



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-04037
)
)
 Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/05/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has been involved in sporadic alcohol-related misconduct, including driving under the influence (DUI) of alcohol and abusing alcohol at a workplace social event, since 1984. He is currently on probation until 2018 following a 2013 DUI conviction. Applicant has not mitigated the security concerns about his alcohol consumption. His request for a security clearance is denied.

Statement of the Case

On January 29, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew a security clearance required for his job with a defense contractor. After reviewing the results of his background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly

consistent with the national interest for Applicant to have access to classified information.¹

On November 10, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline G (Alcohol Consumption).² Applicant timely responded to the SOR and requested a decision without a hearing. On March 19, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on May 4, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on June 3, 2015, without any response to the FORM from Applicant. The case was assigned to me on August 12, 2015.

Findings of Fact

Under Guideline G, the Government alleged that Applicant has consumed alcohol, at times to excess and to the point of intoxication, from age 18 until at least January 2013 (SOR 1.a); that in May 1984, he was arrested and charged with DUI, to which he pleaded guilty (SOR 1.b); that in August and September 2003, he completed inpatient alcohol treatment (SOR 1.c); that in December 2009, he received from his employer a written warning about violating standards of conduct and substance abuse policies after his involvement in three alcohol-related incidents (SOR 1.d); and that in January 2013, he was arrested and charged with DUI, to which he pleaded nolo contendere, and for which he is on probation until 2018 (SOR 1.e). Applicant admitted all of these allegations. In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor and requires a security clearance for his work. From September 1985 until March 2006, Applicant served in the United States Navy as an aviation electronics technician. He retired with an honorable discharge as a chief petty officer. Applicant has worked for his current employer since May 2008. He worked for a different defense contractor from May 2006 until May 2008. Applicant has held at least a secret-level security clearance since 1988. (FORM, Item 2)

Applicant has been married since September 1989. A previous marriage began in September 1978, ended by divorce in February 1981, and produced one child. (FORM, Item 2)

In his EQIP, Applicant disclosed the information about his alcohol-related arrests, his alcohol-related misconduct at an office holiday party, and alcohol-related counseling as alleged in the SOR. Applicant disclosed in an April 2013 personal subject interview

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6, as amended (Directive).

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included four exhibits (Items 1 - 4) proffered in support of the Government's case.

that he started consuming alcohol when he was 18 years old. He avers that he does not drink according to any pattern; and that, until January 2013, he consumed two or three beers with friends two or three times each week. Applicant claims he has not consumed alcohol since January 2013. (FORM, Items 2 and 3)

As a result of Applicant's January 2013 DUI arrest and conviction, he is on probation until 2018. According to the terms of his probation, Applicant is not to consume or possess alcohol. He also is required to use an ignition interlock device for any motor vehicle he owns or operates until 2016. Further, Applicant must submit to unannounced drug and alcohol screening over the course of his probation. (FORM, Items 3 and 4)

Applicant submitted six character references with his response to the SOR. All of the authors praised Applicant's professionalism, integrity, and trustworthiness. None of those letter reflected any knowledge of the adverse conduct documented in this record. His performance evaluations for 2009 and 2010 reflect that he is a "solid performer." Among the personal decorations awarded to Applicant during his Navy career are six good conduct medals and six Navy and Marine Corps Achievement Medals. (FORM, Item 1)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁹

Analysis

Alcohol Consumption

Available information, including Applicant's admissions to the SOR allegations, establishes that Applicant has consumed alcohol, at times to the point of excess and intoxication, for his entire adult life. He also has been twice arrested for alcohol-related offenses, despite completing inpatient alcohol treatment and being counseled for his alcohol-related conduct at an office party. This information raises a security concern expressed at AG ¶ 21, as follows:

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.

More specifically, available information requires application of the following AG ¶ 22 disqualifying conditions:

(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

(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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

I have also considered the potential application of the mitigating condition at AG ¶ 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 or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant has not consumed alcohol since his January 2013 DUI arrest. However, his adverse alcohol-related conduct has taken place at various points in the past 31 years. It has also occurred after inpatient alcohol treatment and workplace counseling about his alcohol use. Available information does not include any input from a medical professional regarding Applicant's current relationship with alcohol. Thus, this record suggests that Applicant's abstinence is due more to the requirements of his probationary status. Criminal penalties await Applicant should he be found to have used or possessed alcohol while on probation. On balance, I conclude Applicant has not mitigated the security concerns raised by the Government's information about his use of alcohol.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline G, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I note that Applicant is a retired Navy veteran who has the support of current and former associates and shipmates. He is a solid performer at work. However, without additional information showing that he is unlikely to abuse alcohol or to engage in alcohol-related misconduct, the positive whole-person information in this record is not sufficient to resolve the doubts about his suitability for continued access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge