



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



In the matter of:)
)
-----) ISCR Case No. 14-04074
)
Applicant for Security Clearance)

Appearances

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

04/13/2015

Decision

Harvey, Mark, Administrative Judge:

From 2007 to 2012, Applicant engaged in binge alcohol consumption, and in 2012, he was diagnosed as alcohol dependent. He received alcohol-related treatment or counseling four times, and each time, he subsequently resumed his alcohol consumption. He has never been arrested for or convicted of an alcohol-related offense. In December 2012, he finally recognized the depth of his alcohol problem, and he ended his alcohol consumption. Alcohol consumption security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 2, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On October 28, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline G (alcohol consumption). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On November 21, 2014, Applicant responded to the SOR. (HE 3) On February 10, 2015, Department Counsel was prepared to proceed. On February 24, 2015, DOHA assigned the case to me. On March 18, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of the hearing, setting the hearing for March 24, 2015. (HE 1) The hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 16-18) Department Counsel offered two exhibits into evidence, and Applicant offered one exhibit into evidence. (Tr. 21-22; GE 1-2; AE A) There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 21-22; GE 1-2; AE A) On April 1, 2015, I received the transcript of the hearing.

Findings of Fact¹

Applicant admitted the conduct alleged in SOR ¶¶ 1.a to 1.d. (HE 3) He also provided some extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 60-year-old employee of a defense contractor, who has worked as a project manager and requirements developer since February 2014. (Tr. 6, 9-10, 51-52 GE 1) In 1973, Applicant graduated from high school. (Tr. 7) In 1994, he received a bachelor of science degree in mechanical engineering, and in 2004, he was awarded a master's degree in business. (Tr. 7) In 1976, he was married, and in 1988, he was divorced. (Tr. 8) In 1997, he was married, and in 2012, he was divorced. (Tr. 8) His two children are 30 and 33 years old. (Tr. 8-9) Applicant has never served in the military. (Tr. 8)

Alcohol Consumption

Applicant disclosed his issues with excessive alcohol consumption on his SF 86 and to his current employer. (Tr. 23; GE 1) Applicant engaged in binge alcohol consumption from about 2007 to December 2012. (Response to SOR ¶ 1.a; GE 2) From 2008 to September 2012, Applicant excessively consumed alcohol, and occasionally, he was absent from work. (GE 2) In 2012, he was diagnosed as alcohol dependent. (Response to SOR ¶ 1.d) He had the same employer for 21 years (from 1988 to 2009). (Tr. 53) For the first 18 years, he had no work absences due to excessive alcohol consumption. (Tr. 54) The last 3 years of this 18 year employment, he was absent from

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

work about 10 days a year because he was drinking about a fifth of vodka on a daily basis. (Tr. 54-56) In 2009, he left his employment because there was a reduction in force (RIF) due to an economic downturn. (Tr. 53-54) In September 2012, he resigned at the request of his employer from his next employment because he had been absent from so much work due to alcohol consumption and attendance at alcohol treatments and counseling. After completing his alcohol-related treatment in early 2012, he resumed his alcohol consumption in the latter half of 2012. (Tr. 53, 70-71; Response to SOR ¶¶ 1.b and 1.c)

Applicant's second former spouse is a 63-year-old retired school teacher. (Tr. 30) She divorced him in 2012, because of his excessive alcohol consumption. (Tr. 27, 30; GE 2) She described his history of alcohol consumption. His alcohol consumption gradually increased after he performed extensive temporary duty in Germany around 2005. (Tr. 32) Applicant knew she disapproved of his alcohol consumption, and he unsuccessfully attempted to conceal his alcohol consumption from her. (Tr. 27, 32-35) She was able to detect his alcohol consumption by changes in his actions, and she had a keen sense of smell and could identify the odor of alcohol on his breath after he took his first drink. (Tr. 28, 41-42)

Applicant second spouse continued to love him despite his alcohol use; however, she believed he had to "hit rock bottom" before he would end his alcohol consumption. (Tr. 42) She was concerned he would die from excessive alcohol consumption. (Tr. 43-44) She had to leave him in order to make a convincing statement that he had hit rock bottom and needed to stop consuming alcohol. (Tr. 42-43) After Applicant ended his alcohol consumption, she and Applicant resumed living together; however, she promised that if he resumed his alcohol consumption she would leave him. (Tr. 29, 35, 48) He assured her that he would never drink alcohol again. (Tr. 29)

Applicant said some alcoholics eventually accept the fact that they must terminate their alcohol consumption or their alcohol consumption will cost them their lives. (Tr. 74) Once they accept this realization, they can truly commit to abstinence from alcohol consumption. (Tr. 74) Applicant learned he had elevated liver enzymes, which in turn, caused atrial fibrillation. (Tr. 56) He recognized the adverse impact of alcohol on his marriage and his health. (Tr. 56-57) He sincerely and honestly concluded that ending his alcohol consumption was necessary to save his life. (Tr. 74-75)

Alcohol counseling and treatment and rehabilitation

Applicant received treatment for alcohol abuse in 2007,² 30-days of inpatient alcohol treatment from August 2009 to September 2009, outpatient treatment from November 2010 to January 2011, 35-days of inpatient alcohol treatment from November 2011 to January 2012, and three-months of outpatient treatment from January to April 2012. (Tr. 24, 37-38, 44-46, 57-61, 72) After most of the inpatient sessions, he attended outpatient aftercare counseling sessions. (Tr. 61, 68) He also attended numerous Alcoholics Anonymous (AA) meetings over the last 10 years. (Tr. 61-62, 68-69) After

² The SOR did not allege any alcohol-related counseling or treatment prior to November 2011.

each treatment session from 2007 to 2012, he rationalized that he could responsibly resume his alcohol consumption. (Tr. 69, 74) He started with one drink a day, and then he gradually increased his alcohol consumption until he was regularly becoming intoxicated from excessive alcohol consumption. (Tr. 69-70, 74) Around May 2012, he resumed his alcohol consumption, and he consumed alcohol until December 2012. (Tr. 46, 73) From 2005 to December 2012, he was only able to maintain sobriety for a maximum of about 12 months. (Tr. 40)

Applicant has been abstinent from alcohol consumption for 27 months. (Tr. 24) He does not have any alcohol in his residence. (Tr. 78) He has only missed one day of work in the last two years due to illness, and that absence was after his cardiac procedure in July 2014. (Tr. 24) He exercises regularly, and he has lost 35 pounds. (Tr. 24) He has reconciled with his former spouse from his second marriage. (Tr. 24) He enjoys his employment. (Tr. 77) He attends church regularly and spends time on a daily basis in prayer and meditation. (Tr. 25) He relies on his second wife and his church for support.

Applicant's second spouse promised to call his employer if he ever resumed his alcohol consumption. (Tr. 50) Applicant said he has no objection to his second wife calling his employer and letting his employer know that he has resumed alcohol consumption, if he does so. (Tr. 81)

If Applicant suddenly had a desire for alcohol, he would obtain support from his second wife or contact a friend from AA. (Tr. 78) He maintains his contact with his AA sponsor; however, he has not attended any AA meetings for the last eight months. (Tr. 73, 76) Applicant made a commitment to continue to refrain from alcohol consumption. (Tr. 80)

Character evidence

Applicant's former spouse describes him as trustworthy and honest when he is not drinking alcohol. (Tr. 29) Applicant is a good person who no longer desires to consume alcohol. (Tr. 49) She believes he has truly changed. (Tr. 49)

The vice president of Applicant's company said he is aware of Applicant's history of alcohol consumption and his commitment to abstinence. (AE A) Applicant has displayed "a high degree of honesty, integrity and reliability. He has proven to be hard working and dedicated, and has never been known to leave a job unfinished." (AE A)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.*

at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive 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."

Seven alcohol consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶¶ 22(a) - 22(g) provide:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, 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;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

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

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(a) to 22(d) and 22(f) apply because: his excessive alcohol consumption resulted in his divorce from his second wife; he missed work because of excessive alcohol consumption the night before he was scheduled to work; he engaged

in binge alcohol consumption;³ he was diagnosed in 2012 as alcohol dependent; and he was treated for alcohol abuse or dependence four times from 2007 to 2012, and each time after his treatment, he resumed his alcohol consumption and relapsed.

Four alcohol consumption mitigating conditions under AG ¶¶ 23(a)-23(d) 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;

(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.

AG ¶ 23(b) fully applies and AG ¶¶ 23(a), 23(c), and 23(d) partially apply. Applicant acknowledged his alcoholism and established a 27-month period of abstinence. His second spouse's support for his continued abstinence and promise that she will leave him and report any resumption of alcohol consumption are important consequences he will suffer, if he resumes his alcohol consumption. He achieved improvements in his physical fitness, lost weight, attended church regularly, and had reduced risks of medical problems due to ending his alcohol consumption. He acknowledged the severe personal, professional, and medical consequences that will result if he resumes his alcohol consumption and sincerely committed to not drinking alcohol in the future.

³Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>. There is no evidence of any consumption of alcohol since December 2012.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

In December 2012, Applicant recognized that he was at "rock bottom;" he needed to change; and it was essential to his wellbeing that he permanently end his alcohol consumption. Enough time has elapsed without alcohol consumption to fully establish his alcohol consumption has ended. He is making "satisfactory progress," and his alcohol consumption no longer casts doubt on Applicant's "current reliability, trustworthiness, or good judgment." After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude his changes in his life, recognition that he cannot consume alcohol without dire consequences, and his abstinence from alcohol consumption since December 2012, are sufficient to resolve my doubts about Applicant's alcohol consumption and to mitigate security concerns under Guideline G.

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

There is some evidence supporting denial of Applicant's access to classified information. Applicant had excessive alcohol consumption from 2007 to December 2012. He received alcohol-related treatment on four occasions, and after each treatment he relapsed. He described frequent episodes of binge-alcohol consumption. He was diagnosed in 2012 as alcohol dependent. His excessive alcohol consumption adversely affected his marriage, employment, and health. Despite these consequences over the years, he continued to consume alcohol.

The evidence supporting approval of Applicant's clearance is more substantial than the evidence supporting denial. Applicant is a 60-year-old employee of a defense contractor, who has worked as a project manager and requirements developer since February 2014. In 1994, he was awarded a bachelor of science degree in mechanical engineering, and in 2004, he was awarded a master's degree in business. There is no evidence at his current employment of any disciplinary problems. He has never been arrested for any alcohol-related conduct. There is no evidence that he ever consumed alcohol at work.

Applicant changed significantly when he ended his alcohol consumption in December 2012. He accepted personal responsibility for his shortcomings and misbehavior. He is honest and has learned from his mistakes. He acknowledged his alcoholism and established a 27-month period of abstinence. His second spouse's support for his continued abstinence and promise that she will leave him and report any resumption of alcohol consumption are important consequences he will suffer, if he resumes his alcohol consumption. He has achieved physical fitness improvements, lost 35 pounds, attends church regularly, and reduced the risk of medical problems by ending his alcohol consumption. In December 2012, Applicant recognized that he was at "rock bottom;" he needed to change; and he had to permanently end his alcohol consumption or he would not survive. Enough time has elapsed without alcohol consumption to fully establish his alcohol consumption has ended, and he will not use alcohol in the future.

Applicant's former spouse and the vice president of his company praised Applicant's honesty and dedication. He is a trustworthy person who strives to accomplish tasks at work and cares for his family. There is no evidence of disloyalty or that he would intentionally violate national security. His alcohol abstinence for 27

months and commitment not to consume alcohol in the future shows Applicant's current reliability, trustworthiness, and good judgment.⁴

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude approval of Applicant's access to classified information is clearly consistent with national security.

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 to 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to approve Applicant's security clearance. Eligibility for access to classified information is approved.

MARK HARVEY
Administrative Judge

⁴Applicant's alcohol abstinence must be maintained to ensure that he can safeguard classified information. Approval of Applicant's security clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider significance of past conduct or circumstances in light of more recent conduct having negative significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to abstain from alcohol consumption also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See *also* ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this Applicant's security clearance is conditional.