



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



In the matter of:)	
)	
)	ISCR Case No. 14-05984
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On April 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On June 8, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On September 24, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on October 19, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and Items 4 through 11 are admitted into evidence. Applicant did not provide additional evidence and the record closed. The case was assigned to me on December 28, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He is a high school graduate. He has not served in the military. He married in 1982 and divorced in 1991. He remarried in 1995. He has a grown child. He has worked for the same federal contractor since 1987.¹

In 1984, Applicant was arrested and charged with driving under the influence (DUI) of alcohol. No other information was provided about this arrest.

In approximately November 1998, Applicant was arrested and charged with domestic battery of his spouse. Applicant admitted alcohol was a factor in the incident. He pled guilty and was required to complete an anger management class, which he did.²

In approximately December 2000, Applicant was arrested and charged with domestic battery of his spouse. Applicant admitted alcohol was a factor in the incident. He pled guilty and was required to complete an anger management class, which he did. He was also required to obtain an alcohol evaluation from a certified alcohol program and complete a 20-week partner abuse intervention program. He completed both. A letter from the alcohol counselor from September 2001 stated she met with Applicant "for a Chemical Dependency Evaluation update." She indicated there had been no significant impairments in Applicant's life since the previous evaluation and no further recommendation were made for any additional treatment.³

After the 2000 arrest, Applicant voluntarily attended an outpatient alcohol detoxification program from January 2001 to March 2001. He completed the program. Applicant admitted that he was diagnosed as alcohol dependent while at the program, but other evidence of that diagnosis is not contained in the FORM. He abstained from alcohol consumption from 2001 until approximately 2009 when he began to consume approximately one to two beers after work, regularly but not necessarily every day. He has had no alcohol-related incidents nor was any evidence presented that alcohol has

¹ Item 5.

² Items 5, 6, 7, and 8.

³ Items 5, 6, 7, 10 and 11.

had a negative impact on his personal or professional life since the December 2000 domestic violence charge. During Applicant's background interview with a government investigator he admitted that, before attending the detoxification program, he had a problem with alcohol and that he was a recovering alcoholic.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

⁴ Item 7.

Section 7 of Executive Order 10865 provides that 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

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.

I have considered all of the disqualifying conditions under AG ¶ 22 and the following are potentially applicable:

(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;

(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, evaluation, treatment, or abstinence.

Applicant was charged with DUI in 1984. No information about the disposition of the charge was provided. Applicant was charged with domestic battery in 1998 and 2000. He pled guilty to the charges. There is evidence to support that Applicant was evaluated by a staff member at an alcohol treatment program. The evidence provided by Applicant indicates he was a recovering alcoholic. The letter from the staff member at the alcohol treatment program does not clearly state that he was evaluated and determined to be alcohol dependent, rather the letter was an update for a chemical dependency evaluation. I find AG ¶ 22(a) applies. I find AG ¶ 22(e) marginally applies. There is no evidence that Applicant was told he must abstain from all alcohol use forever. AG ¶ 22(f) does not apply.

I have considered all of the mitigating conditions under AG ¶ 23 and 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 admitted that before going through the detoxification program he had a problem with alcohol. He abstained from alcohol consumption from 2001 to 2009. Since then he consumes one to two beers after work, regularly, but not necessarily daily. There is no evidence of any alcohol-related incident since 2000, more than 15 years ago. There is no evidence he was advised that he must abstain from all alcohol consumption for the rest of his life. Applicant has been consuming alcohol since 2009 without incident. It appears his difficulties with alcohol are in the past, and he has established a pattern of responsible use. I find a significant amount of time has passed since Applicant had a problem with alcohol and that future problems are unlikely to recur. AG ¶¶ 23(a) and 23(b) apply. Applicant completed an alcohol program in 2001 and has demonstrated a clear and established pattern of modified consumption. I find AG ¶ 23(d) partially applies.

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 the 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.

