



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



In the matter of:)	
)	
)	ISCR Case No. 14-04244
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

January 22, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 23, 2012. On February 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 10, 2015. He answered the SOR in writing through counsel on May 11, 2015, and requested a hearing before an Administrative Judge.¹ The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on July 16, 2015. I granted Applicant’s request for a delay until September 17, 2015, in order for

¹Counsel, however, did not represent Applicant at his hearing.

his counsel to be available. DOHA originally issued a notice of hearing on August 13, 2015, setting the hearing for September 17, 2015. However, Applicant later decided to proceed without counsel, and I convened the hearing as rescheduled on November 2, 2015. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on November 10, 2015. I granted Applicant's request to keep the record open until December 2, 2015, to submit additional matters. On November 17, 2015, he submitted a Closing Statement. He submitted no further exhibits. The record closed on December 2, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline G - Alcohol Consumption

Applicant is 39 years old, and has worked for a Defense Contractor for "about three years." (TR at page 20 line 18 to page 21 line 24.) He served in the U.S. Navy "for approximately 14 years," and received a General Discharge in 2013. (*Id.*)

1.a.~1.f. Applicant started drinking alcohol "in middle school," and increased its consumption during the years he attended high school. (TR at page 22 lines 4~12.) In 1994, while a high school student, Applicant was charged with and convicted of having an Open Container at the beach. (TR at page 31 line 12 to page 32 line 1.)

Four years later, in 1998, Applicant, then a technical consultant, was drinking with friends at a hotel. (TR at page 32 line 2 to page 34 line 4.) He remembers going to bed, but woke up in his truck after crashing into a tree. (*Id.*) He suffered an alcohol induced blackout. He later pled guilty to and was convicted of Driving Under the Influence of alcohol (DUI). (TR at page 32 line 2 to page 34 line 4.) As a result of this conviction, Applicant was fined, placed on probation for about two-and-a-half years, and had his drivers license suspended.

A year later, Applicant enlisted in the Navy in April of 1999. (GX 1 at page 16.) While on active duty in Guam, in November of 2004, he was involved in an alcohol related barroom brawl. (TR at page 26 line 6 to page 28 line 13.) As a result of this incident, he received non-judicial punishment for, in part, Drunkenness; and as part of his punishment, received "21-day outpatient" treatment for alcohol abuse. (*Id.*)

Eight years later, in November of 2012, Applicant, after consuming alcohol at a bar, on his way back to his hotel, decided to go "skinny dipping." (TR at page 35 line 8 to page 36 line 24.) As a result of this incident, he again received non-judicial punishment for, in part, Drunkenness. (*Id.*) Two months later, in January of 2013,

Applicant was discharged from the Navy with a General Discharge as an alcohol rehabilitation failure.

Applicant has offered an evaluation from a Clinical Psychologist who avers that Applicant does not have “an alcohol problem.” (AppX A.) However, I can not ignore that Applicant suffered an alcohol induced blackout in 1998, his admission to being diagnosed in the Navy as being an alcohol abuser, and that he still consumes alcohol.² (TR at page 30 lines 18~24, at page 31 lines 1~2, and at page 33 lines 2~20.)

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 commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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

²In his written Closing Statement, Applicant avers that since his wife’s October 27, 2015, birthday, he as “abstained completely” from the consumption of alcohol. Even if his closing statement were evidence, which it is not; while laudatory, his abstinence is simply too little too late.

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

Paragraph 21 of the adjudicative guidelines sets out the security concern relating to Alcohol Consumption: “Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 22(a) is applicable and provides that “*alcohol-related incidents away from work, such as driving while under the influence, fighting . . . or other incidents*” may be disqualifying. Applicant has a 1998 DUI, and was drunk and disorderly in 2004 and again in 2012. Subparagraph 22(d) is applicable and provides that a “*diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence*” may be disqualifying. Applicant admittedly suffers from alcohol abuse as diagnosed while serving in the Navy. Subparagraph 22(f) is also applicable and provides that a “*relapse after diagnosis . . . and completion of an alcohol rehabilitation program,*” may be disqualifying. He was discharged from that Navy in 2013 for being an alcohol rehabilitation failure. I can find no countervailing mitigation conditions that are applicable.

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. Under AG Paragraph 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. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of those who know him in the work place. (TR at page 53 line 5 to page 56 line 3, and AppX B.) However, at this time the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Alcohol Consumption. In the future, after an appropriate period of abstinence, he may again apply for a security clearance.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge