



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



In the matter of:)
)
) ISCR Case No. 17-03467
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Kenneth M. Roberts, Esq.

10/29/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 29, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. Applicant responded to the SOR on February 20, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on May 8, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 22, 2018, scheduling the hearing for July 10, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He worked for a defense contractor from 2002 through 2015, when he was hired by his current employer to work at the same location. As discussed below, he was terminated by his current employer in December 2015 and rehired in July 2016. He seeks to retain a security clearance, which he has held since the 1990s. He attended college for a period, but he has not earned a degree. He is divorced without children.¹

Applicant is an admitted alcoholic with a history of alcohol adversely affecting his life. He had an operation in 1990, and was told by a doctor that his “drinking days are over.” He began drinking again in 1995, and he entered an alcohol treatment program the same year. He completed the program and attended Alcoholics Anonymous (AA) meetings for a period. He remained sober until 1999. He entered another alcohol treatment program in 2000, where he was diagnosed as alcohol dependent. In 2002, a DOHA administrative judge determined that Applicant’s alcohol consumption was mitigated and continued his security clearance.²

Applicant remained sober until August 2015, when his undiagnosed depression worsened, and he suffered a relapse. His drinking affected his job, and he missed work. He received written warnings for taking unscheduled leave as a result of his drinking. He would stop drinking for a week or two and then resume. He self-reported his drinking to his employer.³

Applicant’s employer arranged through their employee assistance program (EAP) for him to attend a three-day inpatient alcohol detoxication program on December 21, 2015. He was released from the facility on December 24, 2015, with instructions to enter an outpatient program. Applicant did not like the facility. He was housed with people with mental illness, and the facility did not emphasize recovery.⁴

Applicant did not remain sober. During a night of heavy drinking in late December 2015, he fell, cut his head, and received a black eye. When he reported to work the next morning, he was still under the effects of alcohol. His employer terminated him.⁵

In January 2016, Applicant realized he had hit bottom and needed help. A long-time friend drove him to a 30-day inpatient rehabilitation program in a neighboring state.

¹ Tr. at 79-80, 83, 107; GE 1; AE A.

² Tr. at 94-98, 101-103; Applicant’s response to SOR; GE 2, 4.

³ Tr. at 24, 56-57, 82, 98-99, 102; Applicant’s response to SOR; GE 1, 2; AE A.

⁴ Tr. at 24, 56-57, 84; Applicant’s response to SOR; GE 1-3; AE A.

⁵ Tr. at 33-34, 57-58, 63-65, 99-101; Applicant’s response to SOR; GE 1-3; AE A.

Applicant paid \$32,000 for the treatment. While at the facility, he was diagnosed with alcohol dependence and depression. He was placed on medication for his depression.⁶

Applicant completed the program and focused on sobriety and his health. He still regularly attends AA meetings and has fully embraced the 12 Steps. He has a sponsor, and he is a sponsor. He is compliant with his depression medication. He has not had a drink since before he entered the facility in January 2016. He realizes the seriousness of his actions and the consequences if he returns to drinking.⁷ I found him to be forthcoming and sincere.

Applicant was rehired in July 2016 by the company that terminated him. He is highly regarded, as reported by witnesses and documents submitted on his behalf. He is praised for his excellent job performance, responsible handling of classified information, work ethic, loyalty, patriotism, dedication, honesty, diligence, dependability, conscientiousness, reliability, trustworthiness, leadership, and integrity.⁸

Applicant was examined by a forensic psychiatrist in May 2018 for the purposes of his security clearance. His diagnostic impressions were substance use disorder, alcohol dependency, in remission; and major depressive disorder, recurrent, moderate (no suicide ideation). The psychiatrist felt that Applicant's undiagnosed and untreated depression significantly contributed to his 2015 relapses.⁹ He concluded:

At this juncture, [Applicant] has been on the job, valued by his employer, and has made significant adjustments in his psychosocial range and maintains treatment for his depressive disorder. He is fully restored and more apt to deal with future challenges without relapse.

I see no impairment that would prevent him from thinking, making judgements, taking supervision, fulfilling his duties or processing information. I do not find him vulnerable to untoward influence due to an addiction or a mental problem.¹⁰

Policies

This case is adjudicated 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,

⁶ Tr. at 71, 76, 83-86, 100-105; Applicant's response to SOR; GE 1, 2; AE A, I.

⁷ Tr. at 84-94, 101, 105-108; Applicant's response to SOR; GE 1, 2; AE A, D.

⁸ Tr. at 21-34, 54-76; GE 1; AE A, E-N.

⁹ Tr. at 35-53; AE B, C.

¹⁰ AE B.

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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 are potentially applicable in this case:

- (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;
- (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 is an admitted alcoholic whose battles with alcohol are well documented. The above disqualifying conditions are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. 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 received alcohol treatment in 1995, 2000, December 2015, and January to February 2016. He remained sober from 1995 to 1999 and from 2000 to 2015, but he relapsed and returned to uncontrolled drinking. His company arranged for him to attend a three-day inpatient alcohol detoxification program on December 21, 2015. He was released from the facility on December 24, 2015, but Applicant was unhappy with the program and yet again returned to uncontrolled drinking. During a night of heavy drinking in late December 2015, he fell, cut his head, and received a black eye. His employer terminated him the next morning when he reported to work still under the effects of alcohol.

In January 2016, Applicant realized he had hit bottom and needed help. He paid for his 30-day inpatient rehabilitation program in a neighboring state. While at the facility, he was diagnosed with depression and placed on medication. Applicant and the forensic psychiatrist felt that Applicant's undiagnosed and untreated depression significantly contributed to his 2015 relapses.

Applicant has been sober since January 2016. He is compliant with his depression medication. He regularly attends AA meetings. He has a sponsor, and he is a sponsor. He realizes the seriousness of his actions and the consequences if he returns to drinking. I found him to be forthcoming and sincere. I am cognizant that Applicant has been through this process before. Nonetheless, I find that he established a pattern of abstinence, and alcohol consumption no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a), 23(b), and 23(d) are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. I also considered Applicant's excellent character evidence and that the company that terminated him in December 2015, rehired him in July 2016, and completely supports him.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	For Applicant
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge