



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-03410
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

April 10, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 23, 2013. On July 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J 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 August 8, 2014. He answered the SOR in writing on August 26, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on January 20, 2015. Applicant did not respond to the FORM. The case was assigned to me on March 31, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR,, Applicant admitted the factual allegations in Paragraphs 1.a.~1.d. of the SOR, with explanations. He failed to respond to Paragraph 2.a. of the SOR, which I consider a denial.

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

Applicant is 32 years old, and is employed by a “Federal Contractor” who seeks a security clearance on behalf of Applicant. (Item 5 at pages 5 and 10.)

1.a. Applicant “first started using alcohol in high school (exact date not recalled) and” consumed alcohol until at least June of 2013, the date of his Personal Subject Interview. (Item 6 at page 4.) In his August 2014 Answer, Applicant avers he “will use alcohol responsibly.” (Answer.)

1.b.~1.d., and 2.a. Applicant was first arrested in March of 2004 for Driving Under the Influence of Alcohol (DUI). (Item 6 at page 3.) He was convicted of the DUI; and as part of his sentence, he was placed on probation for three years. (*Id.*)

In April of 2005, Applicant was arrested, in part, for a second DUI, for a Probation Violation (as a result of the 2004 conviction), and was convicted of these charges. (Item 6 at page 2, and Item 7 at page 3.) As part of his sentence, Applicant was fined \$1,500, had to attend 18 months of DUI classes, and placed on probation for five years. (*Id.*)

In October of 2011, Applicant was arrested a third time for DUI, for another Probation Violation (as a result of the above conviction), and was again convicted of these charges. (Item 6 at page 2, and Item 7 at page 3.) As part of his sentence, Applicant was fined, had to attend 18 months of DUI classes, jailed for 192 days, and placed on probation for another five years. (*Id.*) Applicant is still on probation as a result of this most recent conviction.

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 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 under the influence . . .*” may be disqualifying. Applicant has three alcohol-related convictions in the last 11 years, and he is still on probation as a result of his most recent 2011 conviction. I can find no countervailing mitigation conditions that are applicable.

Guideline J - Criminal Conduct

The security concern for Criminal Conduct is set out in Paragraph 30: 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.

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 31(a) provides that "*a single serious crime or multiple lesser offenses*" may raise security concerns. Under Subparagraph 31(d) when an "*individual is currently on parole or probation*" that fact may raise security concerns. Applicant has three convictions, and is still under probation as a result of his most recent conviction. I find no countervailing mitigating condition that is applicable here. Subparagraph 32(a) requires that "*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.*" That is not the case here, as Applicant's last conviction was less than four years ago. The mitigating condition under Subparagraph 32(d) requires that "*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity . . . good employment record . . .*" That is not the case here, as Applicant is still on probation as a result of that conviction.

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 record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Alcohol Consumption and related Criminal 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge