



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 17-01557

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

10/29/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. National security eligibility for access to classified information is denied.

Statement of the Case

On July 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, Criminal Conduct, and G, Alcohol Consumption. 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 10, 2017. He requested a hearing before an administrative judge. The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of

Hearing on June 27, 2018 for a hearing on September 6, 2018. I convened the hearing as scheduled.

The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, presented two witnesses, and submitted Applicant Exhibits (AX) A through O, which were admitted into the record without objection. At the Government's request, the record was kept open for one week for submission of a document reflecting a 2018 alcohol incident to conform to the evidence revealed at the hearing. The document was received and marked as GX 8. DOHA received the transcript of the hearing (Tr.) on September 14, 2018.

Findings of Fact

Applicant is 50 years old. He works as an electrical engineer for a defense contractor. He is married and has two children. He served on active duty in the U.S. Marine Corps from 1985 until 1988, receiving a bad conduct discharge. (GX 1) He obtained his undergraduate degree in 1993. He has been with his current employer since 2001. He initially held a security clearance in 1986. He has held his current clearance since 2003. (GX 1) He completed his most recent security clearance application in March 2016.

Alcohol Consumption

Applicant has a history of alcohol-related problems since approximately 1983 to at least April 2016. (SOR 1.a) He was arrested in December 2014 and charged with DWI 1st. In March 2015, he was found guilty of DWI and sentenced to 45 days confinement (suspended); one year restricted license with ignition interlock; fined \$250 and required to attend a state alcohol safety action program. (SOR 1.b) Applicant was arrested on December 10, 2015 and charged with DWI 2nd offense; refusal to take a breathalyzer test; restricted license violation; and driving after the forfeiture of a license. He was sentenced to 180 days confinement (160 days suspended); three years unsupervised probation; \$500 fine and attendance at the state alcohol safety action program. For driving after forfeiture of a license, he was sentenced to six months confinement (suspended six months); three years unsupervised probation; and one year suspension of a license. (SOR 1.c) On April 4, 2016, Applicant was charged with public swearing and intoxication. He was found guilty of public swearing and intoxication in July 2016. (SOR 1.d) (GX 4-6)

Applicant was a social drinker since the age of 16. He believes he had an alcohol-related incident in the early 90's. (Tr. 61) He acknowledged that he was diagnosed with depression and received medication in about 2014. (AX B) Applicant experienced stress and started to self-medicate with alcohol. (Tr. 55) He received two DWI's in two years. (GX 3-5) All alcohol was removed from the home. Applicant attended inpatient treatment for 28 days from April 19, 2016 and was discharged on May 17, 2016. He successfully completed the program, which consisted of individual and group counseling, and other educational activities. (AX E)

In 2016, Applicant's employer initiated an internal program to monitor Applicant's behavior and use of alcohol. Certain restrictions were placed on Applicant to include: no use of alcohol at any time; scheduled meeting with a psychiatrist; random alcohol testing; attendance at AA meetings (at least 5 per week); family and addictions counseling; check in and out with work hours; parking in front of building; smoke breaks outside the break room area; lunch breaks no more than one hour. (AX C) In addition, Applicant lost his position as a supervisor. (Tr. 41)

The CEO of the company testified at the hearing that he has personally observed Applicant for the last 18 months. The formal memorandum was signed by the company officer and applicant in November 2016. If the terms of the agreement were not kept, Applicant could be terminated. (Tr. 34)

The President of the company, who is a retired Admiral, stated that he took the time and effort to give Applicant an opportunity to continue his employment, despite the history of alcohol abuse, because he has been a trusted employee for almost 20 years. He knows that Applicant has contributed greatly to the company and deserves the opportunity to continue to work for the company. (Tr. 35) He testified at the hearing that Applicant has progressed and the restrictions have ended. (Tr. 42) He also wrote a strong letter of recommendation for Applicant. (AX O)

Applicant continued alcohol treatment with a licensed clinical social worker (LCSW). He attends bi-weekly sessions and is no longer on medication. He attended AA and has a sponsor. He admits that he is an alcoholic. (Tr.57) Applicant's therapist wrote a letter of recommendation in August 2018. The LCSW noted that he has known Applicant for ten years and has treated him the past four years for alcohol abuse. He opined that Applicant has been open and honest about his behaviors and has taken responsibility for them. The therapist stated that Applicant had a "relapse" in May 2018 which resulted in a legal problem (the 2018 public intoxication conviction). Despite that incident, Applicant's prognosis is positive and that he shows a commitment to his sobriety. (AX M)

Applicant explained that as to the incident of public swearing and intoxication in July 2016, (SOR 1.d), he did not recall much about the event. Upon questioning, he stated that he had a "relapse" in March 2018, and told his employer. He acknowledged that the "relapse" occurred in March 2018, when he was arrested and pled guilty in April 2018. (Tr. 68) Applicant explained that he was distressed about a situation with his daughter and her fiancé who was killed. (Tr. 68) Applicant stated that he had thirteen months of sobriety before this event. He claimed that he has not had a drink since that time. (Tr. 71)

Applicant signed a statement of intent, dated September 5, 2018. (AX J) He also submitted a number of character references. Each letter attested to Applicant's dependability and trustworthiness. (AX A, F, H,) The letters indicated that the writer knew of Applicant's problem with alcohol.

At the end of the hearing, the Government requested that the record be kept open for one week so that the SOR could be amended to conform to the evidence of record. SOR allegation 1.e, about the arrest on or about March 18, 2018, and charge of Public Swearing and Intoxication was added. On April 27, 2018, Applicant was found guilty of the charge and required to pay a fine and court costs. (GX 8) Applicant's attorney responded and presented a submission within the allotted time. (AX P)

Criminal Conduct

The SOR (2.a) cross-alleged the information alleged in 1.a through 1.e. Applicant admitted to all SOR allegations in paragraph one. The history of alcohol abuse stems from 1983 to 2018.

Applicant admitted his 2014 and 2015 DWI convictions and the unsupervised three year probation. He is still on probation for one more year. He was arrested in 2016 and 2018 for public swearing and intoxication, and was found guilty.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, 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 relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

(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;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant has a history of alcohol abuse since 1983 to 2018. He was found guilty of a DWI in 2014 and 2015. He received a three year unsupervised probation. He was found guilty of public swearing and intoxication in 2016 and 2018. These incidents that involved drinking are cross- alleged under Guideline J. Applicant admits his diagnosis for an alcohol disorder and received treatment. These facts establish prima facie support for the foregoing disqualifying conditions, and shifts the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (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 sought treatment in 2014. He completed an inpatient and outpatient program. He was compliant with both. He readily acknowledges that alcohol was ruining his life. He had been sober for about 13 months, until he had another public intoxication conviction in 2018. He submitted information from his therapist who states he has a good prognosis despite the “relapse” in 2018. He attends AA meetings, and receives counseling. The therapist report stated that Applicant was forthright and had insight into his situation. He has a sponsor in AA. His employer is monitoring him and recommends him for work and a security clearance. However, the pattern of alcohol “relapse” continues despite his good efforts. He is also still on probation. His latest relapse was in March 2018. He has not mitigated the security concern under the alcohol guideline.

Guideline J: Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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.

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (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;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (c) individual is currently on parole or probation.

As discussed under Alcohol Consumption, Applicant has four alcohol-related convictions from 2014 to 2018. He has a history of alcohol abuse and intoxication from 1983 to 2018. He is currently on unsupervised probation. The evidence establishes the above three disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

- (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 has not mitigated the criminal conduct concerns. His pattern and relapse in 2018 prevent reliance on passage of time. He has been addressing his alcohol disorder but it is not unreasonable to expect a longer period of time to show that he has fully mitigated under this guideline. He receives partial credit for his treatment and his good efforts. He has a good recommendation from his employer, but his 2018 involvement in a legal alcohol incident negates full mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is respected by those that know him. He performs well at work. He was in the military. He has worked at his current employment for 17 years. He has held a security clearance since 2003. He has excellent letters of recommendation. He admitted and obtained help for his alcohol problems. He acknowledged that he is not the same person as before. He successfully completed inpatient and outpatient programs. He is doing everything to stay sober. He has a sponsor in AA. He is described as a good father by his wife.

Applicant however has had alcohol convictions in 2014, 2015, 2016 and 2018. He was monitored by his employer and one condition was to abstain from alcohol. In 2018, due to stress, he again resorted to alcohol. This is troubling. If another very stressful incident occurs it is not clear how Applicant would react to another stressful incident. He has made great strides, but the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant has not mitigated the concerns under Guidelines G and J.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-e:	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 grant Applicant access to classified information. National security eligibility is denied.

Noreen A. Lynch
Administrative Judge