



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



In the matter of:)
)
) ISCR Case No. 12-07907
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant mitigated the security concerns raised by a 2011 alcohol-related event at work. Clearance is granted.

Statement of the Case

On May 6, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on August 31, 2016. A complete copy of the file

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

² GE 3.

of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on September 13, 2016, and timely submitted a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7, and Applicant's FORM response is admitted as Applicant's Exhibit (AE) A, without objection.

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 59, has worked for his employer, a federal contractor, as an aircraft mechanic since August 2009. He was first granted access to classified information in 1987, during a previous period of employment with his employer between 1987 and 1999. Applicant's clearance lapsed between 2001 and 2006, when he owned and operated a restaurant franchise. He obtained a security clearance again in 2009 when he began his current job, but does not have access to classified information. Applicant completed his most recent security clearance application in October 2015 and disclosed that in 2011, his employer asked him to seek treatment related to his use of alcohol.³

Applicant admits that, in November 2011, he tested positive for alcohol at work. The record does not contain any information about the events that prompted the test. In response to the positive test result, Applicant's employer issued a final warning notice for violating company policy and placed Applicant on a corrective plan administered by the employer's Employee Assistance Program (EAP). The corrective plan included an alcohol evaluation, referral to an alcohol-treatment program, and random alcohol testing for two years from the date Applicant completed a treatment program.⁴

The EAP administrator, a physician, diagnosed Applicant as alcohol dependent and referred him a 30-day, outpatient treatment program. Applicant successfully completed the program, during which he was also diagnosed as alcohol dependent by a licensed substance abuse counselor. Upon intake, Applicant reported that he was consuming 12 to 18 beers daily. At discharge, he was given a good prognosis of remaining alcohol free. The discharge instructions recommended, "continuation of a twelve-step program, acquiring a sponsor, and working the twelve steps to recovery."⁵ The discharge instructions did not include specific instructions that Applicant remain

³ GE 3 - 4; AE A.

⁴ GE 6.

⁵ GE 6.

alcohol-free in the future. Applicant attended Alcoholics Anonymous from December 2012 to May 2013.⁶

Between February 2012 and October 2013, Applicant submitted to 15 random alcohol screenings as required by his employer. Each test was negative. In May 2012, a background investigator interviewed Applicant about his alcohol-consumption habits. Applicant began drinking alcohol in social settings as a teenager. Over time, his use progressed from drinking in social settings to drinking alone, although he could not pinpoint when the change occurred. Applicant acknowledged his drinking became a daily, all-day habit. He would not drink to intoxication, but would consume alcohol continuously throughout the day. Applicant admitted having a problem with alcohol until he completed the treatment program in December 2011. Applicant stated in his answer to the SOR that he appreciated the knowledge he received from the treatment program. He reported to the investigator that he had been sober since entering treatment in November 2011 and that he did not intend to consume alcohol in the future.⁷

By the time Applicant responded to a set of DOHA interrogatories in February 2014, he resumed drinking alcohol, consuming two to three beers at a time on a weekly basis. He denied drinking to intoxication or before reporting for work. In his May 2016 SOR answer, Applicant admitted that he continued to consume alcohol, but he did not do so daily or a “need-to-have basis,” but on weekends, vacations, and family gatherings. Despite his 2011 alcohol dependent diagnosis, Applicant does not believe that he is a chronic alcohol abuser and considers himself a reliable and trustworthy employee. Since the 2011 incident, Applicant has received multiple awards from his employer for his performance, and there is no evidence of any other alcohol-related incidents.⁸

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, 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

⁶ GE 5-7.

⁷ GE 4, 7.

⁸ GE 3, 5.

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 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.

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

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 record establishes a *prima facie* case under the alcohol consumption guideline. During his background investigation, Applicant reported alcohol-consumption habits indicating that at in at least 2011, he habitually consumed alcohol to impaired judgement, culminating in his reporting to work under the influence of alcohol. Because of this incident, Applicant submitted to alcohol evaluations from his employer’s EAP administrator and the alcohol-treatment program he attended. Both evaluations determined that Applicant had an alcohol use disorder.⁹

Applicant receives partial mitigation under AG ¶¶ 23(b) and (d) for acknowledging that his pattern of maladaptive use of alcohol, completing an alcohol treatment program, following through on the aftercare recommendations, and satisfying the terms of his

⁹ AG ¶¶ 22 (b) – (d).

employer's corrective plan. Neither mitigating condition fully applies because Applicant resumed his alcohol consumption, albeit on a modified level, and it is not clear from the record whether any level of alcohol consumption is appropriate given his alcohol use disorder diagnosis.

After a review of the records, I have no reservations about Applicant's ongoing security worthiness. Considering Applicant's completion of a treatment program and his satisfactory completion of his employer's corrective plan with the whole-person considerations in AG ¶ 2(d), the record contains sufficient evidence to mitigate the security concerns raised by the 2011 incident and Applicant's history of alcohol consumption. Applicant has held a security clearance for over 20 years. During that time, he has had one alcohol-related incident. He has no alcohol-related criminal history. There is no evidence to indicate that the 2011 positive alcohol test was more than an isolated incident. Since the 2011 incident, Applicant has received recognition and performance awards from his employer. Although Applicant continues to consume alcohol, he has established a pattern of modified consumption and there does not appear to be an ongoing problem that calls into question his current judgment, reliability, or ability to properly handle and safeguard classified information.

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, Alcohol Consumption

FOR APPLICANT

Subparagraphs 1.a – 1.d:

For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge