



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



In the matter of:)	
)	
)	ISCR Case: 18-00899
)	
)	
Applicant for Security Clearance)	

Appearances

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

November 19, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 21, 2014, Applicant submitted a security clearance application (e-QIP). On April 24, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct and 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 adjudicative guidelines (AG) effective after June 8, 2017.

Applicant answered the SOR on May 15, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on August 28, 2018, and the hearing was convened as scheduled on September 26, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered eight exhibits, referred to as

Applicant's Exhibits A through H, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 9, 2018.

Findings of Fact

Applicant is 35 years old, and is engaged to be married. He has a Bachelor's of Science degree in Engineering. He is employed by a defense contractor as an Engineer. He is seeking to retain a security clearance in connection with his employment. Applicant began working for his current employer in 2011, and has held a security clearance since 2014.

Guideline J – Criminal Conduct

The Government alleges that the Applicant has engaged in criminal activity that creates doubt about a person's judgment, reliability, and trustworthiness.

Guideline G – Alcohol Consumption

The Government alleges that the Applicant has engaged in excessive alcohol consumption, which 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.

Applicant testified that he began consuming alcohol after graduating from college in 2005. He estimates that he consumed alcohol about once a week at social gatherings, and never at home or alone. He normally consumed three to four beers at a time. He states that he very rarely drank to the point of intoxication. (Tr. p. 41.)

Prior to 2017, Applicant had never been arrested. On January 15, 2017, he was arrested and charged with Driving Under the influence of Alcohol and Driving While Blood Alcohol Level is .08% or More. He explained that on the evening in question he was driving home after attending a concert, where he consumed about four beers, and then went to a bar, where he drank another four beers, for a total of eight beers over a four hour period. Leaving the bar, Applicant was pulled over by the police and administered a breathalyzer. Applicant had a blood alcohol level of .15. Applicant believes that he passed the field sobriety test that was administered. Applicant pled guilty to both charges, and was sentenced to four days in jail, ordered to complete the six month First Offender Alcohol Program, and was placed on three year probation until 2020. (Applicant's Exhibit C.)

Five months later, on June 23, 2017, and before the first arrest was resolved, Applicant was arrested a second time for Driving Under the influence of Alcohol and Driving While Blood Alcohol Level is .08% or More. Applicant stated that one day after

finishing work, he and two of his coworkers went to a bar for a few drinks. (Tr. pp. 30-31.) Applicant felt that he needed something to lift his spirits since his first arrest and conviction were not reduced or dismissed as he would have liked. As Applicant drove home, he was pulled over and administered the breathalyzer. He states that his blood alcohol level was about .20. (Tr. p. 32) On March 5, 2018, he pled guilty to both charges. He was sentenced to 94 days in jail, ordered to complete the six-month Multiple Offender Alcohol Program, and was placed on five years unsupervised probation until 2023. (Applicant's Exhibit G.) Applicant paid the court fines related to the offenses. (Applicant's Exhibit D.) Applicant has not completed the Multiple Offender Alcohol Program and remains on probation until 2023. (Tr. p. 34.) He continues to attend Alcoholics Anonymous (AA) meetings about once a week as part of the court-ordered program. He also attends group meetings every other week, and in between those, has one on one counseling. Applicant recently completed his in-home confinement in lieu of the full 94 days in jail, on July 10, 2018. (Applicant's Exhibits E and F.) He has learned not to bottle up his feelings, which only make things worse. (Tr. p. 37.)

Applicant testified that he does not have an AA sponsor, but does have his fiancé to talk to if needs to talk. Applicant states that he last consumed alcohol in June 2017. He now knows for sure that he will not be drinking unless he knows that he has a ride. (Tr. p. 39.)

A letter from the Applicant's program manager dated September 25, 2018, indicates that Applicant is considered to be a serious-minded highly responsible person. He performs a superior job, is on time, and is within budgetary constraints. He is a respected leader within the organization. He works meticulously and carefully protects classified information. (Applicant's Exhibit H.)

Performance appraisals of the Applicant for 2016 and 2017 reflect favorable ratings in every category. (Applicant's Exhibits A and B.)

Policies

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, 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. According to AG ¶¶ 2(a) and 2(c), 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 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline J – Criminal Conduct

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

(c) individual is currently on parole or probation;

(d) violation of revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Appellant was arrested, charged and convicted on two separate occasions just last year with Driving Under the Influence of Alcohol and Driving with a Blood Alcohol Level of .08% or More. This evidence is sufficient to raise the above disqualifications.

The conditions set forth under AG ¶ 32 could mitigate security concerns (MCs) arising from Appellant's criminal conduct:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's recent history of two arrests and convictions for DUI, occurred just last year in 2017. He has not yet finished the court-ordered sentencing requirements and will remain on probation until 2023. He has not produced sufficient evidence to establish that future criminal problems are unlikely. He has not established mitigation under MC ¶ 32.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

- (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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

The evidence shows that Applicant recently incurred two arrests, charges and convictions for Driving Under the Influence of Alcohol. Never before has he had this problem. These incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

- (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 good 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;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment or relapse, and is making satisfactory progress in a treatment program; 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 failed to introduce sufficient evidence of rehabilitation. Although it has not been determined if he is an alcoholic or is alcohol dependent, he has had two alcohol-related incidents just last year resulting in convictions. He last consumed alcohol to excess in June 2017. His conduct was irresponsible and dangerous. He states that he now knows that if he is to drink again, he will make sure that he has a ride. Given the recent nature of his drinking problem, more time without drinking is needed to show the Government that he will not return to his old habits. ¶ 32 does not provide full mitigation.

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. Applicant last consumed alcohol in June 2017, after being arrested last year on two occasions for Driving Under the Influence of Alcohol. At this time, there is no strong evidence in the record to show that he will remain sober for any sustained period. He has failed to present sufficient evidence of rehabilitation to overcome his heavy burden to mitigate his alcohol abuse. Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge