



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01560

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline G (alcohol consumption) and Guideline J (criminal conduct). He mitigated the security concerns under Guideline H (drug involvement and substance misuse). Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 30, 2015. On July 10, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, H, and J. The DOD CAF 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.¹

Applicant answered the SOR on August 9, 2017, admitting all of the SOR allegations except for the allegations in SOR ¶¶ 1.f and 3.a. He also requested a hearing before an administrative judge. The case was assigned to me on August 28, 2017. On September 19, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2017. I convened the hearing as scheduled. Applicant waived the 15-days notice required under the Directive. (Tr. 7)

Government Exhibits (GE) 1 through 8 were admitted into evidence without objection. At the hearing, Applicant testified and presented favorable testimony from two of his supervisors, who both attested to his superb work ethic, honesty and trustworthiness. DOHA received the transcript (Tr.) on October 5, 2017.

Findings of Fact²

Applicant is 32 years old. He graduated from high school in 2003 and he recently obtained an associate's degree. He is working toward his Bachelors degree. Applicant was married in 2008 and divorced in 2009. He has custody of the one daughter from that marriage. Applicant has been employed as a personal computer technician by a federal contractor since October 2015. Applicant served honorably in the U.S. Army from 2005 to August 2013, when he was medically discharged for Post-Traumatic Stress Disorder (PTSD). (Tr. 51) He deployed to Iraq for a 15-month period of combat operations, and to Afghanistan for a 12-month period in 2010 - 2011. (Tr. 47) He was on near constant patrols in Afghanistan and endured multiple improvised explosive device (IED) blasts. (Tr. 46-49) Applicant was subsequently diagnosed with traumatic brain injury (TBI), PTSD, and injuries from his wartime service. (Tr. 50) He also injured his back in theater, and was prescribed opioids to treat the pain by Army medicine. (Tr. 37) Applicant became addicted to the opioids and had to go through a withdrawal protocol. (Tr. 76) He is rated 70% disabled by the Department of Veterans Affairs (VA).(Tr. 52)

On August 30, 2015, Applicant completed a Security Clearance Application (SCA),³ and in section 22 (police record) he disclosed DUI arrests in June 2012 and August 2013. In his Answer to the SOR dated August 9, 2017, Applicant admitted the alcohol related allegations in SOR ¶¶ 1.a through 1.e, and he denied SOR ¶ 1.f. He

¹ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

² Unless stated otherwise, the source of the information in this section is Applicant's August 30, 2015 Security Clearance Application (SCA) (GE 1) and his two summaries of clearance interviews by a background investigator. (GE 3).

³ GE 1.

admitted the drug-related allegation in SOR ¶ 2.a, and denied the allegations of criminal conduct in ¶¶ 3.a and 3.b. His admissions in his Answer are adopted here as findings of fact, including the two DUI's and one time use of cocaine as a private in 2006. (Tr. 59, 62) This cocaine use occurred when Applicant was a new soldier. He joined a celebration when his unit completed its first field exercise. Applicant drank so much that he blacked out and doesn't remember ingesting the cocaine. A subsequent urinalysis test revealed its presence. (Tr. 60) He was punished under Article 15 of the UCMJ. (GE 6) This was an isolated incident and not likely to recur.

Applicant testified credibly that he had difficulties upon his return from Afghanistan. He hit a "rough patch" in 2012–2013 and started drinking heavily to cope. (Tr. 46) He was self-medicating. (Tr. 74) "The loss of friends, and just about four years of combat . . . patrols every day . . . it got to me." (Tr. 45) Consequently, he was arrested for two DUI's within a 14-month period. After his DUI arrest in 2012, while Applicant was on active duty, he was ordered to attend alcohol – substance abuse prevention course ("ASAP") including attendance at Alcoholics Anonymous ("AA") meetings. He completed the ASAP course, and last attended an AA meeting in 2014. (Tr. 72) SOR ¶ 1.e simply alleged his treatment and will be disregarded as it is not a disqualifying condition.

During the treatment, he was diagnosed with alcohol abuse and opioid dependence in 2012. (GE 8) He refrained from drinking entirely for one year following treatment. Nonetheless, he returned to alcohol and continues to drink on social occasions but never to excess. (Tr. 69 - 70) He also had court-ordered treatment from August 2013 to March 2014, following his second DUI. (Tr. 58) Again, he attended AA meetings. (Tr. 71) He refrained from alcohol use for one year following his second DUI, but later relapsed. In answers to interrogatories, Applicant stated that he presently drinks about once a week, only moderately, and he prefers beer and bourbon as a night cap. (Tr. 44) Applicant last drank to the point of intoxication during the 2015 and 2016 Super Bowl games. (GE 4, Tr. 80-81)

In his subject interview on January 12, 2017, Applicant stated that he contacted the court and spoke to a probation officer about the warrant that issued for his arrest in February 2015 as alleged in SOR ¶ 3.a. The warrant issued because Applicant failed to appear in court in early January 2014 to answer misdemeanor charges of failure to have proper registration for his vehicle. (GE 7) Applicant was told by the probation officer that he had failed to submit his drug and alcohol awareness class completion paperwork to probation as required. (GE 3, p. 16) Therefore, the warrant is still outstanding. (GE 7) The record was kept open for over two weeks specifically so that Applicant could provide documentation to show that he had satisfied the requirements of his probation and the warrant was recalled. (Tr. 39, 47) Four different times during the hearing, Applicant was reminded that he needed to provide these post-hearing documents. He was directed to make a list of the specific items requested, including probation documents, his DD-214, medical – VA documents to show that he is 70% disabled. He continues to treat with a VA Psychiatrist for mental health issues related to his deployments. (Tr. 84- 85) No post-hearing documents were provided.

Policies

DOD took action in this case 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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 adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. 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 as to obtaining 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 as to 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

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 is 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 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 had two alcohol-related incidents, the DUI arrests in June 2012 and August 2013. He was diagnosed as opioid dependent and an alcohol abuser in 2012. Nonetheless, Applicant testified that he continues to drink alcohol socially, but not to excess. He disclosed his continuing transgressions in his answers to interrogatories and

in his testimony including drinking to inebriation as recently as February 2016 at a Super Bowl party. SOR. AG ¶¶ 22(a),(d), and (f) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. 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's last alcohol-related arrest was in August 2013. His DUI offenses have been mitigated by the passage of time. He has completed treatment twice, attended AA meetings, and reduced his alcohol intake. An inference can be drawn that Applicant has confronted his condition, and he is trying to cope with his dependence. However, since he still uses alcohol, he has not met his burden in establishing that sufficient time has elapsed since his last alcohol-related event in February 2016, and he has taken responsible measures to insure that it never happens again. The above-mentioned mitigating conditions do not apply except for AG ¶ 23(a) with respect to SOR ¶¶ 1.a - 1.b.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

Applicant used cocaine one time in 2006 while he was a young private in the Army. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant has provided evidence of completion of substance abuse-courses or rehabilitation, and attendance at AA meetings. His use of cocaine was an isolated event in 2006. He has abstained from drug use since then. He was punished by the Army at non-judicial punishment. He has disassociated from friends who use illegal drugs, and intends to abstain in the future. His drug use has been mitigated by the passage of time and it no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) and AG ¶ 26(b) are applicable.

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant'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:

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 and trustworthiness; and

31(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has admitted to two arrests for DUI. His failure to appear and subsequent issuance of a warrant, have been established by the Government's evidence. (GE 5 and GE 7) The above disqualifying conditions are applicable.

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

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.

My analyses above under administrative guidelines G and H are the same under this administrative guideline J, and are herein incorporated by reference. Applicant has completed two substance-abuse courses and had counselling through attendance at AA meetings. While AG ¶¶ 32 (a) applies to mitigate the cross-alleged allegations at SOR ¶¶ 3.b, Applicant has produced no documentation showing that he mitigated the concern in SOR ¶ 3.a. He provided no evidence that the terms of his probation following his second DUI arrest, have been satisfied and the warrant withdrawn, despite repeated requests.

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 have incorporated my comments under Guidelines G,H and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has served honorably in the Army and is suffering the lingering effects of combat. He has completed substance-abuse courses and counseling. Most importantly, Applicant did not resolve the specific violations alleged in the SOR ¶ 3.a, and he continues to use alcohol.

Applicant's criminal violations and inability to follow rules and instructions, and his continuing alcohol misuse remain security concerns. He has a diagnosis of alcohol abuse and opioid dependence, and he testified that he drank excessively at Super Bowl parties in 2015 and February 2016. This leads me conclude that his alcohol abuse is not yet under control. These transgressions were not minor or infrequent, and they were not committed under such unusual circumstances that they are unlikely to recur. There is insufficient evidence to conclude that Applicant has acknowledged the egregiousness of his alcohol abuse or taken steps to alleviate the stressors or circumstances that contribute to his alcohol consumption, to insure that such behavior does not recur. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guidelines G and J.

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.b, and 1.e:	For Applicant
Subparagraphs 1.c, 1.d and 1.f:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge