



In the matter of:)
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) ISCR Case No. 07-04377
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)
 Applicant for Security Clearance)

For Government: Braden M. Murphy, Esq., Department Counsel
 For Applicant: John E. Tuthill, Esq.

April 25, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On April 20, 2006, Applicant submitted his Security Clearance Application (e-QIP). On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), detailing the security concerns under Guideline G (Alcohol Consumption), to Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 26, 2007, and requested a hearing before an administrative judge. On January 25, 2008, DOHA assigned the case

to me. A Notice of Hearing issued on March 3, 2008, and the case was heard on March 20, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified, called five witnesses, and offered Exhibits (AE) A through I into evidence without objection. DOHA received the hearing transcript on March 31, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a, 1.b and 1.c of the SOR, and offered explanations in support of his request for eligibility for a security clearance.

Applicant is 53 years old. He is a senior staff chemical engineer for a federal contractor for whom he has worked since May 1981. As a senior member of the staff, Applicant oversees many projects for the company. He is married and has three adult sons, one of whom lives at home. In May 1993, he earned a Master of Science in Mechanical Engineering. Over the course of his employment, he received training in handling and storing classified information. (GE 2). He has held a Secret security clearance for 26 years. (Tr. 72).

In the summer of 1990, Applicant began experiencing chronic joint and back pain. In 1995, he was diagnosed with fibromyalgia. His doctor prescribed various medications for his condition, including anti-inflammatory agents and specific anti-depressant drugs over the next several years. The medications were initially effective for periods of time, but eventually lost their efficacy. In early 2004, he began self-medicating with alcohol on a regular basis to relieve the pain. (Tr. 74).

In the fall of 2006, Applicant developed severe sciatica pain. When he met with a government investigator for his security clearance interview in November 2006, he stated he had increased his evening alcohol consumption to approximately six to ten beers each night over the course of several hours in order to manage his pain. (GE 3; Tr. 76; 78; 87). Although he admitted in his Answer that he occasionally drank to excess or became mildly intoxicated, he does not believe he engaged in binge drinking or became intoxicated to the point of having impaired judgment while drinking at home. He never placed himself in a position where his judgment could be a concern. (Answer; Tr. 76; 77).

During the first half of 2007, Applicant started attending physical therapy to relieve the sciatica pain. After working with the physical therapist and doing exercises at home for a period of time, the sciatica pain began to mitigate, as did the fibromyalgia pain. By April and May of 2007, he moderated his alcohol consumption to two or three beers a couple nights a week at home. (Tr. 89). He continued the therapy sessions until December 2007, when his insurance benefits ran out for that year.

After learning from a governmental investigator in June 2007 that his alcohol consumption was jeopardizing his security clearance, Applicant immediately stopped

drinking and sought an independent alcohol and substance abuse evaluation, as recommended by the investigator. (Tr. 62). On July 16, 2007, he met with a licensed social worker, certified in drug counseling, for an evaluation. After completing an alcohol and drug assessment, the counselor sent a report to the government investigator on July 31, 2008. He diagnosed Applicant as having an alcohol abuse disorder. (GE 4). He recommended that Applicant participate in outpatient treatment, including individual counseling, alcohol education, and seek help at a pain management clinic. He recommended Applicant abstain from alcohol use. (*Id.*). Applicant did not receive a copy of that report until October 2, 2007, despite repeated calls to the counselor's clinic.

After meeting with the government investigator in June 2007, Applicant did not consume alcohol until his birthday in September 2007, when he had a couple beers with his family at home. (Tr. 61). Over the past nine months he has had about 12 drinks, and completely stopped consuming alcohol on December 6, 2007. He is very aware of the diagnosis he received from two health care providers and is committed to maintaining abstinence. (Tr. 60; 83-84; 90). Currently, he controls his pain through exercises and anti-inflammatory drugs.

Over the course of the years that Applicant was drinking, he was never arrested for any alcohol related incidents, disorderly conduct, or intoxication. He generally never drank outside of his home, unless he had a glass of wine with friends while socializing. (Tr. 61-61; 78-81). He never went to work under the influence of alcohol, or received any type of disciplinary action related to alcohol consumption. None of his colleagues ever observed him intoxicated.

Applicant's current supervisor testified. He has a Top-Secret security clearance. He has known Applicant for four and a half years and been his supervisor since September 2007. He interacts with Applicant on a daily basis. He has never observed Applicant under the influence of alcohol at work or during social events they attended. He rated Applicant as "exceptional" in the 2007 annual performance evaluation, which included information and comments from other employees. (AE F). He supports Applicant's request for a Top-Secret security clearance. (Tr. 16-22).

Another colleague of Applicant testified. He has held a Secret clearance for 20 years. He has known Applicant for 25 years and supervised him for four years, giving him an "excellent" rating each year. Although they interacted socially on occasion years ago, their relationship has essentially been of a professional nature. He has never observed Applicant under the influence of alcohol or medication. He initiated Applicant's request for a Top-Secret security clearance. He does not have any reservations or concerns about Applicant's reliability, trustworthiness, judgment, or ability to handle classified information. (Tr. 23-29). Several other colleagues have similar opinions of Applicant and those opinions were considered in his previous evaluations. (AE H).

One of Applicant's friends testified telephonically. He has a Ph.D. in laboratory medicine and pathology. He has known Applicant for more than 40 years. He is aware of Applicant's struggle with sciatica pain and fibromyalgia, and the issues surrounding

the security clearance hearing. He has never observed Applicant abusing alcohol, although he has detected that Applicant had been consuming alcohol during an occasional telephone conversation over the past couple years. Applicant never discussed his work with him. The last time he saw Applicant was in December 2007. (Tr. 31-43). He considers him to be a good father, husband, friend, and dedicated employee.

Three of Applicant's colleagues submitted letters in support of Applicant, attesting to his reliability, integrity and trustworthiness. One of them strongly recommends his application for a Top-Secret security clearance. (AE B, D and E).

A clinical psychologist, who interviewed Applicant twice in January 2008, testified. He has been licensed since 1986 and began working in private practice in 1988. He has extensive clinical experience, covering a broad range of psychological issues. Over the course of his practice, he has performed many substance abuse evaluations for clients, including Applicant, who voluntarily came to him for a second opinion. As part of his evaluation, he administered two psychological assessment tests to Applicant: the Substance Abuse Subtle Screening Inventory Test and Michigan Alcohol Screening Tool. He also reviewed the July 2007 alcohol and drug assessment report from the previous health care provider, and numerous documents written by Applicant in response to the Government's security concerns, as well as his medical records.

Based on his interview, the assessment tests and a review of various documents, the psychologist concluded that Applicant possessed an "Alcohol Abuse Disorder, In Early Partial Remission and of mild to moderate severity." (AE A; Tr. 98). Applicant acknowledged that his alcohol consumption predisposed him to medical problems and potential employment issues. The psychologist recommended that Applicant abstain from all alcoholic beverages. In early March 2008, the psychologist again met with Applicant, who informed him that he had remained abstinent for two and a half months. The psychologist opined that if the Applicant has abstained for that period of time, "he has a good prognosis to be able to maintain sobriety without formal intervention or treatment." (AE A at 2). He believes that "historically [Applicant's] use of alcohol has primarily been social, and then in the last few years, his dinking increased as he started to use that as a treatment for his fibromyalgia." (Tr. 104). He does not have any reservations about Applicant's ability to perform his job competently or professionally. (Tr. 91-104).

Applicant's wife testified. They have been married 30 years and have three adult children. For the last nine years, she has worked outside of the home. She is very aware of her husband's physical problems and the various treatments and medications he has used to treat them, including the consumption of alcohol. His consumption of beer increased in the fall of 2006 when the sciatica pain became more prominent. She does not believe he has an alcohol problem and has observed him cease drinking for periods of time. He generally never drank outside of the home. He has not consumed alcohol since December 2007. He currently manages his pain with physical therapy,

exercise and vitamins. He may make an appointment at a pain clinic for additional assistance. (Tr. 40-54).

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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, 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 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, 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 to obtain a favorable security decision. 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."

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 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.”

Based on the evidence, the Government established a disqualifying condition under AG ¶ 22(d), which is applicable when there is evidence of “a diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.” On March 17, 2008, a clinical psychologist diagnosed Applicant as having an Alcohol Abuse Disorder, in Early Partial Remission. Although the Government argued that the evidence also raised a disqualification under AG ¶ 22(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,” I do not agree. Applicant and his wife deny that he became intoxicated to the point of having impaired judgment while he drank at home at night. Furthermore, I do not believe the Government intended that this disqualification be directed to individuals who consume alcohol, alone, in the privacy of their home, and do not break any laws or violate established standards of conduct.

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation. Four Alcohol Consumption Mitigating Conditions are potentially applicable under AG ¶¶ 23 (a)-(d):

- (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 credibly acknowledges his issues of alcohol abuse. Over the past nine months, he consumed about 12 drinks, and since December 7, 2008, he has not consumed any alcohol. He has successfully addressed his pain problems through physical therapy and anti-inflammatory drugs. He is committed to abstinence and a healthy life style. He has recently considered making an appointment at a pain management clinic. All of those actions are sufficient to trigger the application of AG ¶ 23(b). There is some evidence to support a limited application of AG ¶ 23(c), in that he received a favorable prognosis from the evaluating clinical psychologist, based on his past months of sobriety. None of the other two mitigating conditions 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following: (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) 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 include 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. Applicant is a 53-year-old man, who has worked for his employer for more than 27 years and received exceptional ratings for several years. He has held a Secret security clearance for 26 years without any reported incidents of mishandling classified information. His current and former supervisors consider him to be a very reliable, trustworthy and valued employee. They support his request for a Top-Secret security clearance, as do other colleagues. Over the past years, none of his witnesses observed Applicant to be intoxicated or exhibiting impaired judgment, in spite of his painful condition.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. Applicant is an intelligent and successful individual, who imprudently began consuming alcohol at night as a means to manage excruciating pain. He has since learned to manage his pain through a change in his life style and without alcohol. Given his commitment to change and

