



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



In the matter of:)	
)	
)	ISCR Case No. 15-01885
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Sean Bigley, Esquire

May 24, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 22, 2014. On October 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E for Applicant. 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 within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 29, 2015. He answered the SOR in writing through counsel on November 14, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on January 13, 2016. As the case had previously been assigned to another Judge, DOHA had already issued a notice of hearing on January 7, 2016, and I convened the hearing as

scheduled on January 29, 2016. The Government offered Exhibits (GXs) 1 through 4. GXs 1 and 2, were received without objection. GXs 3 and 4 were objected to, Applicant's Counsel claiming lack of authentication. (TR at page 13 line 15 to page 15 line 4.) That objection was overruled; after Department Counsel represented to the Court their authenticity. (*Id.*) Applicant testified on his own behalf, as did three witnesses, and submitted Exhibits (AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on February 9, 2016. I granted Applicant's request to keep the record open until February 29, 2016, to submit additional matters. On February 9, 2016, he submitted Exhibit G, which was received without objection. The record closed on February 29, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a. and 1.b. of the SOR, with explanations. He denied the factual allegations in Subparagraph 2.a. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline G - Alcohol Consumption & Guideline E - Personal Conduct

Applicant was born in the United States. (TR at page 61 lines 15~23.) His parents moved back to their Caribbean island ancestral home; when Applicant "was three or four years old," to "take over the family business." (*Id.*) His family is well known, and very wealthy. (TR at page 61 line 24 to page 62 line 12.) Applicant moved back to the United States, at the age of 18, to pursue his higher education, and eventually obtained a Ph.D. (TR at page 62 line 24 to page 64 line 5.)

Applicant's mother was "kidnapped (sic) and held captive . . . from May 22, 2012 through May 26, 2012," as verified by the Federal Bureau of Investigation (FBI). (TR at page 64 line 16 to page 73 line 14, and AppX A.) The FBI asked Applicant to be the negotiator with the kidnapers, which put much stress on Applicant. (TR at page 64 line 16 to page 73 line 14.) He turned to alcohol to relieve his stress.

1.a. and 2.a. Applicant admits that in January of 2013, he was arrested, in part, and was judged guilty of, Extreme Driving Under the Influence (DUI) with a Blood Alcohol Content of (.15~.20). (TR at page 73 line 15 to page 76 line 9, and at page 86 line 15 to page 87 line 4.) He was sentenced to nine days in jail with work release, enrolled in alcohol screening and DUI classes, and fined. (*Id.*, and GXs 2 and 4.)

1.b. and 2.a. Applicant admits that in December of 2013, he was arrested, in part, and pled guilty to, Extreme Driving Under the Influence (DUI) with a Blood Alcohol Content of (.15~.20). (TR at page 76 line 10 to page 78 line 6, and at page 87 line 5 to page 88 line 25.) He was sentenced to unspecified jail time, enrolled in an alcohol treatment program, and fined. (*Id.*, and GXs 2 and 3.) Applicant successfully completed

that treatment program in June of 2014, as evidenced by a completion certificate. (AppX B.) In January of 2015, a Clinical Health Psychologist with the State's "Motor Vehicle Division" averred: "Based on my evaluation, the condition of the Applicant does not affect his ability to safely operate a motor vehicle." (AppX G, emphasis in original.)

Applicant is now more focused on work and on fitness. (TR at page 78 line 7 to page 81 line 4.) In November of 2015, he was evaluated by a "Substance Abuse Professional," who determined, in part, the following:

2. [Applicant] . . . did receive two DUI's during the course of one year. That year included his mother's kidnapping (sic), his father's stroke, moving his parents from . . . [a Caribbean island] to the United States, and increasing responsibilities at work . . . - all at the same time.
3. [Applicant] . . . is remorseful of his excessive drinking on the two occasions. As a result of the DUI's . . . [Applicant] returned to a healthy lifestyle of physical and mental well-being.
4. It is my professional opinion that . . . [Applicant] is genuine in his contrition and his disposition of a healthful lifestyle is sustainable long-term.
5. It is my professional opinion that . . . [Applicant] **does not** present **any** risk to national security. (AppX C at pages 1~2, emphasis in original.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant 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 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.

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

Paragraph 21 of the adjudicative guidelines sets out the security concern relating to Alcohol Consumption: “Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 22(a) is applicable and provides that “*alcohol-related incidents away from work, such as driving while under the influence*” may be disqualifying. Applicant had two DUI’s in 2013. However, I find that this is countered by the mitigation condition under Subparagraph 23(a). It provides that where “*so much time has passed, or the behavior . . . 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.*” Applicant’s DUI’s occurred more than two years ago, under extremely unusual circumstances. Furthermore, it is clear from the testimony of his three witnesses that Applicant is a changed man since his trauma of 2013. (TR at page 23 line 17 to page 58 line 24.) This allegation is found for Applicant.

Guideline E - Personal Conduct

The security concern for Personal Conduct is set out in Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(c), "*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.*" Applicant had two DUI's in 2013. Again, I find a countervailing mitigating condition that is applicable here. Subparagraph 17(c) is applicable where "*so much time has passed . . . that it [the behavior] is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgement.*" The Applicant's uncharacteristic conduct occurred more than two years ago. This allegation is also found for Applicant.

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. Under AG Paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of those who know him in the work place. (TR at page 23 line 17 to page 58 line 24, and AppXs D~F.) The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has mitigated the security concerns arising from his Alcohol Consumption and related Personal Conduct.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Richard A. Cefola
Administrative Judge