



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



In the matter of:)
)
) ISCR Case No. 14-05369
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and G (alcohol consumption). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 2, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2015, scheduling the hearing for September 17, 2015. The hearing was convened

as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on September 28, 2015.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He served in the U.S. military from 2003 until he was honorably discharged in 2011. He deployed to Afghanistan in 2005, Iraq in 2008 to 2009, and Afghanistan in 2009 to 2010. He is a high school graduate. He has never married, and he has no children.¹

Applicant was arrested in 2007 and charged with public intoxication. He was given 80 hours of community service, and the charge was dismissed. He received a letter of counseling from his commanding officer.²

In 2008, Applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for violating Article 134 by being drunk and disorderly. He was ordered to perform extra duties for 14 days, and he forfeited \$200 in pay. He was also required to attend a one-day Alcohol Drug Abuse Prevention and Treatment (ADAPT) program.³

In 2012, Applicant had a few beers before he reported to work at about 3:00 a.m. His supervisor severely chastised him, or as described by Applicant: "I got a good yelling." Applicant was permitted to work that day, and there was no formal disciplinary action taken.⁴

Applicant describes his current alcohol consumption as three or four beers a month. He stated that he works in a harsh environment and that alcohol is not conducive to his work.⁵

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2013. He reported his 2008 NJP for drunk and disorderly. He did not report his 2007 arrest for public intoxication. He was not required to report the scolding he received from his supervisor. He credibly testified that he did not intend to falsify the SF 86. He did not think he was required to list the 2007 arrest because he did not think he had been charged.⁶

¹ Tr. at 20; GE 1, 2.

² Tr. at 13-14; Applicant's response to SOR; GE 2.

³ Tr. at 14, 18-20; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 15-17; Applicant's response to SOR; GE 2.

⁵ Tr. at 17-18, 20-21.

⁶ Tr. at 12-15; Applicant's response to SOR; GE 1, 2.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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;
- (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 individual is diagnosed as an alcohol abuser or alcohol dependent; and
- (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.

The above disqualifying conditions are established by Applicant's alcohol-related incidents.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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; and
- (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).

Applicant's last alcohol-related incident was more than three years ago. He has matured and currently only drinks about three or four beers a month. I find that Applicant has established a pattern of responsible alcohol use and that uncontrolled

drinking is unlikely to recur. His current alcohol consumption does not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, 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 and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded 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 relevant 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. I have incorporated my comments under Guidelines E and G in my whole-person analysis. I also considered Applicant's honorable military service and his multiple deployments to Afghanistan and Iraq.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated the alcohol consumption security concerns.

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-1.d:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	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.

Edward W. Loughran
Administrative Judge