



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



In the matter of:)
)
) ISCR Case No. 17-01269
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated alcohol consumption security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. Applicant responded to the SOR on June 16, 2017, and elected to have the case decided on the written record in lieu of a hearing. On July 6, 2017, Department Counsel requested a hearing before an administrative judge.

The case was assigned to me on December 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2017, scheduling the hearing for January 16, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on January 24, 2018.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since September 2015. He is applying for a security clearance for the first time. He has an associate's degree. He is married with two young children.¹

Applicant is an admitted alcoholic with a history of alcohol adversely affecting his life. He was terminated from jobs in February 2014 and April 2014 for unsatisfactory performance. He did not drink on the job, but he drank on nights before he worked, resulting in him working with some alcohol still in his system or while hungover.²

Applicant realized that alcohol was a problem, and he admitted himself to a 30-day inpatient treatment program in May 2014. He was diagnosed with alcohol use disorder. He completed the program.³

Applicant was not ready for sobriety and he returned to drinking. He was arrested in April 2015 and charged with driving under the influence of alcohol (DUI). His blood alcohol concentration was .28%. In January 2016, he pleaded guilty to DUI and received probation before judgment. He completed the terms of the probation, which ended in January 2018.⁴

Applicant has been sober since July 2015. He received additional substance abuse treatment and alcohol education classes from August 2015 through 2016. He attends Alcoholics Anonymous (AA) meetings on an irregular basis. He relies on his support system of his family and utilizes AA and his sponsor if he feels the need. He realizes the seriousness of his actions and the consequences if he returns to drinking.⁵ I found him to be forthcoming and contrite.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹ Tr. at 20, 29; GE 1, 2.

² Tr. at 15-16, 21; Applicant's response to SOR; GE 1-4.

³ Tr. at 16-18, 26-28; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 16-19, 22-25, 29-30; Applicant's response to SOR; GE 1, 2, 5.

⁵ Tr. at 20-23, 27; Applicant's response to SOR; GE 2.

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(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."

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).

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 several conditions that could raise security concerns under AG ¶ 22. 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, 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 was terminated from jobs in February 2014 and April 2014 for unsatisfactory performance. He did not drink on the job, but he drank on nights before he worked, resulting in him working with some alcohol still in his system or while hungover. He realized that alcohol was a problem, and he admitted himself to a 30-day inpatient treatment center in May 2014, where he was diagnosed with alcohol use disorder. He returned to drinking and was arrested for DUI in April 2015. The above disqualifying conditions are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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; 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 is an admitted alcoholic. He realized that alcohol was a problem, and he admitted himself to a 30-day inpatient treatment program in May 2014. He was not yet ready for sobriety; he returned to drinking; and he was arrested for DUI. He received additional substance abuse treatment and alcohol education classes, and he has been sober since July 2015. He relies on his support system of his family and utilizes AA and his sponsor if he feels the need. I found Applicant to be forthright and contrite about the incidents and his drinking. He is committed to sobriety. I find that Applicant established a pattern of abstinence and alcohol consumption no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) are applicable. AG ¶ 23(d) is partially 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 Guideline G in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption 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: For Applicant

Subparagraphs 1.a-1.e: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge