



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 17-01577

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: Paul J. Malone, Personal Representative

05/03/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his use of alcohol. His request for a security clearance is granted.

Statement of the Case

On March 17, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. On March 9, 2017, he completed a personal subject interview (PSI) with a government investigator. Based on the results of the completed background investigation, Department of Defense (DOD) adjudicators could

not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On July 31, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for alcohol consumption (Guideline G). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on January 24, 2018, and convened the requested hearing on March 6, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 and 2. Applicant testified and proffered Applicant Exhibits (AX) A – F. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on March 15, 2018.

Findings of Fact

Under Guideline G, the Government alleged that Applicant disclosed in his PSI that he had driven while intoxicated every four or five months (SOR 1.a) and that he had done so as recently as the weekend before his PSI (SOR 1.b). In response, Applicant admitted, with explanations, both allegations. In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 29 years old. In May 2011, he graduated *magna cum laude* from a state university with a bachelor's degree in engineering. Appellant's academic achievements included numerous awards for honors and membership in elite academic and professional societies. He has worked as an engineer for his current employer since March 2016. From August 2011 until February 2016, he worked in a similar position for a different defense contractor. Applicant's performance evaluations for the period 2013 through 2017 reflect excellent work, professionalism, good character, and potential for success. Appellant also became an Eagle Scout before attending college. (GX 1; AX D; AX E; Tr. 18 – 19.)

Appellant first received a security clearance through sponsorship by his previous employer. He currently is trying to obtain eligibility for a top secret clearance with access to sensitive compartmented information (SCI). To that end, he knows he will have to complete a polygraph examination. Applicant has never been arrested for any alcohol-related offense. But for the information he disclosed in his PSI, he has never been involved with any documented alcohol-related misconduct that resulted in involuntary counseling or disciplinary proceedings. He has never been diagnosed with or treated for alcohol abuse or dependence. Nonetheless, during his March 9, 2017, personal subject interview (PSI) with a government investigator, Applicant disclosed that he had, at times, driven after consuming alcohol. He opined in the PSI that he may have been legally intoxicated on some of those occasions, including most recently during the weekend before the PSI. (Answer; GX 2; Tr. 46 – 47)

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

Applicant began using alcohol in college. Persons who have known him during and after college over the past decade have never known Applicant's use of alcohol to be abusive or in any way problematic. He usually drank beer and was never out of control. A co-worker since 2016 testified that Applicant never abused alcohol at company or social gatherings, and confirmed that Applicant abstains from alcohol whenever they are at social gatherings together. Applicant's fiancée has known him for ten years. She characterized Applicant's alcohol use as moderate after college (no more than two or three beers on any one occasion).

In response to interrogatories, Applicant stated he drank one or two pints of beer two or three nights weekly, and three or four pints every other weekend. In response to interrogatories, Applicant stated he was last intoxicated in June 2017. Applicant's fiancée testified that after his PSI in March 2017, Applicant changed his approach to alcohol and greatly moderated his drinking. Other witnesses also testified as to their observations of the change in Applicant's behavior after the PSI, and characterized his use of alcohol after March 2017 as "restrained." Another long-time associate wrote that Applicant takes the security clearance process very seriously and that he has been very concerned about any personal conduct that would cast doubt on his suitability for clearance. (Answer; GX 2; AX B; Tr. 22 – 41)

After receiving the SOR, Applicant stopped drinking. He also enrolled in an alcohol awareness and recovery program that is a variation of Alcoholics Anonymous. Applicant's attendance and participation in that program continues and has been very productive. The program's coordinator, a clinical psychologist, corroborated Applicant's claim of abstention from alcohol and endorsed his sobriety as sincere and reliable. The coordinator also determined that Applicant has never been addicted to alcohol. (Answer; AX B; AX C; Tr. 50)

Applicant also sought alcohol counseling from his company's employee assistance program (EAP) and received a positive evaluation of his alcohol use from a licensed professional counselor to whom he was referred by EAP. That evaluation corroborated Applicant's efforts to maintain sobriety, and stated that Applicant does not have a problem with alcohol. As such, his prognosis for continued sobriety is good. (Answer; AX A; Tr. 49)

Applicant has changed the way he socializes with his friends and coworkers. Whereas before he would go to craft breweries on weekends, he now engages in other events that do not emphasize alcohol consumption. (Answer; Tr. 54 – 56)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,²

² See Directive. 6.3.

and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁵

Analysis

Alcohol Consumption

Applicant's disclosures about his use of alcohol reasonably raised a security concern that is stated at AG ¶ 21, as follows:

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; AG ¶ 2(b).

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.

More specifically, Applicant's disclosures require application of the disqualifying condition at AG ¶ 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 use disorder.

Although never arrested with an alcohol-related offense or diagnosed with any alcohol use disorder, Applicant disclosed drinking sufficient quantities of beer that support the likelihood that he may have driven while intoxicated as recently as March 2017. By contrast, and more important, Applicant was concerned he may have a problem with alcohol that would undermine his suitability for access to classified information if left unaddressed. To his great credit, Applicant moderated his drinking after his PSI and stopped altogether after receiving the SOR. Further, he presented information from longtime friends and associates, and from professional counselors, that shows he has stopped drinking. Applicant's information also shows he is unlikely to engage in adverse alcohol-related misconduct in the future.

All of the foregoing supports application of the following AG ¶ 23 mitigating conditions:

(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

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.

On balance, I conclude Applicant's use of alcohol does not pose a disqualifying security risk. He has mitigated the concerns raised under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has an excellent record of professional, academic, and personal

accomplishments. Friends and professional associates, who have known Applicant for most of the past decade, regard him as a person of great reliability and character. Applicant has no record of adverse conduct, yet felt compelled to ensure that he addressed his concerns about his alcohol use to the satisfaction of the Government. His candor and his actions regarding counseling and sobriety are sufficient to satisfy the security concerns raised by the Government's information. A fair and commonsense assessment of the record as a whole shows that the security concerns presented in the SOR are mitigated.

Formal Findings

Formal findings 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.b: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge