



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



In the matter of:)
)
) ISCR Case No. 14-04775
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: Bruce R. Heurlin, Esq.

08/17/2015

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 February 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. The action was taken 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, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 17, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 25, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 22, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 30, 2015.

Findings of Fact

Applicant is a 27-year-old engineer for a defense contractor. He has worked for his current employer since 2013. He is applying for a security clearance for the first time. He has a bachelor's degree and a master's degree. He has never married, but he cohabitates with his girlfriend. He does not have children.¹

In 2009, Applicant had too much to drink before he moved his car in a bar's parking lot and fell asleep in the car. He was asleep behind the wheel when the police woke him and arrested him. His blood alcohol concentration (BAC) was about 0.21%. He was charged with driving under the influence (DUI) of alcohol. He was placed in a diversion program and received 12 hours of alcohol treatment, where he was diagnosed as an alcohol abuser. He paid courts costs, and the charge was dismissed.²

Applicant hit a telephone pole after drinking heavily in September 2011. He was charged with driving while intoxicated (DWI), BAC over 0.15. He pleaded guilty and was sentenced to 120 days in jail, which were suspended; probation for 18 months; a \$900 fine; and \$390 court costs. He was required to complete a 12-hour DWI education program, attend a DWI impact panel, and complete 40 hours of community service. He was only permitted to drive with an ignition interlock device. He completed all the terms of his sentence and probation.³

Applicant started drinking alcohol when he was in high school. His drinking increased when he was in college. He received his DUI shortly before he graduated college in 2009. He did not drink as much in graduate school until shortly before his 2011 DWI. He was having relationship problems with his then girlfriend and drank more frequently and heavier for the two-week period leading up to his DWI.⁴

Applicant admits that he should have learned his lesson after his 2009 DUI, but he credibly stated that the 2011 DWI clearly opened his eyes. He no longer drinks and drives. He drank in moderation until he stopped drinking in March 2015. He is an accomplished athlete, and he still competes at a high level. He exercises at least an hour a day, and he eats healthy foods. He met his current girlfriend shortly after his 2011 arrest. She supports his healthy lifestyle, which does not include excessive drinking. He loves his job, and a security clearance is necessary for him to continue to

¹ Tr. at 18-24, 47-48; Applicant's response to SOR; GE 1, 2; AE C, D.

² Tr. at 35-40, 54, 59-60; Applicant's response to SOR; GE 1-3.

³ Tr. at 40-44, 54-55; Applicant's response to SOR; GE 1-3; AE J.

⁴ Tr. at 35; Applicant's response to SOR; GE 2, 3.

grow in the company. He is aware that if he is given another chance, it is unlikely that he will receive another.⁵

Applicant received an alcohol assessment from a licensed independent substance abuse counselor/licensed clinical social worker (LISAC/LCSW) at a recognized substance abuse counseling center in June 2015. The counselor concluded:

Although [Applicant's] MAST (Michigan Alcoholism Screening Test) score (over a life time) does indicate problem drinking, there is no indication at this time that he is a problem drinker or suffers from an alcohol abuse or alcohol dependence disorder. In addition, there is no indication that he is a risk of reoffending, i.e., drinking or driving.⁶

Applicant submitted numerous letters and documents attesting to his excellent job performance, honesty, professionalism, work ethic, responsibility, trustworthiness, reliability, judgment, and integrity.⁷

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 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 access to classified information will be resolved in favor of 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,

⁵ Tr. at 21-22, 44-52, 56, 61-64; Applicant's response to SOR; GE 2, 3; AE B, E.

⁶ AE K.

⁷ AE F-I, L-N.

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:

- (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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant has two alcohol-related driving arrests. He admits that he drank alcohol to excess and to the point of intoxication. While attending alcohol treatment after his first arrest, he was diagnosed as an alcohol abuser. 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 good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's last alcohol-related arrest was in September 2011, almost four years ago. He completed the required substance abuse programs after his arrest. He is in a good relationship with his girlfriend who supports his healthy lifestyle. He is highly regarded in a job that he loves. It should not have taken two arrests, but I believe he has learned his lesson. He received a favorable assessment from an LISAC/LCSW at a recognized substance abuse counseling center.

I find that Applicant has established a pattern of responsible alcohol use and that uncontrolled drinking is unlikely to recur. His current alcohol consumption does not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) are applicable. AG ¶ 23(d) is partially 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(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.

I considered Applicant's favorable character evidence. Applicant exhibited extremely poor judgment when he drove on two occasions after heavy drinking. However, I am satisfied that he finally learned his lesson, and the conduct will not be repeated.

Overall, the record evidence leaves me without questions or doubts as to 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

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

Edward W. Loughran
Administrative Judge