



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



In the matter of:)
)
) ISCR Case No. 17-02154
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

July 19, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On June 28, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR (Answer) on July 26, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 26, 2017. The Defense Office of Hearings and Appeals (DOHA) had previously issued a notice of hearing on September 18, 2017, scheduling the hearing for November 8, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 3, which were admitted without objection. The record was left open until December 8, 2017, for receipt of additional documentation. Applicant

presented three pages of documents, which I marked Applicant's Exhibit (AppX) A. DOHA received the transcript of the hearing (TR) on November 17, 2017.

Findings of Fact

Applicant admitted to the two allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since 2011, and Applicant has held a security clearance since 2011. (TR at page 14 line 5 to page 16 line 22, and GX 1 at pages 32~33.)

Guideline G - Alcohol Consumption

1.a. In March of 2014, Applicant was arrested for Driving Under the influence of Alcohol (DUI). (TR at page 16 line 23 to page 19 line 1.) He subsequently pled guilty as charged, paid a \$1,400 fine, and completed "an eight hour class from Prime for Life." (GX 2 at pages 3~4.)

1.b. Less than two years later, in February of 2016, Applicant was again arrested for DUI. (TR at page 19 line 2 to page 24 line 17.) He subsequently pled guilty to a reduced charge of "Driving with [a] Measurable Controlled Substance [alcohol]." (GX 2 at pages 4~5.) Applicant was fined \$500, attended weekly "alcohol education classes," and his driver's license was "revoked" for a year. (*Id*, see also Answer)

Applicant still consumes alcohol, but at a much reduced rate, rarely finishing a complete drink. (TR at page 24 line 25 to page 27 line 18.) In July of 2017, the Clinical Director of a treatment program averred, in part, that Applicant showed "no signs of alcoholism." (Answer at page 12.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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.” 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 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 the applicant may deliberately or inadvertently fail to protect or 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 Executive Order (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. One condition clearly applies:

(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.

Applicant has two alcohol-related incidents (DUIs) in March of 2014 and again in February of 2016.

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's last alcohol related incident occurred more than two years ago. His alcohol consumption appears to have been greatly reduced, as testified to by the Clinical Director of a treatment program. (Answer at page 10.) Furthermore, those who know Applicant well aver he has learned from his past mistakes, and have no doubt as to his rehabilitation and trustworthiness. (AppX A.)

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has a laudable history of working in the defense industry and is respected by those who know him in the work place. (AppX A.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge