



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



In the matter of:)	
)	
)	ISCR Case No. 07-09724
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Susan G. Chappell, Esq.

May 30, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 27, 2006. On November 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, for 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.

On December 18, 2007, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 21, 2008. The case was assigned to another administrative judge on February 25, 2008. The case was transferred to me on February 26, 2008. On March 13, 2008, a Notice of Hearing was issued scheduling the hearing for April 15, 2008. The hearing was held, as scheduled. The Government offered three exhibits which were admitted as Government Exhibits (Gov) 1-3 without objection. The Applicant offered three exhibits which were

admitted as Applicant Exhibits (AE) A - C. Applicant and four witnesses testified. The transcript was received on April 23, 2008. The record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits to all of the allegations.

Applicant is a 59-year-old employee with a Department of Defense contractor seeking a security clearance. He is a senior engineer and has worked for his current employer since April 2006. He retired from federal employment on March 31, 2006 after 31 years of service. He has held a security clearance for over 32 years. He served on active duty in the United States Army from August 1969 to August 1971. He received an honorable discharge. He has been married for 31 years and has a son, age 28. (Tr at 48, 59, 81, 105, 116; Gov 1; Gov 2 at 14-16.)

In 1999, Applicant's son was arrested and charged with murdering a female teenage friend. He pled guilty and was sentenced to life in prison without parole. Applicant and his wife have endured a lot of emotional pain as a result of their son's actions and subsequent imprisonment. Applicant started to drink wine in the evenings in order to numb his feelings. When he was drinking he became emotionally distant from his wife. At his heaviest intake, he drank up to two bottles of wine per night. His drinking did not affect his work performance. He still showed up for work and received favorable evaluations. (Tr at 86-88; Gov 2 at 8; AE B; Answer to SOR.) His co-workers did not notice that he had a drinking problem. (AE B, Federal Co-worker Interviews.) He has no recent arrests for driving under the influence. He was arrested on one occasion for driving under the influence in May 1973. (Gov 1, section 23; Gov 2 at 8.)

Applicant's wife was concerned about his drinking and realized her husband was starting to have a problem with alcohol. She said her husband used alcohol to "deaden the pain" after their son went to prison. His drinking cut him off from her. He drank on a daily basis when he got home after work. The couple sought professional help to cope with their son's situation. She asked her husband to quit drinking after she realized he was drinking too much after seeing the therapist. She thought his drinking was making him more depressed. (Tr at 86-92.)

Applicant initially denied that he had a drinking problem. Applicant's wife eventually told him to stop drinking or move out of the house. He chose to move out. He rented an apartment. He talked to his wife daily and saw her a couple times a week. A few months after he moved out, Applicant called his wife and asked her to take him to the doctor and to arrange to attend an inpatient alcohol treatment program. She arranged for him to attend an inpatient treatment program in March 2005. (Tr at 91, 93, 94; AE B at 68-70.)

Prior to departing for the inpatient alcohol treatment program, Applicant talked to his supervisors and told them he had an alcohol problem. His supervisors were very supportive. He took leave to attend the inpatient treatment program from March 1, 2005 to March 20, 2005. (Tr at 123; AE B at 48, 68-70; Answer to SOR.)

When Applicant began treatment, he spent three to four days in the detoxification unit. During this time he did not feel well but had no major physical issues. After completing detox, he underwent two and a half weeks of intensive inpatient treatment. He learned about the disease of alcoholism while in treatment. He went home after he successfully completed the program. He joined an Alcoholics Anonymous (AA) group as part of his aftercare, obtained a sponsor and remained sober. After four months of sobriety, his wife invited him to move back home. (Tr at 93-96; 122-125.) He celebrated one year of sobriety in February 2006. (Tr at 126.)

After he retired from his federal government job and moved to the location of his current employment, he did not stay actively engaged in the AA program. In July 2006, he decided to drink a beer at the airport after a flight was canceled. He started to think that he could drink socially. He called his wife and told her to pick him up at the airport because he drank a beer. After that, he occasionally had a beer or a glass of wine with dinner. His drinking started to escalate in the summer 2007. (Tr at 96-99; 126-128, 131.)

Sometime in August 2007, Applicant called in sick to work and told his supervisor that he was having problems with alcohol and that he needed some time off. He drank a couple bottles of wine during the time he was off. (Tr at 136.) After this incident, Applicant started to make some changes. He joined a local substance abuse counseling group. He started to attend AA again and acquired a sponsor. He had two relapses in November 2007 and on January 23, 2008. Each of these episodes occurred over the course of an evening. The last time, he drank a full bottle of wine. (Tr at 31-32, 100,103,132-133.) He disclosed his two relapses to his counselor and his psychologist. (Tr at 137-138.)

In early February 2008, Applicant obtained a new sponsor. He has progressed with his new sponsor. He is more engaged and realizes in order to stay sober he has to stay engaged and work the program. He attends an AA meeting daily and meets with his sponsor at least once a week. He attends his other group meeting on a weekly basis. The meetings last 90 minutes. (Tr at 133-134,137.) Applicant admits he is a recovering alcoholic. He works the program on a daily basis to keep himself healthy. (Tr at 117, 148.)

Applicant's wife states that she believes her husband is committed to sobriety. She said it was very meaningful to her that he changed sponsors because he thought his first sponsor was not working out. It shows her that he is serious about managing his disease (alcoholism). He goes to AA meetings often and is enthusiastic about what he learns during the meetings. Since he has obtained a new sponsor, he has done some really great step work. His prior relapses made her husband realize that he can't

drink again. When he drinks casually it escalates. She believes this realization “gives him a huge leg up on the disease.” (Tr at 109-114.)

Mr. M., BS, LADAC, Applicant’s substance abuse counselor, evaluated Applicant in September 2007. He concluded that Applicant meets the criteria for alcohol dependence. (Gov 2 at 12.) Mr. M. provided a subsequent letter, dated April 1, 2008, indicating Applicant has attended his continuing care program since September 2007. He attends weekly group sessions for 90 minutes. He is required to attend a minimum of three 12-Step meetings a week and maintain a sober support network. His counselor notes that Applicant has been appropriate in regards to his recovery program and has made some recent changes in his program that appear to be beneficial. If Applicant continues in a program of recovery, his relapse potential is low. If he discontinues his participation in a recovery program, the potential will increase. He notes that Applicant appears to be motivated towards his recovery. (AE A.)

Dr. L., a clinical psychologist, started to see Applicant on a weekly basis on January 2, 2008. During their initial meeting, Applicant disclosed that he was a recovering alcoholic. Applicant had an AA sponsor but was in the process of looking for another sponsor when he first came to see him. He recalls Applicant telling him that the last time he had a drink was one month prior to their initial visit in January 2008. (Applicant testified it was November 2007. The government conceded November 2007 was the more accurate date. Tr at 151.) Since he began seeing Dr. L., Applicant drank alcohol on one occasion in late January or early February 2008. Applicant reported this relapse to Dr. L. The last time Dr. L. saw Applicant was on April 10, 2008. (Tr at 26-45.)

Applicant’s diagnosis is Alcohol Dependence in early full remission. Early full remission means a person is abstinent from alcohol for at least one month but less than 12 months. Applicant has abstained from alcohol for two and a half months. Dr. L. stated that Applicant’s prognosis is favorable as long as he is involved in treatment. When Applicant is not involved in treatment, he tends to be more isolated and has the greatest tendency to relapse. Dr. L. states Applicant attends a weekly group counseling session, attends AA meetings daily, and has regular contact with his sponsor. He is also on anti-depressants which contributes to his remission. Dr L. states Applicant has no denial about his disease and is confronting his alcohol dependence. He cannot predict the future or whether Applicant will relapse in the future. Relapse is not atypical and is treated as part of the treatment. Applicant’s prognosis is good as long as he involves himself in treatment. (Tr at 26-45.)

Applicant’s supervisor is a retired Air Force Lieutenant Colonel who currently holds a TOP SECRET clearance. He was involved in the hiring process. Applicant was recommended for the position. He sees Applicant on a daily basis when the both of them are in town. He was not aware that Applicant had an alcohol problem until one day in the fall 2007 (Applicant states it was August 2007.), Applicant called in sick for a few days. Applicant contacted him and told him he had a problem drinking wine and needed some time off to deal with personal issues. His supervisor was aware of his son’s situation and understood that it was a stressful period for him. He and Applicant

discussed the situation when Applicant returned to work. Applicant told him that he was attending AA. He took no disciplinary action against Applicant. He has no concerns regarding Applicant handling classified information. He finds him open, honest, and trustworthy. He gave Applicant a satisfactory rating on his most recent performance evaluation which closed out in October 2007. (Tr at 47-65.)

Applicant's facility security officer (FSO) has worked for the company since 2005. She has been in the security business for 19 years. She holds a TOP SECRET clearance. In April 2006, she conducted initial prescreening interviews with Applicant when he submitted an application to upgrade his security clearance to TOP SECRET. During the interview, Applicant disclosed his alcohol problem and that he self-admitted himself into an inpatient alcohol program in 2005. He also disclosed that his son was in prison for murder. She also spoke with Applicant in the Fall 2007, after he missed a few days related to his alcohol relapse. After talking with him, she was not concerned about his absence. Applicant is forthright about his alcohol issue and is seeking treatment. (Tr at 67-72, 74-77.)

The FSO indicated that Applicant serves as the COMSEC (communications security) custodian. She works with him on a daily basis. He has a good understanding of the sensitivity of the material and how it is controlled. He is very aware of what is required to protect national security information. She believes Applicant is trustworthy. She is aware of his two relapses in November 2007 and January 2008 but does not think he is a security risk. He continues to perform his job. He pays attention to detail. He is aggressively seeking to manage the disease. (Tr at 72-73, 76-79.)

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.

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 as to obtaining a favorable security decision.

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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following Alcohol Consumption Disqualifying Conditions (AC DC) apply:

AC DC ¶22(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) does not apply. Applicant has no recent alcohol-related arrests. His one arrest for driving under the influence occurred more than 35 years ago in 1973. There are no recent alcohol-related incidents which raise a concern.

AC DC ¶22(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 person is diagnosed as an alcohol abuser or alcohol dependent) does not apply. Applicant had no alcohol-related incidents in his previous or current job. He called in sick to work for a few days in August 2007 but this cannot be considered an alcohol-related incident at work. His co-workers at his previous job and his current job were not aware of his alcohol issues until he disclosed them.

AC DC ¶22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant was drinking a couple bottles of wine a night when he was drinking heavily.

AC DC ¶22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence) applies. Dr. L., Applicant's clinical psychologist, diagnosed Applicant as alcohol dependent, in early remission.

AC DC ¶22(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) does not apply. Although Mr. M., Applicant's counselor concluded that Applicant meets the criteria for alcohol dependence. The record is unclear as to Mr. M.'s credentials. He is a substance abuse counselor but it is unclear whether he is a licensed clinical social worker.

AC DC ¶22(f) (relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program) applies. Applicant completed inpatient alcohol treatment on March 20, 2005. He remained sober for over a year and a half but started drinking alcohol again when he retired and accepted another job in another city.

AC DC ¶22(g) (failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence) is not applicable to Applicant's case.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

Alcohol Consumption Mitigating Condition (AC MC) ¶ 23(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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) is not applicable at this point. At the time of the hearing, Applicant had been sober for approximately two and a half months. Not enough time has passed for AC MC ¶ 23(a) to apply. However, it is noted that Applicant sought treatment on his own. Since returning to AA in August 2007, his two relapses were brief, each occurring during the course of one evening, and Applicant

fully disclosed his relapses to his alcohol treatment providers. There is no issue pertaining to his reliability, trustworthiness, and good judgment.

AC MC ¶ 23(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) applies. Applicant acknowledges that he is a recovering alcoholic. He has taken steps to deal with his alcoholism since March 2005. He was sober for a year and a half. Although, he started to drink alcohol because he thought he could do so socially, he came to the realization that he could not drink alcohol in August 2007 and began to attend AA meetings again. He attends AA meetings daily. He attends a weekly group meeting with a substance abuse counselor, and is being treated by a clinical psychologist. He has been proactive in his alcohol treatment, recognizing the need to change his sponsor. He has been sober since January 23, 2008.

AC MC ¶23(c) (the individual is a current employee who is participating in a counseling or a treatment program, has no history of previous treatment and relapse, and is making satisfactory progress) is not applicable because Applicant returned to drinking alcohol after his inpatient treatment in March 2005. He is making satisfactory progress in his current program.

FC MC ¶23(d) (the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with 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) applies. Although he has relapsed in the past, Applicant has demonstrated that he is proactive in his fight to remain sober. He attends daily AA meetings, has a sponsor, and acknowledges his alcoholism. Dr. L., a licensed clinical psychologist, gives him a favorable prognosis as long as he remains involved in treatment. Applicant is actively involved in treatment, as verified by his substance abuse counselor, and his wife. His wife has noticed a positive change in Applicant since August 2007. Although Dr. L.'s diagnosis states that Applicant is in early full remission from his alcohol dependence, Applicant has not tried to hide his disease including his two relapses. He voluntarily sought treatment. He has established that he is serious about remaining abstinent.

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) 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 common sense 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 considered the impact that Applicant's son's crime and incarceration had on him. I considered the favorable comments of Applicant's co-workers and friends. I considered his 31 years of service as a federal government employee. I considered the comments from his clinical psychologist and substance abuse counselor who verify that he has actively worked the program since September 2007. Although he had two incidents of relapse in November 2007 and January 2008, he did not hide these incidents which indicate his inclination to deal with his alcohol problem. Applicant has been sober for two and a half months. It is noted that he identified that he was having trouble with alcohol again in August 2007 and took steps to achieve sobriety since that date. He has mitigated the concerns raised under alcohol consumption based on his honesty about his alcoholism and the steps he has taken to control his sobriety. Guideline G, Alcohol Consumption, is found for Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge