



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



In the matter of:)	
)	
)	ISCR Case: 15-02592
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

May 27, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of excessive alcohol consumption and criminal misconduct. Based upon a review of the testimony, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

On May 15, 2014, Applicant submitted a security clearance application (e-QIP). On December 13, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines G (Alcohol) and J (Criminal Conduct). 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on January 13, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. DOHA issued a notice of hearing on March 16, 2016, scheduling the hearing for April 4, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 11, 2016, for Applicant to submit exhibits. Applicant failed to submit any documentation by April 11, 2016, and the record closed. DOHA received the transcript of the hearing (Tr.) on April 12, 2016.

Findings of Fact

Applicant is 34 years old. He has been employed by a government contractor since October 2009. He earned a bachelor's degree in 2005. He has never married and has no children. (GE 1.)

The SOR alleges Applicant was arrested and convicted of Driving Under the Influence of Alcohol twice: on August 27, 2010, and May 24, 2014. Applicant admitted to all of the allegations contained in the SOR.

On or about August 27, 2010, Applicant was at a bar. He consumed approximately four beers and a shot of whiskey. He did not feel intoxicated and chose to drive home. He was stopped by a police officer for "rolling [through] a stop sign." He was administered a breathalyzer test, which he failed. He was subsequently arrested and charged with Driving Under the Influence of Alcohol. He voluntarily attended an alcohol safety program prior to his court appearance. In October 2010, he pled guilty to Driving Under the Influence of Alcohol. He was sentenced to pay a fine; his driver's license was suspended for six months; he was required to attend 12 to 16 Alcoholics Anonymous (AA) classes; and he was placed on probation for three years. (GE 2; GE 3; Tr. 15.)

On May 24, 2014, Applicant was arrested and charged with Driving Under the Influence of Alcohol. He was attending a barbeque and consumed two glasses of whiskey and six or more beers over a period of several hours. He did not feel intoxicated and chose to drive home. He was stopped at a sobriety checkpoint. He was administered a sobriety test and failed it. Subsequently, he was arrested. Applicant pled guilty to the charge of Driving Under the Influence of Alcohol and was sentenced to 96 hours of jail; three years of probation; and was required to enroll in an alcohol counseling program. Applicant testified he is still on probation for this offense. (GE 2; GE 3; Tr. 20-23.)

Applicant began consuming alcohol at the age of 19. (GE 2.) In addition to the alcohol arrests alleged, Applicant admitted that he received a citation for having an open container of alcohol on the beach in July 2013. (Tr. 19-20.)

Applicant testified that he has learned from his mistakes. He testified that he has not consumed alcohol in the past "10 to 12 months." He no longer associates with the

friends he used to drink with, and now associates with supportive friends and family. He does not currently attend AA. (Tr. 14-21.)

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 to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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.

Applicant was convicted of two Driving Under the Influence of Alcohol incidents in August 2010 and May 2014, after he consumed alcohol to the point of impaired judgment and chose to drive. These incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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.

Applicant's alcohol-related incidents are recent. Other than completing the court ordered alcohol-related classes, he produced little evidence of rehabilitation that would show future misconduct is unlikely to occur. No prognosis was offered into evidence. Applicant failed to meet his burden to mitigate the alcohol-related concerns.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant has a recent history of criminal arrests and convictions that occurred in 2010 and 2014. These offenses give rise to concerns about Applicant's judgment and reliability, both because of the nature of the offenses and the quantity of criminal offenses. Further, he produced no documentation to show he was released from probation. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) 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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(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.

Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. His offenses are recent and he failed to present evidence to show that similar criminal conduct is unlikely to recur. AG ¶ 32(a) does not provide full mitigation.

Applicant failed to present evidence to show that he was pressured into criminal acts. He admitted each of the allegations. Neither AG ¶¶ 32(b) nor 32(c) provide mitigation.

Applicant failed to introduce evidence of sufficient rehabilitation. While he testified he had remorse for his past, and that he completed court-ordered alcohol classes, he presented nothing but his self-serving claims to show the levels of his current alcohol consumption. Further, he presented no documentation of job training or higher education, a good employment record, or other constructive community involvement. Not enough time has passed since his criminal convictions to support a finding of rehabilitation. AG ¶ 32(d) does not provide full mitigation.

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 Guidelines G and J in my whole-person analysis. Applicant's alcohol consumption and criminal conduct occurred around a designated set of friends with whom he no longer associates. He has completed the court-ordered alcohol classes. However, he failed to present enough evidence of rehabilitation to overcome his heavy burden to mitigate his alcohol abuse and criminal conduct. Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	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.

Jennifer I. Goldstein
Administrative Judge