



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



In the matter of:)
)
-----) ISCR Case No. 14-06161
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esquire
For Applicant: Brian E. Kaveney, Esquire

06/29/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). 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 DOD on September 1, 2006.

In a response dated August 29, 2015, Applicant admitted all seven allegations raised and offered brief comments on each point in mitigation. Applicant also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on November 2, 2015. DOHA issued a notice of hearing on November 6, 2015, setting the hearing for November 24, 2015. The hearing was convened as scheduled.

The Government offered eight documents, which were accepted without objection as exhibits (Exs.) 1-8. Applicant gave testimony, introduced five witnesses, and offered 21 documents, accepted into the record without objection as Exs. A-W. The transcript was received on December 4, 2015. On December 16, 2015, the Government

forwarded an additional document in the form of a positive professional recommendation from Applicant's employer, which was accepted into the record as Ex. X. The record was then closed.

Findings of Fact

Applicant is a 57-year-old engineer who has been employed by the same defense contractor for nearly four years. He has earned two master of science degrees related to his field. Applicant is married and has three children. He served as an officer on active duty in the United States military for four years in the 1980s. He has maintained a security clearance since 1979. Applicant disclosed his past issues with alcohol on his security clearance application, a past regarding which he is remorseful. He has been sober for nearly four years. (Tr. 13)

Near the end of 1995, at the age of 38, Applicant first began consuming alcohol when he discovered he enjoyed the taste of white wine. By 1998 or 1999, he "began to descend into alcoholism. . . ." (Tr. 46) In November 2000, he was charged with Driving Under the Influence (DUI), a misdemeanor. (Tr. 83-86) In February 2001, he pled no contest and was placed on probation for a year. During the 2004 to 2005 timeframe, his alcohol consumption led to his losing a work laptop and cell phone on his way home from work.¹ By 2009, Applicant's problem with alcohol hit its nadir. At times he would consume one to two bottles of wine a day, occasionally he would drink hard liquor. (Tr. 76, 79, 84-85) At work, he had always been a "star performer." (Tr. 81) He had used wine to reward himself for his accomplishments. Then, in early 2009, he was charged with Driving While Intoxicated (DWI), a misdemeanor, in another state. (Tr. 86-89) Ultimately, in July 2009, he again pled no contest, was fined, sentenced to one weekend in jail, and placed on probation for one year.

In the interim, after the DWI and as his imbibing began adversely affecting his work, Applicant's drinking issues affected his marriage. At his wife's urging, Applicant sought professional help for his drinking. (Tr. 87) From February 2009 to November 2009, Applicant received treatment at a comprehensive addiction treatment center, where he was diagnosed with Alcohol Dependency by medical professionals. Applicant cites February 2009 as to being the end of his "period of consistent drinking," but he suffered at least one relapse and consumed alcohol during this treatment. (Tr. 47) This relapse occurred in September 2009, after a stressful work day when he was waiting in a crowded restaurant bar, smelled alcohol, and succumbed to a craving. Consequently, he repeated the treatment cycle. (Tr. 34)

Since December 2009, Applicant has had two more relapses. First, in July 2011, while participating in Alcoholics Anonymous (AA), he was under much pressure at during a work trip in a town where he had no information on AA resources. He felt too uncomfortable to discuss his drinking issues with coworkers. During dinnertime, he gave

¹ No classified information was contained in the items and they were eventually located by local authorities. Tr. 47.

in to his craving for alcohol. When he missed work the following day, his coworkers were concerned. Hotel security checked on Applicant, finding him in his room, hungover. (Tr. 51) Applicant attributes his lapse, in part, to his stress and hunger, noting that he now eats smaller meals on a more frequent basis, and to better manage stress. (Tr. 51-52)

In 2010, Applicant was diagnosed with a cardiac issue and prescribed an anti-arrhythmic medication, Amiodarone, which can have adverse interaction issues with stimulants such as alcohol. It also has a known side effect of potentially causing liver damage. Applicant was advised that, with his history of alcoholism, his use of the drug could be risky. (Tr. 53)

On or about August 8, 2012, Applicant was suffering from gastritis and having difficulty both eating and digesting his food. He was also in a great deal of pain. Rather than consult a medical professional, he thought a glass of wine would anesthetize his pain. As a result, he felt worse and found it difficult to function for days. This was the last time he consumed alcohol. After that incident, he was diagnosed with liver failure. Applicant noted that, "it was that path that led me down to eventually getting formally diagnosed as having cirrhosis of the liver and then being referred to [a renowned medical facility] I cannot drink at all because of [sic] present nature [and] to go back to drinking, regardless of circumstances, is a death sentence for me, period " (Tr. 56) He acknowledges that he is an alcoholic, as is appropriate under the AA tenets. A licensed clinical social worker from the referenced medical center noted in 2012 that Applicant has been working on comporting his behavior in high-risk situations, such as his son's wedding, and "remains vigilant with respect to his health." (Tr. 56-57; Ex. O)

Applicant has executed a statement of intent in which he agrees to remain sober while maintaining a security clearance. He knows that he must report any relapse to his superiors. (Tr. 57; Ex. N) He has refocused his life away from alcohol and stress toward helping others. He now volunteers at his church every week at its child development center, where its minister praises him as a superior volunteer who has exhibited no indications of alcohol use. (Tr. 104-106) He has learned stress management techniques to help cope with his work, including regular exercise, improved diet, prayer, and more time with his family and friends. Also, he continues participating in AA, which he attends three times a week. He accepts that he is powerless over alcohol and embraces the AA concepts. He is mindful of plans he can employ if he finds himself in a situation where alcohol is readily available or if he feels tempted to succumb. (Tr. 68-69)

Currently a candidate for a liver transplant, Applicant understands the importance of remaining alcohol-free, both in terms of his cirrhosis and his medications. An important requirement for being on the liver transplant candidate list is absolute sobriety and compliance with constant medical testing and monitoring. He has been under close medical scrutiny and subject to rigorous screening since March 2013 in anticipation of a liver transplant. Such screening was previously quarterly, but, due to his positive track record to date and his continued AA participation, which the transplant division requires, he is screened every six months. (Tr. 64-65; Ex. E and Ex. M) To bolster these

requirements, Applicant's wife, who no longer has any tolerance for his drinking, obtained a breathalyzer. She is prepared to require him to use if she has any concerns about his sobriety. (Tr. 66-67)

The prospect of further liver issues and his transplant candidacy have been a wake-up call to Applicant in terms of being extra diligent with regards to alcohol. He currently has a positive prognosis concerning his alcoholism from his alcohol treatment center, which concluded he is in remission. (Tr. 71-73; Ex. P, Ex. C) He maintains regular contact with his AA sponsor, who holds a Ph.D. and has been sober for 25 years, between meetings. Applicant has had no adverse incidents at work regarding alcohol, his treatment, or his health since his 2012 relapse. Applicant no longer has physical cravings for alcohol. He now rarely travels for work, and has his office's support for staying close to home. (Tr. 98, 100) If he must travel, he goes fortified with information regarding local AA groups. (Tr. 102)

Applicant's direct supervisor at work is highly supportive of Applicant's sobriety and is open to working with him should he have any concerns or issues, including those related to stress and travel. (Tr. 137-140) Applicant's security officer is also aware of Applicant's past alcohol-related issues and current strides to maintain sobriety. (Tr. 140) Applicant acknowledges that "drink for me amounts to a death sentence." (Tr. 74) He has no problem discussing his stressors with individuals at work. (Tr. 140)

A former supervisor of Applicant's testified that he has known Applicant for 25 years and knows of his past problems with alcohol. They maintain regular contact. The witness believes Applicant's problems are in the past. (Tr. 109) He bases this observation on Applicant's incentives, specifically, his placement on the liver transplant list, maintenance of his family and marriage, and his personal pride of accomplishment. (Tr. 109-110; Ex. D) Due to Applicant's knowledge, expertise, and diligence, and having noted the change in Applicant since he quit alcohol, the witness would rehire Applicant "in a heartbeat." (Tr. 111, 114) He also notes that Applicant's wife is a very strong woman who will not tolerate Applicant relapsing. (Tr. 113)

A Government customer of Applicant's, with 50 years of military service, has known Applicant since 1999. (Tr. 121-126; Ex. Q) He admires Applicant as a worker and for overcoming his alcohol issues, which they have discussed. He believes Applicant has reorganized his life and will not again jeopardize his family life. Moreover, a supervisor of Applicant's who has everyday contact with him noted that Applicant is a trustworthy asset to his team. He knows of Applicant's past alcohol issues, but has never witnessed Applicant suffer any alcohol-related issues. (Tr. 134-135) His current supervisor also reports nothing but positive things about Applicant.

Testimony was given by a state licensed professional counselor who is also a behavioral health assessment therapist, certified substance abuse counselor, certified disorder specialist and nationally certified counselor with a master's degree in counseling. (Tr. 17-18) During her years of practice, she has clinically conducted psycho-social evaluations on thousands of patients and works under medical

supervision for a major health care hospital system. (Tr. 18-19; Ex. U) She was accepted by both parties as a duly qualified medical professional capable of forming opinions as permitted under DOHA case law. (Tr. 20) She conducted a full evaluation of Applicant, ranging from interviews with Applicant and his wife to a physical examination. She reviewed his record from alcohol treatment and spoken with associated staff concerning his treatment for alcohol dependence.

That witness believes Applicant's confession that he is an alcoholic is well-considered and sincere. (Tr. 26-27) Under the theory that alcoholism is a lifelong diagnosis, she noted that he appropriately recognizes that he is in lifelong recovery.² (Tr. 36) She diagnosed him with alcohol use disorder in sustained remission, noting as well his severe heart and liver issues. (Tr. 22-23) She volunteered that he is conducting himself appropriately in recovery and she has not noted any signs of further alcohol use. While her profession forbids her from making predictive judgments, she stated that such considerations lead her to observe that his chances of relapse are, consequently, lower. (Tr. 26) She further noted that she has no reason to conclude Applicant is not following treatment recommendations. She concluded by noting that "if he continues doing what he's doing then [sic] he can lead a sober and very healthy life." (Tr. 29)

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 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 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 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.

² Consequently, when specifically questioned, the witness stated that it would be clinically impossible for her to conclude that Applicant had "zero chances" of relapse, noting that such a prediction or conclusion would be "not realistic." (Tr. 37) She also responded that successful completion of his treatment program was not a "guarantee" that he could or would never again abuse alcohol. (Tr. 39)

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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.

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

Excessive alcohol consumption is a security concern because it 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 ¶ 21) Applicant pled no contest to a DUI and a DWI, lost work-owned property after leaving his office due to alcohol use, generally abused alcohol as a “reward,” relapsed during alcohol treatment, was medically and clinically determined to be alcohol dependent, and missed a meeting while on work travel due to a hangover. This is sufficient to raise Alcohol Consumption Disqualifying Conditions:

AG ¶ 22(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);

AG ¶ 22(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);

AG ¶ 22(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);

AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence);

AG ¶ 22(e) (evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program); and

AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).

I considered all of the Alcohol Consumption Mitigating Conditions, including:

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);

AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)); and

AG ¶ 23(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 licensed social worker who is a staff member of a recognized alcohol treatment program).

While there is no "bright line" rule for determining when conduct is recent or when sufficient time has passed since the incidents at issue, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a meaningful period of time has passed without evidence of an alcohol issue, there must be an evaluation of whether that period of time demonstrates 1) changed circumstances or 2) conduct sufficient to indicate a finding of reform or rehabilitation.

Here, Applicant has maintained sobriety for nearly four years. Aside from successful completion of an appropriate alcohol treatment program, which was immediately and voluntarily repeated after relapse, Applicant willingly acknowledges his alcoholism and has committed himself to sobriety. This has been reinforced by four highly influential factors. First, his wife has made it clear that their familial happiness depends on his comporting his behavior. Second, Applicant has developed serious

heart and liver diseases, both of which can trigger severe bouts of debilitating illness and could prove to be fatal with continued alcohol use. Third, Applicant is taking a unique and essential heart medicine with highly adverse interactions with stimulants such as alcohol.

Fourth, and finally, Applicant's continued inclusion on the liver transplant donation list, which appears to be a medically necessary next step for Applicant given his stage of cirrhosis, is strictly based on his remaining alcohol-free. He has shouldered the burdens associated remaining sober since 2012 responsibly, understanding the potential repercussions of relapse and repeatedly noting that "drink for me amounts to a death sentence." Given these factors after nearly four years of sobriety, I find there is sufficient evidence of his commitment to refrain from alcohol abuse. AG ¶ 23(a) applies.

Applicant has embraced the tenets of AA and openly acknowledges his alcoholism as a life-long illness that demands a "one-day-at-a-time" diligence to maintain sobriety. As noted, he has been abstinent for nearly four years. He has a positive support network in place, ranging from an experienced AA sponsor, a highly watchful and supportive spouse, and concerned work peers, to continued AA attendance. He repeated his alcohol treatment volitionally after a single relapse during his 2009 treatment. Instead of rewarding himself with alcohol for accomplishments, he now spends more time with his family, volunteers at his local church, and is committed to both exercise and a healthier diet. Consequently, I find that AG ¶ 23(b) applies.

Taken in conjunction with the above, I further note that Applicant has diligently followed his treatment's aftercare requirements and remained abstinent. Both his medical records from his treatment facility and a state licensed professional counselor with a master's degree in counseling from a recognized treatment facility, accepted by both parties as a duly qualified medical professional, speak in favor of Applicant. They note his compliance with corrective action and posit a cautiously favorable prognosis for Applicant, recognizing that alcoholism is a life-long struggle. Therefore, I also find that AG ¶ 23(d) applies.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant 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. Applicant is a mature and credible 57-year-old engineer who has been employed by the same defense contractor for nearly four years. He has earned two science-related master's degrees and served as

an officer in the United States military honorably in the 1980s. He is married to a very supportive woman, with whom he has three children. He has maintained a security clearance since 1979.

After a relapse in 2009, Applicant repeated and successfully completed alcohol treatment. His two subsequent relapses proved to be dire wake-up calls to the medical necessity of his remaining abstinent. Aside from marital issues that would again arise should his mindful wife be aware that he has relapsed, Applicant has developed severe heart and liver problems. The former health issue has made him dependent on an anti-arrhythmic medication which, by its nature, is incompatible with stimulants. The latter health issue is in the form of cirrhosis, which is sufficiently severe to have had his medical specialists place his name on the liver transplant list at a major medical institution. His inclusion on this list, as well as his everyday health, is dependent on his remaining abstinent. A recent medical evaluator assessed that his chances of relapse are lowered due to his good judgment and active recovery efforts. Throughout Applicant's period of rehabilitation, he has maintained the trust of his employer and demonstrated professionalism.

All of these unique circumstances act as a form of surety that Applicant will maintain sobriety or risk extreme repercussions. Combined with his positive references, credible testimony, and demonstrated level of commitment in other aspects of his career and life, I find it highly unlikely that Applicant will again abuse alcohol. Consequently, I conclude that Applicant has mitigated 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.g	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.

Arthur E. Marshall, Jr.
Administrative Judge