



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



In the matter of:)
)
) ISCR Case No. 07-07358
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E, Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

June 19, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guideline G, Alcohol Consumption. His eligibility for a security clearance is denied.

On July 27, 2006, Applicant submitted a Security Clearance Application (SF 86). On December 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, Alcohol Consumption. The action was taken pursuant to 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing.¹ On March 3, 2008, Department Counsel prepared a File of Relevant Material (FORM), containing ten Items, and mailed Applicant a complete copy on March 6, 2008. Applicant received the FORM on March 18, 2008, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional evidence. DOHA assigned the case to me on May 27, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.b through 1.e. His admissions are incorporated as findings of fact. He denied the allegation contained in ¶ 1.a.

Applicant is 38 years old and divorced. From April 2003 to the present, he has worked as a coater/finisher for a federal contractor. In July 2006, he submitted a SF 86. (Item 4).

In October 1988, Applicant enlisted in the U.S. Air Force. He served until May 1994, when he was involuntarily separated by the Air Force because of two alcohol-related incidents. On September 19, 1993, he was arrested on a military base by base security police and charged with (1) Driving Under the Influence of Alcohol (DUI), and (2) Failure to Obey a Lawful Order. His blood alcohol content registered 19%. He was reprimanded and scheduled to attend a Substance Abuse Rehabilitation Training Program. On March 5, 1994, the base security police arrested him again for (1) Driving While Driving Privileges Revoked and (2) DUI. He received an Article 15 hearing under the Uniform Code of Military Justice (UCMJ) and sentenced to be reduced to the grade of airman first class, and forfeit \$250 of his monthly pay for two months. In May 1994, the Department of Air Force recommended that he be discharged due to his inability to meet standards, probation and rehabilitation. On May 5, 1994, he was discharged due to misconduct and received a General Discharge. (Item 10).

On February 21, 1996, Applicant was arrested and charged with (1) Driving Under Suspension, (2) Driving Without Lights, and (3) Open Container. The court found him guilty of Count 3 and he forfeited his bond. The two other counts were *nolle prossed*.

On May 29, 2005, Applicant was arrested and charged with (1) DUI, (2) Loud Music, (3) Driving Under the Influence of Alcohol Less Safe, and (4) Driving Under the Influence and Blood Alcohol Content .08% or More. The court found that the initial stop by the police was improper and the evidence was suppressed. The district attorney dismissed the charges against him.

¹The Answer is undated.

Applicant started consuming alcohol at the age of 13 and continued through high school. During an April 2007 investigative interview, he asserted that he usually consumes one to three cognac drinks on weekend evenings. He stated he does not drink and drive. He voluntarily attended one alcohol awareness class, the date of which is unknown. He has been intoxicated two or three times in his life. He does not believe that he has an alcohol problem. (GE 5). He provided little evidence of mitigation, despite opportunities to do so.

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 used to evaluate 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 common sense 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, 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 to obtain a favorable security decision. 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."

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 Government's 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(a)-(g) describe seven Alcohol Consumption Disqualifying Conditions that may be applicable to security concerns raised under this guideline. Applicant admitted the three DUI arrests and another alcohol related arrest alleged in SOR ¶¶ 1.b through 1.e. Based on his admissions and other record evidence, the Government raised AG ¶ 22 (a), which is applicable when there is evidence of "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." Applicant denied that he consumed alcohol to excess and to the point of intoxication from 1983 to 2007, as alleged in ¶ 1.a of the SOR. After reviewing the file, I find that there is insufficient evidence to support that allegation.

The Government produced substantial evidence of a disqualifying condition and the burden shifted to Applicant to produce evidence and prove a mitigating condition. Four Alcohol Consumption Mitigating Conditions are potentially applicable under AG ¶¶ 23 (a)-(d):

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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.

One of the mitigating conditions has some application to the facts in this case. Applicant was arrested in 1993, 1994, 1996, and May 2005. Given that the last incident occurred three years ago and nine years after the previous incident, sufficient time has passed to trigger a limited application of AG ¶ 23(a). Full application of the condition is not warranted because the 2005 incident was not isolated and four alcohol-related incidents in his life, over the span of 12 years, is sufficient to raise questions about his judgment.

Applicant does not believe he has an alcohol problem; hence, AG ¶ 23(b) is not applicable. There is no evidence in the record to support the application of AG ¶ 23(c), or AG ¶ 23(d) that requires participation in a formal alcohol rehabilitation program, rather than a brief educational experience.

Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the “whole person” analysis. In evaluating the conduct of the applicant, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include:

(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) 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.

According to 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. Applicant is a 38-year-old man, who began voluntarily consuming alcohol when he was 13 years old, continued throughout high school, and into his adult life. Early in his military career, he abused alcohol on two occasions, which resulted in his involuntary separation. This milestone event apparently was not enough to raise Appellant's awareness of the negative effect alcohol was having on his life, as he was subsequently involved in alcohol-related incidents in 1996 and 2005. All of those events raise questions about his judgment.

Despite that history, commencing in 1993 through 2005, Applicant asserted that he does not have an alcohol problem and responsibly consumes alcohol. However, he did not provide any substantive evidence to affirm his statements, although he was given additional time to do so. Absent independent corroboration, such as an evaluation from an appropriately credentialed health care provider or other sources, documenting Applicant's assertions that he does not have an alcohol issue, I am concerned that there is a strong likelihood that he continues to abuse alcohol or will in the future.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his alcohol consumption.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge