



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



In the matter of:)
)
) ISCR Case No. 14-06272
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel

For Applicant: *Pro se*

10/23/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s most recent alcohol-related criminal episode was nearly two and a half years ago. He is no longer on probation, has successfully completed counseling, and now recognizes the consequences of alcohol abuse. I conclude that he has mitigated the security concerns. Clearance is granted.

Statement of the Case

On January 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, criminal conduct, and 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on February 4, 2015, admitting the allegations and requesting a hearing. The case was assigned to me on May 11, 2015. On June 10, 2015, DOHA issued a notice of hearing, scheduling the case for July 8, 2015. The hearing was held as scheduled. At the hearing, Department Counsel made some minor amendments to the SOR. (Transcript (Tr.) 8-9) Also, I received eight Government exhibits (GE 1-GE 8), and seven Applicant exhibits (AE A-AE G). DOHA received a transcript of the hearing on July 16, 2015.

Findings of Fact

Applicant is a 27-year-old single man. He has a high school education, graduating in 2006. Since 2007, he has worked for a federal contractor as an engineering technician. (GE 1 at 10) According to Applicant's supervisor, who has known Applicant for his entire life, he is a trustworthy person. (AE A) According to a co-worker, Applicant is "dependable, loyal, and hardworking." (AE C)

Applicant began drinking alcohol when he was 15 years old. (Tr. 35) Initially, he drank once or twice per month. By his early twenties, he was drinking every weekend, typically consuming 12 to 15 beers over an eight-hour period. (Tr. 36)

One night in 2006, Applicant's friend, who was transporting Applicant and some other friends to a party, drove the car off the road to "do donuts" in a field. (Tr. 30) They had a case of beer in the backseat. Subsequently, the police stopped his friend's car. Upon searching the car, the police officer discovered the beer and administered breathalyzer tests to each of the individuals in the car. (Tr. 30) Although everyone passed the breathalyzer tests, they were each issued citations for being minors in possession of alcohol. (GE 4) The police confiscated the beer and released Applicant and his friends, who then continued to the party. (AE 4 at 2)

On the evening of March 11, 2012, Applicant was driving home from a bar with a friend and pulled the car to the side of the road so that his friend could urinate. (Tr.27) He was then approached by a police officer who, after administering several roadside sobriety tests, arrested and charged him with driving under the influence (DUI), failure to attach front and rear registration plates, and driving while impaired *per se*. When the arrest occurred, Applicant's blood-alcohol level was .14%. (GE 2 at 2) Under a plea bargain, Applicant pleaded guilty to DUI and the other charges were dropped. (GE 2 at 2) He was fined \$250, sentenced to probation before judgment with 20 days in jail (suspended), and given three years of probation. (GE 2 at 2)

Shortly after the March 2012 arrest, Applicant voluntarily enrolled in a six-week alcohol awareness class, consisting of one-hour group therapy sessions, once per week (GE 2 at 3). Applicant completed the sessions. (GE 2 at 3) The record is unclear as to whether he underwent an evaluation for alcohol abuse.

In May 2013, while on probation from the March 2012 offense, Applicant was arrested and charged with DUI, reckless driving in a wanton and willful disregard for the safety of persons and property, negligent driving of a vehicle in a careless and imprudent manner, and failure to stop at a stop sign line. (GE 2 at 3; GE 6 at 5) Earlier that evening, Applicant had consumed between four and six beers at a bar.

Shortly after the arrest, Applicant voluntarily resumed counseling. On May 22, 2013, a licensed counselor administered a standardized alcohol screening test which indicated that he had “some alcohol abuse.” (AE E at 9) On May 28, 2013, Applicant began counseling. He attended counseling sessions twice weekly through August 17, 2013. (GE 3 at 2) The counselor characterized his treatment as a success. (AE E at 9) Per the counselor, Applicant was “now keenly aware of the negative consequences of alcohol abuse” and was motivated not to drink and drive in the future. (AE E at 9)

On September 20, 2013, Applicant pleaded guilty and was convicted, fined \$65, ordered to spend ten days in jail over five weekends, and placed under two years of supervised probation. (AE 6 at 1; Tr. 26) As part of Applicant’s probation, the court required him to abstain from alcohol and to attend Alcoholic’s Anonymous (AA) meetings for one year. Also, Applicant was ordered to install an ignition interlock system in his car. (GE 6 at 7; GE 7 at 3; AE F; Tr. 40)

Applicant attended AA, as ordered, once or twice per week from September 2013 to August 2014. (AE G) After a year, Applicant’s probation was reduced to unsupervised. (Tr. 34) He continued attending AA classes voluntarily after the period of court-mandated AA attendance ended, until the extensive travel requirements of his job resumed, compelling him to stop. (Tr. 42). Applicant has not consumed any alcohol since his DUI arrest in May 2013. (Tr. 43) He understands that if he gets another DUI arrest, “there’s no more chances – no more excuses.” (Tr. 46) Applicant’s probation ended on September 20, 2015. (GE 6 at 3)

According to a current co-worker and former roommate of Applicant, he has matured considerably since his 2013 arrest. (AE D) Before the arrest, Applicant’s insecurity and fear of “let[ting] people down,” led him to drive when he was legally unable. (AE D) Now, he no longer succumbs to peer pressure. His self-confidence has extended to work where he is more assertive. (AE D)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶ 30) Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (*Id.*) Applicant’s history of criminal conduct triggers the application of AG ¶¶ 31(a), “a single serious crime, or multiple lesser offenses.”

Applicant was issued a criminal citation in 2006, and was charged and arrested twice for DUI between 2012 and 2013. The second arrest occurred when he was still on probation for the first offense. AG ¶¶ 31(a), “a single serious crime or multiple lesser offenses,” and 31(e) “violation of parole or probation, or failure to complete a court-mandated rehabilitation program,” apply.

Applicant’s probation just ended one month ago. However, there is substantial evidence of rehabilitation. Applicant fulfilled the requirements of probation, and received a positive prognosis from his alcohol counselor. He has strong references from his supervisor, and some friends and coworkers. Under these circumstances, AG ¶ 32(d), “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training, or higher education, good employment record, or constructive community involvement,” applies.

Alcohol Consumption

Under this guideline, “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 ¶ 21) Applicant has a history of excessive alcohol consumption. The following disqualifying conditions are 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; and

(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.

Since Applicant's 2013 arrest, he has successfully completed outpatient counseling. He attended AA, as court-ordered, and continued attending AA after he was no longer legally required to do so. Also, he has continued to abstain from drinking alcohol. Gauging from Applicant's introspective testimony and his positive character references, he appears to have matured, and to have learned his lesson about the dangers of alcohol abuse. AG ¶ 23(d), as set forth below, applies:

(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.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

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.

Approximately two and a half years have elapsed since Applicant last was arrested and since he last consumed alcohol. This is not that long given the intensity of Applicant's alcohol consumption before the arrest, and given that he had been arrested and charged with DUI approximately a year earlier. However, the negative ramifications of the two arrests and the history of heavy alcohol consumption is mitigated by

Applicant's youth when this behavior occurred, his successful participation in alcohol counseling, including AA, and positive recommendations from his supervisor, friends, and coworkers. Under these circumstances, I conclude that Applicant has mitigated the security concerns.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline J: | FOR APPLICANT |
| Subparagraphs 1.a-1.c: | For Applicant |
| Paragraph 2, Guideline G: | FOR APPLICANT |
| Subparagraphs 2.a: | 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge