



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



In the matter of:)	
)	
)	ISCR Case No. 15-02479
)	
)	
Applicant for Security Clearance)	

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of alcohol-related criminal conduct. He did not mitigate the alcohol consumption and criminal conduct security concerns. Based upon a review of the record evidence, eligibility for access to classified information is denied.

Statement of the Case

On November 10, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct. 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 DoD for SORs issued after September 1, 2006.

On December 2, 2015, Applicant answered the SOR in writing, and requested a hearing before an administrative judge (Answer). On February 12, 2016, the Defense

Office of Hearings and Appeals (DOHA) assigned the case to me. On that same day, DOHA issued a Notice of Hearing. The case was heard on March 1, 2016, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through I into evidence without objection. DOHA received the hearing transcript on March 11, 2016. The record remained open until March 25, 2016, to give Applicant additional time to submit more exhibits. He timely submitted AE L.¹

Findings of Fact

In his response to the SOR, Applicant admitted all allegations contained in the SOR. His admissions are incorporated into these findings of fact. (Answer.)

Applicant is 47 years old and married for 20 years. He and his wife have three children, ages 22, 20, and 15. His two older children attend college. Applicant has earned some college credits. He has worked for one defense contractor from 2003 until 2010, when he started a position with his current employer, another defense contractor. His wife also works. Applicant volunteers as a high school soccer coach. He has also been a Boy Scout leader and is active in his church. (Tr. 14-18.) He has held a security clearance for 13 years. (Tr. 15.)

Applicant began consuming beer in 1987, when he was 17 or 18 years old. As he got older, he also began drinking hard liquor. In June 1988 he was arrested and charged with driving under the influence (DUI). He was 19 years old. After being convicted, his driver's license was suspended for 30 days, and he spent 3 days in an alcohol rehabilitation program. He admitted he did not take the situation seriously and continued to consume alcohol. (Tr. 23-25.) He said that his father was an alcoholic and his sister is a recovering alcoholic. (Tr. 20.)

In September 1996 Applicant was arrested and charged with his second DUI. He was convicted of DUI, fined, and his driver's license was suspended for 30 days. He received a suspended 30-day term of confinement, and was placed on probation for two years. He was 27 years old and married. He and his family had attended a picnic prior to the arrest. (Tr. 25-28.) He completed the probationary term in 1998. (Tr. 45.)

In August 2005 Applicant was arrested and charged with his third DUI. He was convicted of reckless operation of a motor vehicle and fined. (Tr. 28-30.) In October 2011, six years later, he was arrested and charged with his fourth DUI. He was convicted, fined, and his driver's license was suspended for 90 days. He was required to attend a 12-week alcohol rehabilitation program. He was 36 years old. (Tr. 32-35.) He thinks he was placed on two years of probation after this conviction. (Tr. 49.)

In March 2014 Applicant, age 44, was arrested and charged with speeding (76 m.p.h.), fleeing or evading, wanton endangerment, and his fifth DUI. His blood alcohol

¹ There is no AE J or AE K.

content (BAC) was .240. He had been consuming beer and whiskey all afternoon. In August 2014 he pled guilty to all charges, and the DUI was reduced to a misdemeanor. His driver's license was suspended for one year. He was sentenced to 14 days of confinement, and 26 weeks of probation. He was ordered to attend his second alcohol education program. He completed the treatment program on March 25, 2015. It consisted of two individual counseling sessions and then group sessions. His probationary term was scheduled to end in early April 2016. He has never been diagnosed as alcohol dependent or with alcohol abuse. Since completing that program, he has not participated in any form of 12-Step programs, such as Alcoholics Anonymous (AA) or other forms of ongoing substance abuse programs. For emotional support, he speaks to his pastor and his sister. His friends are aware of his alcohol problems. (Tr. 36-44, 50; AE L.)

Applicant considers himself an alcoholic. (Tr. 53.) He admitted that he has blacked-out after consuming too much alcohol a couple times. (Tr. 28.) While attending the second treatment program he was never told to stop consuming alcohol nor was it recommended to him that he should participate in a rehabilitation group or any other aftercare treatment after completing the program. (Tr. 52, 63.) He said his date of sobriety is January 1, 2015. He said he has changed as a result of this last charge. He is aware of the serious consequences to his life and family if he continues to consume alcohol. He now fills his time with family and physical activities. (Tr. 55-56.)

Applicant reported the above criminal incidents to his security officer after each arrest. (Tr. 56.) He said alcohol consumption has never affected his job performance. (Tr. 63.) He recognized that he continued to deny that he had an alcohol problem until the 2014 incident. His friends, colleagues and supervisor are aware of his alcohol issues. (Tr. 55-57.) He acknowledged that attending AA meetings may be helpful, but currently his involvement with his family and church is helping him maintain sobriety. (Tr. 57-58.) He said that he "convinced myself that I'm not going to drink anymore." (Tr. 58.)

Applicant has a successful employment history. He submitted certificates of appreciation and commendations spanning his employment history with defense contractors from 2003 to 2016. In February 2016 he received the Employee of the Month Award. (AE A; Answer.) He submitted eight letters of recommendation from colleagues, program managers, and past and current supervisors, most of whom were aware of Applicant's alcohol problems. His supervisor for 10 years stated that Applicant is respected by colleagues and customers. He said Applicant deserves another chance. All of the authors attest to his competency, performance abilities, and trustworthiness. (AE B through I.)

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, those 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 AG ¶ 2(a), describing 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.

According to 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, 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."

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.

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 two conditions that could raise a security concern and may be disqualifying 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; and
- (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.

Applicant admitted that he was arrested and convicted of DUI four times: 1988, 1996, 2011, and 2014. He was convicted of reckless driving, which involved alcohol, in 2005. His BAC was significantly over the legal limit when he was arrested in 2014. He acknowledged that his judgment has been impaired at times as a consequence of consuming too much alcohol. The evidence established both disqualifying conditions.

AG ¶ 23 provides three conditions that could mitigate security concerns raised under this guideline:

- (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.

The evidence does not establish mitigation under AG ¶ 23(a). Applicant has a history of abusing alcohol, spanning from June 1988 to March 2014. His alcohol-related incidents have not been infrequent. Nor has enough time passed since the last time he consumed alcohol, which was January 1, 2015. The evidence establishes minimal mitigation under AG ¶ 23(b). Applicant recognizes his problems with alcohol and articulated steps that he is taking to remain abstinent. However, he has not yet

established a sustained track record of abstinence. There is insufficient documentation to establish full mitigation of the security concerns under AG ¶ 23(d). Applicant successfully completed a court-ordered addictions treatment program in March 2015. However, there is no evidence that he was evaluated, and received a diagnosis or favorable prognosis from an appropriate health care professional regarding his alcohol issues.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant has been arrested five times for alcohol-related criminal offenses. He admitted those offenses and other non-alcohol related offenses. At the time of the hearing he was on probation. The evidence raises the above disqualifying condition.

AG ¶ 32 provides two conditions that could mitigate the security concerns in this case:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

As noted under AG ¶ 23(a) above, sufficient time has not elapsed since Applicant's March 2014 arrest and subsequent completion of probation in early April 2016. It is too soon to determine that similar conduct will not recur. While Applicant provided ample evidence of a good employment record and active community

involvement, and expressed remorse, all of which is evidence of rehabilitation, there is not a sufficient passage of time without the recurrence of another criminal act. Applicant has a 26-year history of wrestling with alcohol, which included five criminal incidents, and six years of criminal probation.

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). They include the following:

- (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 include 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 pertinent facts and circumstances surrounding this case. Applicant is a 47-year-old man, who has successfully worked for federal contractors since 2003. During that time he has received impressive performance evaluations. He submitted letters from supervisors attesting to his capabilities and trustworthiness. While that employment history is commendable, his long history of abusing alcohol and criminal conduct raises concerns about his judgment, especially in view of the fact that he held a security clearance at the time of the past three arrests and convictions. His probation was scheduled to terminate in early April 2016. After observing his demeanor and listening to his testimony, I believe he is remorseful and committed to sobriety. However, given the extent and seriousness of his past problems, coupled with the lack of participation in an ongoing support or rehabilitation program, and a sustained track record of sobriety, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For these reasons, I conclude Applicant did not mitigate the alcohol consumption or criminal conduct 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 interests to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge