



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-03643
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by financial problems that arose around 2009. He also mitigated concerns about his illegal use of drugs because he is unlikely to repeat his abuse of prescription painkillers and anti-anxiety drugs to which he became addicted in 2009. However, he did not mitigate the security concerns raised by his use of alcohol. He has received extensive counseling and treatment for his alcohol use and was diagnosed as alcohol dependent in 2009. He also has four alcohol-related arrests between 2008 and 2012. Applicant still consumes alcohol. His request for a security clearance is denied.

Statement of the Case

On February 12, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment with a defense contractor. After reviewing the results of Applicant’s background investigation, which included his responses to interrogatories from

adjudicators for the Department of Defense (DOD),¹ it could not be determined that it is clearly consistent with the national interest to continue Applicant's access to classified information.²

On November 26, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F), alcohol consumption (Guideline G), and drug involvement (Guideline H). Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to another administrative judge on March 10, 2015, and a hearing was scheduled for April 30, 2015. On April 28, 2015, the case was transferred me and I convened the hearing as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 8.⁴ Applicant testified and presented Applicant's Exhibit (Ax.) A. These exhibits were admitted without objection. I held the record open after the hearing to receive additional relevant information from the Applicant. DOHA received a transcript (Tr.) of the hearing on May 8, 2015. The record closed May 11, when I received Applicant's post-hearing submissions. They were admitted without objection⁵ as Ax. B⁶ and Ax. C.⁷

Findings of Fact

The Government alleged under Guideline F that Applicant owes \$30,570 for four delinquent or past-due debts (SOR 1.a - 1.d). Applicant admitted SOR 1.a - 1.c, but denied SOR 1.d.

Under Guideline G, the Government alleged that Applicant was arrested and charged with driving under the influence (DUI) in 2008 (SOR 2.a); with driving while intoxicated (DWI) in 2009 (SOR 1.c), in 2011 (SOR 1.d), and twice in three days in April 2012 (SOR 1.d and 1.e). It was also alleged that he was diagnosed as alcohol dependent in July 2009 but continued to consume alcohol (SOR 2.b). Applicant admitted SOR 2.a and 2.c - 2.e, but denied SOR 2.b. (Answer)

¹ See DOD Directive 5220.6 (Directive), as amended, E3.1.2.2.

² Required by Executive Order 10865, as amended, and by the Directive at E3.1.1.

³ The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ Department Counsel's discovery letter (see Directive E3.1.13), dated March 4, 2015, is included in the record as Hearing Exhibit (Hx.) 1. An index listing each exhibit is included in the record as Hx. 2.

⁵ Department Counsel's forwarding email and Applicant's list of documents forwarded are included as Hx. 3.

⁶ Ax. B consists of documents forwarded as "Exhibits 1, 2A - C, 3A - D, 4A - B, 5, and 6." These documents pertain to Applicant's finances and taxes.

⁷ Ax. C consists of documents forwarded as "Exhibits 7 - 10." They contain "whole person" information such as awards, evaluations and reference letters.

The Government alleged under Guideline H that Applicant was diagnosed in July 2009 as dependent on opiates and anxiolytic (anti-anxiety) drugs (SOR 3.a). Applicant admitted SOR 3.a. Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 48 years old. Since July 2012, he has worked as a program analyst for a defense contractor. Applicant served in the U.S. Navy from May 1987 until retiring with an honorable discharge as a chief petty officer in February 2008. From then until he was hired by his current employer, Applicant attended school and held various full-time and part-time jobs, including a brief stint at another defense contractor beginning in January 2008, while he was on terminal leave from the Navy. He resigned from that job in January 2009, because he had injured his back and felt he could no longer do the work for which he was hired. Applicant received several personal awards and decorations while in the Navy. His civilian work performance and his reputation in the workplace are excellent. (Gx. 1; Ax. B; Ax. C; Tr. 34 - 34)

Applicant has been married twice. His first marriage in November 1987 ended by divorce in February 1997. Applicant has one child, now age 25, from that marriage. Applicant remarried in March 1998, but again divorced in May 2011, after having separated in 2009. Applicant has cohabited with his girlfriend since April 2012. (Gx. 1; Tr. 34)

Applicant's departure from the Navy was unexpected. Over the last few years of his career, he had developed several serious health problems. When he reported to his last assignment, an afloat combatant command, an intake medical evaluation resulted in his immediate return to shore duty before being medically discharged with a sixty percent disability. His adjustment to civilian life was difficult and was compounded by the death of a close friend and the end of his second marriage. Applicant's health is now much improved. Most of the health and pain problems that plagued him while in the service have been resolved. Most notably, Applicant has lost a significant amount of weight, thereby correcting the cause of most of his ills. (Answer; Gx. 1; Tr. 86)

Applicant began abusing prescription pain medications around the time he left the Navy. Initially prescribed for lower back pain, Applicant quickly developed a high tolerance for those medications and began to take more than the prescribed dosage without consulting with a physician. Around 2002, Applicant began an extramarital affair with a woman who eventually also became his source of various prescription pain medications. Applicant became addicted to a variety of opiate-based pain medications. In July 2009, he was admitted to an inpatient substance abuse rehabilitation facility for 25 days. While there, he was diagnosed as being addicted to opiates and anti-anxiety medications. He also was diagnosed as alcohol dependent. His diagnoses and aftercare recommendations are contained in a July 30, 2009 discharge summary, which Applicant signed. It was recommended, inter alia, that he abstain from all mood-altering chemicals, including alcohol. (Gx. 1; Gx. 5; Tr. 34 - 37, 61 - 63)

Applicant has a history of alcohol abuse. He first consumed alcohol at around age 9, and his father was an abusive alcoholic. Applicant testified that he did not

consume alcohol in large amounts until after he joined the Navy. Records from his 2009 inpatient treatment show he had a .29 blood alcohol content (BAC) when he was admitted. Applicant's alcohol consumption at that time consisted of between three and eight mixed drinks five times weekly, or four to six beers once a week. Applicant also reported consuming an entire fifth of tequila on one occasion. Records further reflect that in the 30 days before he was admitted to rehabilitation in July 2009, he drank on 20 of those days and was intoxicated on 15 of those days. Applicant also estimates he spent between \$1,500 and \$2,000 on alcohol during those 30 days. (Gx. 5)

In 2008, while still living in State A, Applicant was arrested and charged with driving under the influence (DUI) and refusing a breathalyzer test. Applicant avers he had about three or four beers at a restaurant before driving home. At trial, he pleaded no contest and was placed on probation. He was also required to complete an alcohol safety awareness program (ASAP). In September 2011, after moving to State B, Applicant was again arrested for driving while intoxicated (DWI) and refusing a breathalyzer test. He was convicted of the latter offense, his driver's license was suspended, and he was ordered to complete ASAP again. On April 5, 2012, Applicant was arrested and charged with DWI in State B. He had a .17 BAC. He also was charged with driving on a suspended license. He was convicted of both offenses. Two days after being released from jail for his April 5 arrest, and while a court date for that arrest was pending, Applicant was arrested in State B and charged with DWI 3rd offense (a felony). Applicant was held for 60 days in jail pending trial, at which he was found guilty and sentenced to time already served. Applicant was ordered to undergo intensive outpatient alcohol treatment, which he completed in June 2012. No records of that treatment were produced for this hearing, but Applicant acknowledged that he again was told he should abstain from alcohol. (Gx. 1; Gx. 4 - 8; Tr. 53 - 55, 57 - 65, 93)

In denying SOR 2.b, Applicant did not directly respond to the allegation that he was diagnosed in 2009 as alcohol dependent. Instead, he claimed that he went to rehabilitation solely for his opioid and anxiolytic medication dependence. He averred that the only reason alcohol problems were mentioned in the treatment records was because his insurance would only pay for alcohol treatment, not for drug treatment. Applicant continued to consume alcohol after his 2012 outpatient treatment. He stopped drinking between April 2012, after his second DWI arrest that month, and October 2012. In at least one instance since then, Applicant has consumed five or more beers. At hearing, Applicant testified that he has not consumed alcohol since January 2015. (Answer; Tr. 38 - 45, 55 - 56, 82)

In 2009, Applicant started to experience financial problems. The debt alleged at SOR 1.a is for a credit card he allowed his former mistress to use during their affair. When Applicant ended the relationship in 2009, she reacted by running up a large balance on the card. However, Applicant paid off that debt in March 2015, after initiating a repayment plan in November 2013. The debts alleged at SOR 1.b, 1.c, and 1.d are also for credit cards Applicant misused around the time of his military discharge and the end of his second marriage. He disclosed all of his debts in his EQIP. As to these credit cards, he stated that he used them for "food, rent, and booze." Applicant settled the debt at SOR 1.d in April 2013. (Answer; Gx. 1 - 3; Ax. B; Tr. 47 - 52)

Applicant is being assisted in the resolution of his debts by his girlfriend, who has lent him as much as \$13,000 since April 2012. Much of that money was used for travel to see Applicant's father in 2014, when he was sick. Applicant made another trip in February 2015, when his father died and Applicant had to arrange for a funeral. Applicant is repaying his girlfriend through a structured agreement, but this has hindered his ability to resolve his other financial problems. Applicant also presented information showing he is methodically resolving other financial problems not alleged in the SOR. (Answer; Gx. 1 - 4; Ax. B; Tr. 47 - 51, 71 - 82)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁸ with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁹ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.¹⁰

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹ Directive. 6.3.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.¹¹

Analysis

Drug Involvement

Available information supports the allegation at SOR 3.a. Applicant became addicted to opioid painkillers, which contain controlled substances, and to anti-anxiety medication late in his Navy career. This occurred because he abused prescription pain and anxiety medications that were initially prescribed to him for properly diagnosed medical conditions. Before entering a rehabilitation facility, he was illegally obtaining prescription drugs from a woman with whom he was having an extra-marital affair. This information raises a security concern articulated at AG ¶ 24 as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; and

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, information about Applicant’s drug use requires application of the following AG ¶ 25 disqualifying conditions:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.

¹¹ See *Egan*; AG ¶ 2(b).

I also have considered the following AG ¶ 26 mitigating conditions, which may be pertinent to these facts and circumstances:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation;

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant completed a drug treatment program, and he has not illegally obtained or used prescription medications in nearly six years. Taken in context with the record as a whole, I conclude he has mitigated the security concerns raised under this guideline.

Financial

Available information supports the allegations at SOR 1.a - 1.d. Applicant experienced significant financial problems starting around the time he was discharged from the Navy. Through irresponsible use of his personal credit, he accrued about \$30,000 of delinquent or past-due debt. The largest of his debts resulted from the actions of a former mistress, whom Applicant allowed to use his credit card and from whom he illegally bought prescription pain medications. This information is sufficient to raise a security concern about Applicant's finances that is addressed at AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Specifically, the record requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

By contrast, the record also requires application of the following AG ¶ 20 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The circumstances surrounding Applicant's financial problems have changed significantly. He paid one of the alleged debts two years ago and recently completed a repayment plan for his largest debt that he began two years ago. I also have considered information about other debts and financial issues not raised in the SOR because his actions show good judgment and support a conclusion that he will resolve his remaining debts and will be able to avoid similar problems in the future. Applicant has mitigated the security concerns about his finances.

Alcohol

This record supports the allegations about Applicant's abuse of alcohol and his alcohol-related misconduct at SOR 2.a - 2.e. In 2009, Applicant was diagnosed by competent medical professionals as alcohol dependent. It was recommended at that time that he abstain from all mood-altering chemicals, including alcohol. Applicant has continued to drink and was arrested for DWI three times after completing his 2009

rehabilitation. This information raises a security concern that is expressed at AG 21 as follows:

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.

More specifically, available information requires application of the following AG ¶ 20 disqualifying conditions:

(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;

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

The following AG ¶ 21 mitigating conditions have been considered:

(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.

I conclude the record does not support application of any of these mitigating conditions. Applicant's denial of the SOR 2.b allegation of alcohol dependence is based on his claim that the only way his medical insurance would pay for his drug treatment was if it was classified as treatment for alcoholism. This is simply not credible. It may be that the primary concern when he was admitted was his addiction to prescription medications. However, the record of treatment makes clear that Applicant has a history of alcohol abuse and was diagnosed by medical professionals as alcohol dependent.

Applicant knows he was diagnosed as alcohol dependent because he signed the discharge summary listing the diagnoses at issue here. He knows he was advised, both in 2009 and in 2012, to stop drinking. Yet, Applicant continued to drink and was arrested three times for DWI after completing his 2009 treatment. Applicant also continued to drink after a second course of alcohol treatment in 2012. Applicant claims he has not consumed alcohol since January 2015, but his continued use of alcohol despite extensive in-patient and out-patient treatment undermines my confidence that Applicant's alcohol-related problems will not recur. Available information precludes a finding that Applicant has mitigated the Guideline G security concerns.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F, G, and H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is now 48 years old and has made significant changes in his personal and professional life. Aside from his relationship with alcohol, he has improved his health and his financial condition. I have considered his honorable service in the Navy, as well as his good reputation in the civilian workplace. It is encouraging that he has resolved his finances and has put his prescription drug abuse behind him. However, the adverse information about his alcohol dependence and his alcohol-related misconduct clearly require that he establish a reliable track record of his commitment to sobriety. Until he does so, doubts will remain about his suitability for access to classified information. Because protection of the national interest is the principle purpose of these adjudications, those doubts must be resolved against the individual.

Formal Findings

Formal findings 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 F:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e:	Against Applicant

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 3.a: For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge