



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



In the matter of:)	
)	
)	ISCR Case No. 14-05481
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

05/24/2016

Decision

WHITE, David M., Administrative Judge:

Applicant underwent inpatient treatment in 2005 for alcohol dependence, resumed drinking in 2008, then completed another course of treatment in 2011. He has been abstinent since then, and did not falsify information about these events during the clearance application process. Resulting security concerns were mitigated. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on May 1, 2014. On May 29, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Drug Involvement) and Guideline E (Personal Conduct). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on June 16, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 7, 2015, and the case was assigned to me on October 15, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 4, 2015, and I convened the hearing as scheduled on November 17, 2015. Department Counsel participated by video teleconference. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection, and testified on his own behalf. Pursuant to Directive ¶ E3.1.17, I granted Department Counsel's request to modify SOR ¶¶ 1.b, 1.d, 2.a, and 2.b, by correcting the words describing Applicant's alcohol-dependence diagnoses in May 2005 and February 2011.¹ I granted Applicant's request to leave the record open until December 1, 2015, for submission of additional evidence. On November 25, 2015, Applicant submitted AE H, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 3, 2015, and the record closed.

Findings of Fact

Applicant is a 60-year-old majority owner of a small software company, which he founded in 1999. He earned a bachelor of science degree in 1977, and a master's degree in business administration in 1986. He has no military service. He has held a security clearance since 2011, in connection with his company's requirement for a facility clearance to perform defense contracts. He is twice divorced, and has two teenage children. (GE 1; GE 2; Tr. 5-7, 61-62.)

In his Answer, Applicant admitted the allegation in SOR ¶ 1.b and denied the remaining allegations, in whole or in part, with explanations. Applicant's admissions and statements are incorporated into the following findings.

Applicant began drinking alcohol socially during the mid 1970s, while in college. His second child was born in 2001 with severe heart problems that necessitated a series of six major operations over the next six years. Applicant suffered from severe back pain resulting from chronic spinal conditions that became almost unbearable in about 2003. He declined to take prescription pain medications, but began self-medicating with alcohol after work every evening. Applicant realized that his alcohol consumption was a problem, and he voluntarily entered a ten-day inpatient aversion therapy course of treatment in a local hospital on May 6, 2005. (Answer; GE 3; AE A; AE E; Tr. 32-37, 66-73.)

During this treatment, Applicant was diagnosed by his doctor with alcohol dependence, continuous. He successfully completed the treatment on May 16, 2005, and was discharged. On June 21, 2005, he returned to the facility for a standard two-day "reinforcement" treatment. During 2006, he underwent spinal surgery to relieve his continuing back pain. In 2007, he learned that his wife was having an affair with his

¹Applicant had no objection to these corrections. (Tr. 112-116.)

good friend. She refused to participate in marriage counseling, and he moved out of their home in September 2007. During 2008 Applicant began dating other women, but found that his abstinence from alcohol was socially limiting. He began socially drinking again that summer while on dates. (AR; GE 3; AE A; AE H; Tr. 37-40, 90-93.)

Applicant's divorce from his wife was finalized in December 2010, and included a parenting plan that required him to demonstrate abstinence from alcohol for a period of six consecutive months through random testing twice per week, and to successfully complete a minimum of six months of parenting therapy in order to be permitted the prescribed visitation with his children during summer vacation and to take his younger son out of state. The plan also required that he not use any alcohol for 24 hours prior to, and during, any visitation with his children. (AE B.)

Applicant was not initially successful in meeting the biweekly random testing requirement. He successfully completed another course of inpatient aversion therapy at the same facility from February 17, 2011 to February 28, 2011, in order to help him demonstrate compliance with these requirements. The facility's records indicate that this treatment started with a course of alcohol medical detoxification, which he completed without incident or complication. His doctor diagnosed him with alcohol dependence, continuous, relapse; and alcohol withdrawal syndrome. There is no evidence to support the SOR ¶ 1.c allegations that the detoxification period lasted for 72 hours, or that he admitted drinking wine two weeks prior to this admission. (AR; AE A; GE 3.) Applicant also returned for a "reinforcement" treatment on April 17, 2011. Applicant subsequently completed the parenting plan's specified biweekly six-month random abstinence testing program from September 28, 2011 to March 31, 2012. (AE D.)

Applicant underwent subsequent testing in order to further demonstrate his ongoing compliance with the 24-hour abstinence rule for visitations; and to meet his parenting plan's additional requirement that he undergo an ethyl glucuronide (ETG) hair follicle test for alcohol use within 14 days of any out-of-state travel with his children. These ETG tests, which detect any alcohol use during the preceding 90 days, were performed on hair samples he submitted on August 29, 2013; November 11, 2013; March 17, 2014; June 26, 2014; and November 2, 2015.² All results were negative for ETG, indicating abstinence from alcohol. Since completing his 2011 inpatient treatment, Applicant has been totally abstinent and dating a woman who has also stopped drinking alcohol. He has no interest in drinking again. (AE A; AE C; AE F; Tr. 47-51, 109.)

SOR ¶ 2.a alleged that Applicant misrepresented material facts on his May 2014 SF 86 concerning his alcohol treatment by deliberately failing to disclose that he had consumed alcohol after his 2005 treatment, and that he had been "detoxed" from alcohol upon entering treatment in 2011. However, that SF 86 question only asked if he had ever voluntarily sought counseling or treatment as a result of his use of alcohol. He accurately answered, "Yes," and described both times he underwent treatment. While

²The most recent testing also included negative results for amphetamines, cocaine, opiates, cannabinoids, and PCP.

his answer might be interpreted to imply that he had not consumed any alcohol between treatments, he did not say that. Furthermore, that answer was substantially the same as his answer to the alcohol treatment question on the SF 86 that he submitted in July 2011, which resulted in his being granted his first security clearance. Applicant explained that he knew investigators would talk to his ex-wife, who knew about his drinking between 2008 and 2011, and he had no reason to conceal what he considered social drinking during that period. The evidence does not support a finding that Applicant's May 2014 response to the alcohol treatment question was a deliberate omission, concealment, or falsification of relevant facts. (AR; AE H; Tr. 59-61, 81-85.)

SOR ¶ 2.b alleged that Applicant falsified material facts during his June 18, 2014 interview with a DoD-authorized investigator by stating that he had not consumed alcohol since approximately 2005. GE 4 is an unsworn, non-authenticated, and uncorroborated summary of the interview written by the investigator. It says, on page 6, "He has not had any alcohol since 2005." Applicant was offered the opportunity to object to the admission of this evidence pursuant to Directive E3.1.20, but declined to do so. He did, however, object to the accuracy of this statement and described at length how he and the investigator discussed his social drinking between 2008 and 2011 while trying to reenter the dating scene. The weight of Applicant's testimony, subject to potential criminal penalty under 18 U.S.C. 1001 for falsifications, substantially outweighs the uncorroborated and non-authenticated hearsay assertion in GE 4 that Applicant told the investigator he had not consumed alcohol since 2005. (GE 4; AR; AE H; Tr. 20-26, 51-53, 58-60, 83-92.)

A business associate, who has known and worked closely with Applicant since 2005, wrote a letter describing Applicant as an honest and dedicated person, who is committed to his business, to his sobriety, and to being a good father to his children. He further described Applicant's good character and resistance to social pressures to consume alcohol in both social and business-related settings. (AE G.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the allegations in the SOR and record evidence are:

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant developed his physician-diagnosed alcohol dependence after several years of habitual or binge consumption of alcohol to the point of impaired judgment. He voluntarily underwent, and successfully completed, inpatient aversion-based alcohol treatment in May 2005. For about three years, from 2008 to 2011, Applicant relapsed into alcohol consumption. He successfully participated in another course of inpatient treatment in 2011. These facts support security concerns under the foregoing DCs.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any 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.

Applicant recognized and acknowledged that he had an alcohol problem in 2005. He underwent inpatient treatment, but under social pressures associated with his separation and divorce he resumed drinking about three years later. When confronted with the choice to continue drinking and lose visitation privileges with his children, or to demonstrate abstinence, he participated in another successful course of inpatient treatment in February 2011. He has not consumed alcohol since then, and has no intention to do so in the future. His significant other has also given up alcohol consumption. Under these circumstances, his former addictive alcohol consumption is unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant thus established substantial mitigation under AG ¶ 20(a).

Applicant did not meet the full criteria to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d). During testimony, he did not acknowledge his ongoing alcoholism. He is not currently participating in a counseling or treatment program, does not participate in Alcoholics Anonymous, and did not present a favorable prognosis by a duly qualified medical professional. However, he medically documented his established pattern of abstinence for almost five years after his second course of inpatient treatment, as called for under AG ¶¶ 23(b) and (d). This establishes some additional, partial mitigation under those provisions.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 DCs alleged in the SOR, but not supported by the evidence in this case, are:

- (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; and
- (b) deliberately provided false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative.

Applicant did not deliberately falsify his 2014 SF 86. The information he provided was accurate, albeit easily subject to misinterpretation. He had recently been granted a security clearance based on a 2011 SF 86 with a similar response to the question about his alcohol treatment history. The record evidence also establishes that Applicant did not tell the DoD-authorized investigator that he had not consumed alcohol since 2005, as alleged. Security concerns under AG ¶¶ 16(a) and (b) were accordingly not raised by sufficient evidence under these facts. No discussion of MCs is warranted.

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 pertinent facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for his choices and actions, and who took necessary steps to overcome and control his alcohol dependence. He demonstrated rehabilitation and permanent behavioral changes after successfully completing a second inpatient course of aversion therapy more than five years ago. The potential for recurrence, pressure, coercion, and duress is acceptably low. Overall, the evidence alleviates doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 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.

DAVID M. WHITE
Administrative Judge