC). He failed to inform the LPC of his 2000 operating under the influence offense. The LPC reported that “he is diagnosed with alcohol dependence and depression.” She further stated that his immediate prognosis is good. Applicant’s family physician opined that his “relapse” was related to his insomnia and his tinnitus leading to depression. Applicant claims sobriety since his September 2016 arrest and offers his negative alcohol test results as proof of his sobriety. He also has become involved with AA once again. He claims to attend meetings weekly with the Monday before the hearing being the last time he attended. He does not have an AA sponsor.⁵

Applicant’s security officer recommends he be given access to classified information. He based this recommendation on Applicant’s candidness during his pre-employment interview process where he disclosed his alcohol issues.⁶

⁴ Tr. 26-30, 33-34, 40-41; GE 2.

⁵ Tr. 21-24, 37, 40, 43-45; GE 2; AE B-G.

⁶ AE A.

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 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, these guidelines are applied 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(a), the entire process is a careful weighing 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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

AG ¶ 21 expresses the security concern 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 are potentially applicable in this case:

- (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 whether the individual is diagnosed with alcohol use disorder;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.

Applicant's nonjudicial punishment by the Air Force for operating a vehicle under the influence in 2000, his two DUI convictions in 2012 and 2017, and his diagnosis of alcohol dependence support the application of the above disqualifying conditions. Concerning SOR ¶ 1.d, I find for Applicant because the allegation merely states some of the collateral consequences from the two driving under the influence he felt while he was in the Air Force.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

- (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 established a 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's last adverse alcohol incident occurred in September 2016. In all three of Applicant's drinking and driving offenses his BAC was at least twice the legal limit. In 2000, his BAC was .18 (as a brand new second lieutenant in the Air Force); in 2011, his BAC was .20; and in 2016, his BAC was .23 (when he was on the way to pick up his daughter). Applicant's offenses establish a pattern of alcohol misuse that under these circumstances constitute frequent behavior. His poor judgment on three different occasions, while abusing alcohol and driving, certainly casts significant doubt on his reliability, trustworthiness, and good judgment. Applicant stated that he accepted responsibility for his actions, however, he has failed to provide sufficient evidence to show he has overcome his alcohol dependence and abuse problems. He claims abstinence since being on probation, which is a condition of his probation. His history does not support his maintaining abstinence once the constraint of probation is removed. He has not established a pattern of modified consumption or abstinence without the constraint of probation. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

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 the 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 considered Applicant's service, and the recommendation from his security officer. However, I also considered that he has had three alcohol incidents since 2000. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline G.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge