



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



In the matter of:)
)
) ISCR Case No. 14-03456
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: Ronald Sykstus, Esq.

03/24/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On September 2, 2014, the Department of Defense (DOD) issued 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; 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 DOD on September 1, 2006.

Applicant answered the SOR on October 9, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 19, 2015. I convened the hearing as scheduled on March 12, 2015. The

Government offered exhibits (GE) 1 through 4. Applicant's counsel objected to GE 2, an official document from the Federal Bureau of Investigation.¹ The objection was overruled, and it was admitted. There were no other objections and the remaining documents were admitted into evidence. Applicant and four witnesses testified on his behalf. He offered Applicant's Exhibit (AE) A through X, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 20, 2015.

Findings of Fact

Applicant denied the SOR allegations in ¶¶ 1.a, 1.b and 1.d. He admitted the allegation in SOR ¶ 1.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 62 years old. He attended college and earned 128 credits, but did not complete a degree. He served in the Navy for eight years and was honorably discharged. He was married from 1979 to 1989 and from 1993 to 2003. He has three grown children. He worked for a federal contractor from 1970 to 1994 when he left to go into business with his brother. He returned to working for a federal contractor in 2002 where he continues to work.²

In 1982, Applicant was convicted of driving under the influence (DUI) of alcohol. He paid a fine and completed a driving class. In 2011, Applicant was attending his son's wedding. It was the first wedding in his family, and they had all gathered to celebrate. During the reception, friends of his son started to buy Applicant alcoholic drinks. He admitted he made a mistake when he chose to drive back to where he was staying. He was stopped by the police at a checkpoint and charged with DUI. He obtained an attorney and was eventually notified that he was found not guilty of the DUI charge. He provided supporting documents.³ Applicant admitted his blood alcohol content (BAC) was over .15%. His license was suspended in the state where the offense occurred for 30 days. He was unaware of any requirements he had to complete regarding the suspension. He did not believe the suspension impacted his driver's license in the state where he lived. When he went to renew his driver's license he learned there was an issue due to the other state's suspension. He was made aware that he was required to complete an alcohol awareness program before the hold on his license would be removed from his record, and he would be able to renew it.⁴

Applicant completed a 16-hour alcohol awareness class as part of the state's suspension of his license. As part of the awareness program he was required to attend

¹ The FBI report shows Applicant was convicted of DUI. There is evidence to the contrary in the record.

² Tr. 19-27, 88-90.

³ AE W, Z. The documents state that the disposition of the charge was not guilty. Considering Applicant never appeared in court, it is more likely the charge was dismissed.

⁴ Tr. 28, 30-43, 47-48, 50-57.

an Alcoholics Anonymous (AA) meeting to learn more about the addiction, which he did. Applicant disputes he was ever diagnosed as alcohol dependent and ordered to attend AA on a recurring basis or as a part of a treatment program. Applicant asked the person from the alcohol awareness program who made an assessment about his alcohol use if he had any issues, and he was told no. The only information in the record to support Applicant was diagnosed as alcohol dependent is a report of investigation summary. There is no independent evidence from the treatment facility or information as to who made a diagnosis. Applicant attended the alcohol awareness program as part of the requirement to remove the hold on his license. I find there is insufficient evidence to conclude Applicant was diagnosed as alcohol dependent. He completed the requirements to have the restrictions removed on his license, and he successfully renewed it.⁵

Applicant credibly testified he was never told by anyone to abstain from alcohol consumption. Applicant intends to continue to drink alcohol responsibly. He does not drink to intoxication. He only drinks socially. He lives alone, but does not drink at home alone.⁶

Four character witnesses testified on behalf of Applicant. None of them were concerned that Applicant abused alcohol. He is considered very competent in his job. Several have traveled with him for work and socialized while on travel and never observed him exhibiting any questionable conduct when consuming alcohol. They testified that he has stellar judgment and is considered reliable and trustworthy. He is considered very honest. Documents were provided reflecting Applicant's outstanding work performance and achievements.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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,

⁵ Tr. 27-31, 35, 43-47, 57-61; AE W, X, Z.

⁶ Tr. 32, 35-37, 47-49, 62-63.

⁷ Tr. 65-88; AE A-V.

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 not drawn 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

AG ¶ 21 expresses the security concern for 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 is 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.

Applicant was convicted of DUI in 1982 and charged with DUI in 2011. The above disqualifying condition applies.

I have also 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; and

(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).

Applicant had two alcohol-related incidents in the past 29 years. He was convicted of DUI in 1982 and was charged with DUI in 2011. He was not convicted in the later incident, but acknowledges he was intoxicated when he was stopped by the police after attending his son's wedding. He was unaware that despite the dismissal of the charge he was still required to attend an alcohol awareness class. When he learned of the requirement, he completed the 16-hour class. His conduct after his son's wedding was an aberration from his normal conduct. Applicant continues to consume alcohol, but there is considerable evidence that he does so responsibly. He is remorseful for his lack of judgment for consuming too much alcohol after his son's wedding and his DUI conviction from 1982. I find that his alcohol-related behavior was infrequent and the latest DUI issue happened under unique circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 23(a) and 23(b) apply.

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):

(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 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. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 62 years old. He served honorably in the military. He had a DUI conviction in 1982 and was arrested in 2011 for DUI. He was found not guilty of the later charge, but acknowledged he was intoxicated. He has completed the alcohol awareness class required to renew his license. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the alcohol consumption guideline.

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
Subparagraphs 1.a-1.d:	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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge