



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04614

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Catie E. Young, Esquire

January 20, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On November 6, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On January 8, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing in this case. The case was assigned to this Administrative Judge on April 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 20, 2015, and I convened the hearing as scheduled on May 21, 2015. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through X, which were also admitted without objection. DOHA received the transcript of the hearing

(Tr) on May 29, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 59 years old. He is divorced, and he has three children. He received a Bachelor of Science degree in Mathematics. He attended the United States Military Academy at West Point in 1975 and 1976. Applicant has been associated for two years with a consulting firm that is a defense contractor. Prior to that he worked as a Senior Manager for 30 years for another defense contractor until he retired in 2011. Applicant is seeking a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption, which leads to the exercise of questionable judgement or the failure to control impulses. The following allegations are cited in the SOR as tending to show that:

1.a. It is alleged in the SOR that on or about April 2002, Applicant was arrested and charged with (1) Driving Under the Influence (DUI), and (2) Fight in a Public Place, misdemeanors. Applicant pled guilty to (1) Driving with Blood Alcohol Content Level of 0.08% or Higher, and (2) Fight in a Public Place, both misdemeanors. He was placed on probation for three years and fined approximately \$1,080.

At the hearing, Applicant admitted this allegation. He testified that he had attended an office barbecue and he had been drinking during the event, although he did not know the quantity. Ultimately he was involved in a vehicular accident, which resulted in conflict with the other driver. Although Applicant is the one who called the police, they saw beer in his truck and he was arrested for DUI. Applicant plead No Contest rather than Guilty, as alleged in the SOR, and the rest of information in the SOR is correct. Applicant also was required to attend a First Offender program and he had to perform community service. Finally, he attended some anger management classes. Applicant averred that this was his only arrest for DUI. (Tr at 48-52.)

1.b. It is alleged in the SOR that from August 2003 to October 2003, Applicant attended an alcohol treatment program. He left the program against medical advice and prior to completion. Applicant was diagnosed with Alcohol Dependence by the staff at the facility.

Applicant testified that he had voluntarily entered himself in a treatment program, in August 2003, specifically for alcohol. The treatment consisted of four weeks of

residential treatment, and then outpatient treatment for two weeks. At the hearing, Applicant denied that he had left the program prior to completion. He did confirm that he was diagnosed as Alcohol Dependent. (Tr at 51-57.) Applicant submitted a letter from a friend of his, who met Applicant in this program. The individual confirmed that Applicant did finish the treatment program as prescribed. This person has remained friends with Applicant, and he wrote that he and Applicant continue to attend the same Alcoholics Anonymous (AA) meetings together. (Exhibit D.) Applicant also submitted a letter from a doctor, who is the Chief Executive Officer (CEO) of the facility where Applicant received treatment in 2003. He wrote that Applicant completed his initial phase of the program and transitioned to a lower level of care. (Exhibit C.)

1.c. It is alleged in the SOR that in May 2008, Applicant was arrested and charged with (1) Public Intoxication, and (2) Resisting an Officer. In May 2009, Applicant pled No Contest to Disturbing the Peace, and he was placed on probation for two years and fined approximately \$525.

Applicant admitted this allegation during his testimony, and he explained facts that resulted in this incident. Applicant had been drinking at his home with his son, who was celebrating his 21st birthday, when they went to a bar. Applicant continued to consume alcohol and eventually he and his son were asked to leave the bar. He went out of the bar, and was “exchanging words” with the manager and a bartender. The police were eventually called and he was arrested. As reviewed above, Applicant pled No Contest to Disturbing the Peace, and he was placed on probation for two years and fined approximately \$525. (Tr at 60-65.)

1.d. It is alleged in the SOR that after Applicant was diagnosed with Alcohol Dependence in February 2003, he continued to consume alcohol, at times to the point of intoxication, until at least January 2013.

During his testimony, Applicant admitted that he identifies himself as an “alcoholic.” He testified that he first began consuming alcohol when he was 13 or 14 years of age in 1969. Applicant continued to consume alcohol as he grew older, and he described himself as a weekend binge drinker. He had not believed his drinking was an issue until he entered his first rehabilitation in 1989, primarily for his cocaine abuse. (See below.) After that, Applicant stopped drinking for about six months, and then he started drinking alcohol again in a manner he described as “on and off,” until he went through a rehabilitation program again in 2003. (Tr at 45-47.)

Applicant testified that after his rehabilitation in 2003, he remained sober until 2006. He explained that in 2006, he began traveling more than he had previously, and he stopped working his alcohol rehabilitation program as aggressively nor speaking to his AA sponsor. He started drinking more and after an incident with his supervisor, he began attending AA again and once more pursued sobriety. This occurred in June or July 2006. (Tr at 58-60.)

As reviewed above, Applicant consumed alcohol in 2008, which resulted in his arrest and conviction for Disturbing the Peace. After that arrest, Applicant testified that

he remained abstinent from alcohol consumption until sometime in 2012, when he began drinking again. He first started dating again and drinking wine during his dates. This morphed into drinking vodka at home. Because he was unhappy with once again consuming alcohol, he again enrolled in the same alcohol rehabilitation program he had previously entered in 2003, this time from January 2013 to April 2013. Applicant testified that he last consumed any alcohol on January 27, 2013. (Tr at 65-66.)

1.e. It is alleged in the SOR that from January 2013 to April 2013, Applicant attended an alcohol treatment program where he was diagnosed with Alcohol Dependence. Applicant admitted this allegation. He testified that he still meets every other week with seven other people who attended this treatment program to help each other. (Tr at 66-67.)

Applicant testified that he has had two sponsors since he became involved in AA. The first was his sponsor for nine years before he passed away. He has had his current sponsor almost three years and Applicant meets with him every week or every other week. Applicant continues to attend three or four AA meetings each week. Applicant also testified about changes he has made in his life. He now trains for sprint triathalons, engaging regularly in swimming, running, and bicycle riding four or five times a week. He also has been attending Bible study classes once a week for the last two years. Applicant has been involved with a local university in raising student scholarships. Applicant is also very involved in AA, not just attending meetings, but chairing meetings. (Tr at 69-75.) Finally, Applicant through his activities has gotten himself healthier and more at peace; he has lost 25 pounds and gotten off medications for high blood pressure and high cholesterol. (Tr at 95-96.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant's conduct as set forth in paragraph 1., above, is a concern under Guideline E.

2.b. It is alleged in the SOR that Applicant used marijuana from 1970 to at least 1991, including after having been granted a DoD security clearance in 1984. Applicant admitted this allegation. He testified that he did not use marijuana very often, as cocaine was his drug of choice. (See 2.c., below.) He estimated there were a handful of uses. He stated that he used marijuana one last time in 1991. (Tr at 38-41, 82.)

2.c. It is alleged in the SOR that Applicant used cocaine on multiple occasions from 1978 to 1989, including after having been granted a DoD security clearance in 1984. Applicant admitted this allegation. He testified that he used cocaine from approximately 1978 or 1979 to the last time in 1991. He estimated he used cocaine approximately 12 to 25 times a year for a period of about 10 years, all while holding a security clearance. He stopped using any illegal drugs in 1989, after successfully

completing a three month outpatient rehabilitation program, with the one exception of drug use in 1991 at a wedding. He also stated that during the years that he was using drugs, he only did it on weekends. Applicant testified that he has not used any illegal substances since 1991, and he has no intention to ever use illegal drugs in the future. Applicant also averred that he does not knowingly associate with anyone who uses illegal drugs. (Tr at 41-44, 82-83.)

Mitigation

Applicant submitted a number of documents in mitigation. These include but were not limited to: eight very positive and laudatory character letters (Exhibits E through L); Applicant's excellent performance evaluations at the company where Applicant was employed for more than 30 years (Exhibits M and N); and awards, certificates and recognition earned by Applicant (Exhibits R, S, T, and U).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 ¶ 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 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

Paragraph 1 (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 judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Applicant’s alcohol consumption resulted in the criminal conduct and convictions listed in subparagraphs 1.a. and 1.c. The Government established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” Disqualifying conditions AG ¶ 22(a) and (c) apply to this case. AG ¶ 22(e) and (f) also are applicable because Applicant has had more than one relapse after being diagnosed as alcohol dependent.

In reviewing the mitigating conditions, I find that ¶ 23(a), 23(b) and 23(d) are applicable because Applicant’s last alcohol-related incident occurred in 2008, and Applicant has completely abstained from alcohol consumption since January 2013. While Applicant’s history of relapses are of a concern, I also find these mitigating conditions apply because of the credible testimony of Applicant that he strongly intends not to consume alcohol in the future, and the changes in Applicant’s life that demonstrate a stronger commitment to sobriety than Applicant has ever shown before. Therefore, I find Guideline G for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful an

candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In reviewing the disqualifying conditions under Guideline E, I conclude that Applicant's history of alcohol usage, his continuing alcohol usage after being diagnosed as alcohol dependent, and his illegal drug usage while holding a security clearance, is a concern to the Government under Guideline E. While an argument could be made that his conduct does "support a whole-person assessment of questionable judgement, untrustworthiness, unreliability, . . . and unwillingness to comply with rules and regulations" under ¶ 16, I do not find it controlling.

Applicant's last usage of alcohol occurred almost two years ago, he testified credibly that he does not intend to consume alcohol again, and he has taken strong steps to insure that he will not consume alcohol in the future. Also, while Applicant's drug usage for many years while holding a security clearance is of great concern, it ended almost 25 years ago in 1991. Therefore, I find that mitigating condition ¶ 17(c) is applicable because "so much time has passed" and "it [the conduct] is unlikely to recur and does not cast [current] doubt on the individual's reliability, trustworthiness, or good judgment." Also, ¶ 17(d) applies because Applicant "has acknowledged the behavior and obtained counseling to change the behavior," and "taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior." I, therefore, resolve Guideline E for Applicant.

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) 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. Based on all of the reasons cited above as to why the mitigating conditions apply and are controlling under Guidelines G and E, together with Applicant's positive recommendations and lifestyle changes supporting his sobriety, I find that the record evidence leaves me with no significant questions or doubts

as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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
Subparagraphs 1.a. through 1.e.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a. through 2.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge