



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



In the matter of:)
)
) ISCR Case: 18-00782
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq., Attorney At Law, The Edmunds Law Firm

October 26, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On November 3, 2009, and February 12, 2015, Applicant submitted a security clearance application (e-QIP). On May 10, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), 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 adjudicative guidelines (AG) effective after June 8, 2017.

Applicant answered the SOR on June 26, 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 that same day and the hearing was convened as scheduled on September 25, 2018. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered seventeen exhibits, referred to as Applicant's Exhibits 1 through 17, which were admitted without objection. Applicant

testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 4, 2018.

Findings of Fact

Applicant is 54 years old, is engaged to be married a second time, and has three children from his first marriage. He has a Bachelor's of Science degree and extensive military training. He is employed by a defense contractor as an Operations Manager. He is seeking to obtain a security clearance in connection with his employment. Applicant began working for his current employer in 2012.

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 served on active duty in the United States Marine Corps from 1987 to 2007. He retired after almost 21 years of service as a Lieutenant Colonel. During his military career he had seven deployments, four of those were combat tours. (Applicant's Exhibits E.) Applicant has held a TS/SCI security clearance for over 30 years and has never incurred any security violations or been accused of mishandling classified information.

Applicant began consuming alcohol in high school at the age of sixteen. In the beginning he drank rarely at parties or social events. When he joined the Marines, he states that he became a social drinker. He had no problems with alcohol in the Marines. (Applicant's Exhibit F.) In 2008, after retiring from the Marine Corps, his marriage was troubled, as he found it difficult to get the-high power job his wife wanted him to have. His marriage continued to spiral downhill, and he started drinking more to cope with the situation. At this point, he would drink to the point of intoxication about two to three times a month. He continued to use alcohol to self-medicate and this frequency increased over time. Applicant testified that there were times when he would drink a six pack of beer in the garage by himself. (Tr. p. 83.) His wife was calling him an alcoholic in front of his children, and other people remarked that he had a drinking problem. Applicant decided to seek out help. (Tr. p. 33.)

In 2009, Applicant entered a 30 day alcohol inpatient treatment program at the Veterans Administration (VA) Medical Clinic. During this treatment, Applicant was diagnosed with Alcohol Dependence. He testified that he attended large and small group discussion groups, and spent some one-on-one time with a counselor.

Attendance at Alcoholic Anonymous meetings was recommended, but that there was no real aftercare program. Applicant was completely sober for about a year following this treatment.

Around his birthday, in August 2010, Applicant relapsed. He explained that after his wife celebrated his birthday with intercourse, she told him she wanted a divorce. That afternoon he had one drink consisting of three shots of gin with lemon juice. (Tr. p. 39) Applicant told his sponsor that he had consumed alcohol. In September 2010, Applicant drank again. His next drink was in June 2011, after his divorce was signed. (Applicant's Exhibit P.) He consumed alcohol again in July 2011, and continued to drink periodically.

From 2011 to 2014, although Applicant was divorced, he experienced other stressors in his life that triggered his drinking. In November 2011, he moved out of state to accept a new job. Two of his friends who were still on active duty were killed Afghanistan. Two other friends who had been on active duty with them had retired and committed suicide. He had aunts and uncles die. His father died in February 2014, and the CEO of his company died, unexpectedly, from cancer in May 2014. Applicant continued to consume alcohol, and once intoxicated, realized that he again needed help.

In November 2014, Applicant entered a second 30 day alcohol inpatient treatment program that included one-on-one counseling, four times a week. During this treatment, he was again diagnosed with Alcohol Dependence. Following this program, Applicant began telephonic counseling with one of the counselors from the treatment program. Applicant states that there was no real aftercare program recommended. Applicant was sober for about a year and a half before he relapsed again during the summer of 2016.

At some point, he learned that his girlfriend, who was living with him at the time, was abusing her prescription medication. Applicant's daughter, who was experiencing financial difficulties, moved in to live with the Applicant, and reported his girlfriend's drug abuse. The two women clashed. To deal with the stress, Applicant started drinking again. In June 2016, he consumed two to four beers during the weekend to relax and "chill out". One weekend he became intoxicated, and consumed three beers and some Jack Daniels. He called his counselor and told her about his relapse and she advised that he write everything down. At this point, Applicant started trying to follow her advice by caring for himself first, by focusing on a regular sleep cycle, and a structured week, including working out and eating right. Applicant states that he currently does not have a sponsor. (Tr. p. 95.) He believes that he has a strong support system in place. (Tr. p. 67.) He plans to seek out a therapist for one-on-one counseling sometime soon. (Tr. p. 97.) Applicant last consumed alcohol approximately two years ago and has no intentions of ever consuming alcohol again.

Applicant testified that he was not aware of his diagnosis of Alcohol Dependence from either of the inpatient treatment programs he attended until he received the interrogatories from the DoD in relation to his security clearance background investigation. Applicant said he was advised only to avoid alcohol abuse and not to trigger a situation that might cause him to drink. (Tr. p. 50.)

Applicant testified that he was evaluated by a physician, who told him that his program was strong, and that he should continue on with what he is doing. The physician determined that Applicant's alcohol dependence is currently in remission, sustained. (Tr. p. 68.) Applicant was also self-referred to assess his stability, judgment and reliability, and underwent a psychological evaluation in June 2018 for fitness for duty. Applicant's assessment was Alcohol Abuse moderate, in remission. (Applicant's Exhibit N.)

Letters of recommendation from professional associates, coworkers, and friends attest to Applicant's trustworthiness and reliability, professionalism, dedication to the pursuit of excellence, impeccable character and tireless work ethic. He is described as exceptionally articulate, with a demonstrated superior intellectual ability. He is recommended for a security clearance. (Applicant's Exhibit A.)

Applicant submitted a notarized Statement of Intent indicating that he never intends to consume alcohol again. He agrees that any future involvement with alcohol consumption is grounds for revocation of his national security eligibility. (Applicant's Exhibit O.)

Applicant's performance evaluations for 2013 through 2017 are favorable. (Applicant's Exhibit K.)

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 access 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 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:

(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; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

The evidence shows that Applicant is an alcoholic who was first diagnosed with Alcohol Dependence during his first 30 day inpatient treatment program at the VA medical Clinic in 2009. He claims that there was no aftercare program recommended. However, he did attend Alcoholic Anonymous (AA) meetings and found them helpful. After a year of sobriety, he relapsed. In 2014, he entered another 30 day inpatient treatment program, this time a private recovery center. He claims that this program also did not have a prescribed aftercare program, although he received some telephonic counseling. He remained sober for a year and a half before he relapsed again in June 2016. Applicant believes that he has now established the coping mechanisms to keep him from drinking again. He last consumed alcohol in 2016.

These incidents raise security concerns under AG ¶¶ 22(c), 22(d), and 22(f).

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; 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 of modified consumption or abstinence in accordance with treatment and 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. He is alcohol dependent and struggles with his disease on a day to day basis. He last consumed alcohol in 2016, almost two years ago. However, given the extensive nature of his

drinking problem, as evidenced by his multiple relapses, more time in sobriety is needed to show the Government that he will not return to his old habits. ¶ 32(d) 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(a):

(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. Admittedly, Applicant has had tumultuous periods in his life that he states have triggered his excessive drinking. He has entered and completed two inpatient treatment programs where he was diagnosed with alcohol dependence. Following these treatment programs, after a short period of sobriety, he has returned to consuming alcohol. There is no strong evidence in the record to show that he will remain sober for any period more than a year or two, if that long. 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 G:

AGAINST APPLICANT

Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge