



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-05011
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. His background includes multiple alcohol-related incidents during 2001–2010 when he was arrested and charged with drunk driving. His most recent arrest was in 2010, which resulted in a diagnosis of alcohol dependence as well as his honorable discharge from military service due to alcohol rehabilitation failure. Since then, he has abstained from alcohol for periods and he has reduced his level of drinking, but he continues to drink alcohol on a periodic basis. He did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his history of excessive consumption of alcohol. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (Standard Form 86) on May 12, 2014.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on February 4, 2015, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.² The SOR is similar to a complaint.³ It detailed the reasons for the action under the security guideline known as Guideline G for alcohol consumption. He answered the SOR on February 19, 2015, admitted the SOR allegations, and requested a hearing.

The case was assigned to me on July 8, 2015. The hearing was held as scheduled on July 28, 2015. Department Counsel offered Exhibits 1–3, and they were admitted. Applicant offered Exhibits A and B, and they were admitted. Applicant testified, but no other witnesses were called. The hearing transcript (Tr.) was received on August 6, 2015.

Findings of Fact

Applicant is a 38-year-old employee of a federal contractor. He is seeking to obtain a security clearance for his job as a data link analyst. He has worked for his current employer since May 2014, although he has recently been in a part-time, on-call capacity pending the outcome of this case.

Applicant's employment history includes active duty military service during 1996–2010, which included nine years of sea service.⁴ He was discharged in October 2010 on the basis of alcohol rehabilitation failure, although the character of his service was deemed honorable. He was then unemployed until 2014 when he began his current job. While unemployed, he spent the majority of his time living with and assisting his grandparents, and he began an associate's program in computer information systems in 2012. He has never married and has no children.

¹ Exhibit 1 (this document is commonly known as a security clearance application).

² This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

³ The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

⁴ Exhibit B.

Applicant has a history of excessive consumption of alcohol, and it includes the following facts and circumstances: (1) in 2001, he was arrested twice in the same week for driving while intoxicated (DWI) and reckless driving,⁵ the cases were combined or disposed of together resulting in a conviction for DWI, a suspended sentence to five months of jail, a fine, and suspension of his driver's license; (2) due to his 2001 arrests, the military required him to undergo alcohol counseling for two weeks; (3) in 2005, he was arrested and charged with two counts of driving under the influence of alcohol (DUI), which resulted in a conviction and sentence to 48 hours of jail, 90 days on the DUI first-offender program, 90 days of license restriction, a fine, and probation for 36 months; (4) due to his 2005 arrest, the military required him to undergo a month-long inpatient treatment program, and the military also imposed nonjudicial punishment against him; (5) in 2010, he was arrested and charged with operating a vehicle under the influence of alcohol based on a blood-alcohol level of .10,⁶ but the charge was subsequently dismissed; and (6) due to his 2010 arrest, the military required him to undergo a five-week treatment program during which he received a diagnosis of alcohol dependence, in remission,⁷ and the military also imposed nonjudicial punishment against him.

Applicant continues to drink alcohol, although nowhere near the level of consumption when he was in the military. He stated that his drinking habits in the military consisted of drinking three to four nights per week and having four to five drinks per occasion.⁸ He believes he received a diagnosis of alcohol dependence when going through treatment in 2005,⁹ but there is no documentation supporting that fact. He stated that he reduced his drinking by 75% or so since leaving the military.¹⁰ He stated that he has been intoxicated (meaning well beyond the legal limit for operating a vehicle) twice since leaving the military, a circumstance he credits to living with his grandparents.¹¹ He typically has one to two drinks (rum-and-Cokes) per month.¹² When he drinks, he does so at home or at a friend's house after turning over his car keys to his friend.¹³ He denies drinking to the point of blacking out or vomiting since leaving the

⁵ Tr. 46.

⁶ Tr. 35.

⁷ Exhibit A.

⁸ Tr. 27.

⁹ Tr. 34.

¹⁰ Tr. 28.

¹¹ Tr. 28.

¹² Tr. 28–29.

¹³ Tr. 29–30.

military.¹⁴ He was last drunk on Halloween 2014.¹⁵ He was required to undergo a state-ordered treatment or counseling program in 2011 to obtain a driver's license,¹⁶ which he recently renewed. He has not attended a meeting of Alcoholics Anonymous or a similar program since 2011, as he believes he has an adequate support system in place.¹⁷ He considers himself an alcoholic, but he also believes he is able to control his use of alcohol in a responsible way.¹⁸

Law and Policies

It is well-established law that no one has a right to a security clearance.¹⁹ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹⁴ Tr. 30.

¹⁵ Tr. 30.

¹⁶ Tr. 37–39.

¹⁷ Tr. 39–40.

¹⁸ Tr. 40–42, 50–51.

¹⁹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁰ 484 U.S. at 531.

²¹ Directive, ¶ 3.2.

²² Directive, ¶ 3.2.

²³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁴ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.²⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁶

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²⁷ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁸

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

In analyzing this case under Guideline G for alcohol consumption,³⁰ I have considered the following disqualifying and mitigating conditions:

AG ¶ 22(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 [person] is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(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;

²⁵ Directive, Enclosure 3, ¶ E3.1.15.

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ *Egan*, 484 U.S. at 531.

²⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁹ Executive Order 10865, § 7.

³⁰ AG ¶¶ 21, 22, and 23 (setting forth the security concern and the disqualifying and mitigating conditions).

AG ¶ 22(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

AG ¶ 22(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program;

AG ¶ 22(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

AG ¶ 23(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 and does not cast doubt on the [person's] current reliability, trustworthiness, or good judgment.

Applicant has a serious problem with alcohol. This is rather obvious in light of the following facts and circumstances: (1) the multiple incidents of drinking-and-driving that resulted in arrests, charges, and convictions during 2001–2010; (2) the additional adverse consequences (nonjudicial punishment) he suffered; (3) the two-week alcohol counseling program in 2001, the month-long inpatient program in 2005, and the five-week alcohol treatment program in 2010, which included receiving a diagnosis of alcohol dependence; (4) his premature discharge from military service after nearly 14 years of active duty due to alcohol rehabilitation failure; and (5) his continued use of alcohol after the treatment programs as well as after receiving a diagnosis of alcohol dependence.

Applicant has not presented sufficient evidence of reform and rehabilitation to persuade me that his history of heavy drinking, as well as drinking-and-driving, is safely in the past and will not recur. On this point, it is telling that Applicant continues drinking after going through two intensive alcohol-treatment programs, which included at least one diagnosis of alcohol dependence. He now reports that he has modified his drinking habits, has substantially reduced his level of consumption, and no longer operates a motor vehicle after drinking. Those are all positive signs. But what is missing here is: (1) a recent alcohol evaluation with a diagnosis and a favorable prognosis; or (2) an established track record of abstinence, which is particularly significant given that he received a diagnosis of alcohol dependence as opposed to alcohol abuse; or (3) both. Indeed, one of the mitigating conditions makes a clear distinction between dependence and abuse, noting that the former requires an established pattern of abstinence while the latter only requires responsible use.³¹ Although he reports that he is consuming alcohol at a moderate and responsible level, the fact that he continues to drink means he is only a step or two away from another incident of drinking-and-driving or some other adverse alcohol-related incident. Taken together, those circumstances militate against a favorable decision.

³¹ AG ¶ 23(b).

In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.³² I am convinced that Applicant accepts responsibility for his actions, but I am not convinced that the risk of recurrence of another alcohol-related incident is acceptably low. Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline G:	Against Applicant
Subparagraphs 1.a–1.i:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility is denied.

Michael H. Leonard
Administrative Judge

³² AG ¶ 2(a)(1)–(9).