



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 17-02681

Appearances

For Government:

Aubrey DeAngelis, Esquire, Department Counsel

For Applicant:

Ryan C. Nerney, Esquire
The Edmunds Law Firm

May 16, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 24, 2014. (Government Exhibit 1.) On October 20, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines*, effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on November 16, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 19, 2017. The case was assigned to another administrative judge on December 22, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 12, 2018. The case was reassigned to me on January 31, 2018. I convened the hearing as scheduled on February 6, 2018.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through H, which were admitted without objection. Applicant testified on his own behalf, and called two additional witnesses. DOHA received the transcript of the hearing (Tr.) on February 13, 2018.

Findings of Fact

Applicant is 27 years old and single. Applicant served in the Navy for over seven years, receiving an Honorable Discharge in December 2016. He is seeking to retain national security eligibility for a security clearance. (Applicant Exhibit D; Tr. 46-47.)

Paragraph 1 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of engaging in excessive alcohol consumption. Therefore he is potentially unreliable, and untrustworthy.

In his Answer, Applicant admitted allegations 1.a and 1.b in the SOR with explanations. He denied allegation 1.c. He also submitted additional evidence to support his request for a finding of national security eligibility.

Applicant was involved in one alcohol-related incident while in the Navy. This occurred in June 2014, when he was 23 years old. Applicant went to a pair of nightclubs with two friends and became inebriated, and also possibly drugged against his will. A friend put Applicant into his car, where he overslept because of his drinking, and was late to work the following day. Several months later he received Non-Judicial Punishment under the Uniform Code of Military Justice for the offenses of Drunkenness, and Drunken or Reckless Operation. He received a suspended reduction in rank, a forfeiture of pay, and 45 days extra duty. He served his punishment, and was not reduced in rank. He continued to serve for an additional two years before his term of service ended and he was honorably discharged. (Tr. 50-60, 79-80, 91.)

In August and September 2014 Applicant attended five weeks of alcohol-related treatment at a military medical center. He received a Summary of Treatment letter on September 26, 2014. That letter contained several subparts. His Discharge Diagnosis in the letter was, "Alcohol Use Disorder; moderate." The first Aftercare Recommendation

contained in the letter was, "Maintain sobriety." He then had a year's worth of aftercare. (Government Exhibit 4; Tr. 60-64, 84-86.)

Applicant admitted that before the 2014 incident he often drank to excess when in the Navy. After the incident and during his treatment and aftercare he remained abstinent until about November 2015. After that time Applicant began drinking again, but at a reduced rate. His drinking decreased even more once he left the Navy and entered the civilian workforce in early 2017. Applicant stopped drinking altogether once this proceeding commenced in October 2017, stating, "[A]lcohol is clearly putting my career path, and my hopes and dreams in jeopardy." He has no current plans to resume drinking. If he does resume drinking, he pledges not to abuse alcohol. (Applicant Exhibit H; Tr. 64-69, 76-79, 81-83, 89-90, 92.)

Mitigation

Applicant received a substance abuse evaluation from a Licensed Professional Clinical Counselor, who is also Department of Transportation Substance Abuse Professional, in November 2017. She examined his medical records and interviewed Applicant, his father, mother, and step-father. She stated, "After interviews and assessment it appears that [Applicant] does not pose a risk for an alcohol dependence disorder at this time." (Applicant Exhibit A; Tr. 69-71, 86-87.)

Applicant called two witnesses. The first witness is Applicant's father, a retired sheriff's deputy. Applicant has lived with his father since he left the military. The witness testified that he believes Applicant to be responsible and to have matured in the four years since this incident happened. Applicant's father has noticed no issues with Applicant and alcohol since Applicant began living with him. (Tr. 15-30.)

Applicant's other witness is a co-worker. He has been both a friend and mentor of Applicant since Applicant began working for his current employer. The witness is a recovering alcoholic with 23 years of sobriety. According to the witness, Applicant has a reputation for working hard, and has quickly been advanced into a leadership position. With regard to Applicant and alcohol the witness stated he has never seen Applicant drink and testified, "I haven't had any, seen any exhibits of, of alcoholic behavior with him, and didn't know there was any problem until this was brought up, this situation was brought up." He has trusted Applicant in an important matter in his own personal life. (Applicant Exhibit G; Tr. 30-43, 45-48.)

Applicant provided several laudatory letters of recommendation. The writers include the commander, and executive officer of the military detachment Applicant supports. The commander stated that she finds Applicant, "reliable, motivated and more than competent." The executive officer's comments were similar in nature. A third letter is from the director of another military organization. This person oversees roughly 300 people. He strongly supports Applicant receiving national security eligibility. All the letters

of recommendation provide examples of Applicant's hard work, ability, and value to the company and program. (Applicant Exhibits B and C.)

Policies

When evaluating an applicant's suitability for a national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which reads in pertinent part:

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.

AG ¶ 22 describes four conditions that could raise security concerns and may be disqualifying 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 the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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; and
- (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.

Applicant had a single alcohol-related incident in the Navy. He also arguably drank to excess before 2014, and was diagnosed with Alcohol Use Disorder; Moderate at that time. All of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline includes two conditions in AG ¶ 23 that could mitigate the security concerns arising from Applicant's alleged alcohol consumption issues:

(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; and

(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 or modified consumption or abstinence in accordance with treatment recommendations.

Applicant has mitigated all the allegations in the SOR. Applicant admits drinking to excess before the June 2014 incident, which was almost four years ago. This single incident appears to be unique. As a result of this incident he went to prescribed treatment and aftercare, and remained completely abstinent from alcohol for at least a year, until November 2015. Once he left the service and began work in the private sector his alcohol consumption was greatly reduced because of the change in association. He is currently again abstinent. He has a recent evaluation from a licensed therapist finding that he does not currently have Alcohol Use Disorder. Both mitigating conditions apply to this case. Paragraph 1 is found for Applicant.

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 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. The single alcohol-related

incident in this case, and Applicant's excessive drinking, all occurred when he was young. He has modified his drinking habits considerably, shows the presence of rehabilitation, and is motivated to continue sobriety. Overall, the record evidence does not create doubt as to Applicant's present suitability for national security eligibility, and a security clearance.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

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 or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge