



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 17-01849

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not produce sufficient information to mitigate the security concerns raised by the Government's adverse information about his use of alcohol. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On June 30, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

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

On June 23, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline G (Alcohol Consumption).² Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On August 23, 2017, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on September 8, 2017, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁴ Applicant did not submit any additional information and the record closed on October 8, 2017. I received this case on January 16, 2018.

Procedural Issue

Department Counsel proffered summaries of subject interviews of Applicant conducted by government investigators on November 29, 2016, December 16, 2016, and December 19, 2016. (FORM, Item 4) In the FORM, Department Counsel did not advise Applicant of his options under paragraph E3.1.20 of the Directive. Paragraph E3.1.20 governs admission of documents such as Item 4 and requires witness authentication as a prerequisite of admissibility. Applicant did not object to the admissibility of Item 4. Absent notice to Applicant of his options regarding this particular document, I find his apparent waiver of objection to the admissibility of Item 4 was not a knowing and fully-informed decision. Accordingly, I have not considered Item 4 in reaching my decision in this case.

Findings of Fact

Under Guideline G, the Government alleged that in June 2000, Applicant was charged and convicted of driving while intoxicated (DWI) (SOR 1.a); that in November 2001, he was charged with driving under the influence of alcohol (DUI), evading a peace officer, and driving without a license (SOR 1.b); and that in 2003, Applicant was charged with DUI, for which he was convicted in 2004 and placed on five years of probation after four days in jail (SOR 1.c). The SOR further alleged that in January 2005 (SOR 1.d) and July 2006 (SOR 1.e), while Applicant was on probation, he was charged with DUI and probation violation. In July 2008, again while still on probation, he was charged with DUI and later convicted of the lesser included offense of reckless driving (SOR 1.f). In September 2015, Applicant was charged and later convicted of DUI, sentenced to two days in jail, and placed on probation for one year (SOR 1.g). (FORM, Item 1)

² See Directive, Enclosure 2. Adjudicators applied the adjudicative guidelines issued by the Director of National Intelligence (DNI) on December 10, 2016, and made effective for all security clearance adjudications conducted on or after June 8, 2017.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on five enclosed exhibits (Items 1 – 5).

⁴ See Directive, Section E3.1.7.

In his e-QIP, Applicant disclosed his most recent DUI arrest and explained he was sentenced as a first-time offender in the state where the arrest occurred. Law enforcement records obtained by investigators during Applicant's background investigation documented all of the arrests listed in the SOR. Further, Applicant has admitted SOR 1.a – 1.d, 1.f, and 1.g. He denied SOR 1.e. (FORM, Items 2, 3, and 5)

Applicant is a 62-year-old employee of a defense contractor, for whom he has worked since June 2016. Employment with his current employer and several others since 2005 has involved work in support of overseas military programs. Between July 1974 and February 1997, Applicant served in three different military branches in both active duty and reserve capacities. He and his wife have been married since 2010. Applicant did not submit any information regarding his past or current use of alcohol; nor did he document any alcohol-related counseling or treatment.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new 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 interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

⁵ See Directive, 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.⁹

Analysis

Alcohol Consumption

Available information about Applicant's alcohol-related arrests since 2000 reasonably raises a security concern under Guideline G, expressed at 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 facts established by Applicant's e-QIP disclosures, his admissions to the SOR, and law enforcement records produced by the Government 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.

By contrast, in response to the Government's information, Applicant did not provide information that supports application of any of the mitigating conditions at AG ¶ 23. The security concerns under this guideline are not mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). There is no information in the record that would resolve any of the doubts about Applicant's suitability for clearance

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is denied.

MATTHEW E. MALONE
Administrative Judge