



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06517

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his alcohol consumption. Eligibility for access to classified information is denied.

History of the Case

On March 14, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 19, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on August 24, 2015, and did not respond to the FORM. The case was assigned to me on November 18, 2015.

Summary of Pleadings

Under Guideline G, Applicant allegedly was arrested and charged with alcohol-related offenses on three occasions between April 2010 and January 2014. He entered guilty pleas on each of the charges, and was ordered to (a) attend an alcohol education program and complete 30 hours of community service (subparagraph 1.a); (b) pay fines and charges (subparagraph 1.b); and (c) receive 18 months of probation, pay fines and restitution, and complete an alcohol evaluation and 25 hours of community service. Additionally, Applicant allegedly received counseling in January and February 2014 at a rehabilitation center, where he was diagnosed alcohol dependent and received a recommendation to continue with his counseling and abstain from alcohol consumption.

In his response to the SOR, he admitted each of the alcohol-related incidents with explanations. He claimed he was not drinking prior to being arrested in April 2010 for underage consumption of alcohol. Addressing the allegations in subparagraph 1.c, he claimed he is extremely unlikely to engage in physical violence again. And he claimed he completed the outpatient program and recommended counseling sessions after completing his treatment program, and established abstinence for three months before returning to light drinking.

Findings of Fact

Applicant is a 24-year-old projects coordinator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant is unmarried with no children. (Item 2) He earned a bachelor's degree from a recognized university in August 2013 (Item 3) and claims no military service.

Alcohol-related incidents

While in college, Applicant typically consumed three beers a week and 24 beers on weekends and would drink to intoxication twice a week. (Item 4) Between April 2010 and May 2012, while in college, Applicant was twice arrested for alcohol-related incidents. (Items 1-3) In April 2010, he was arrested for underage consumption of alcohol. Applicant and his roommate had invited people into their room where alcohol was kept and was subsequently charged with having alcohol in his room at a time of being underage, but not for drinking. (Item 2) He plead guilty to disorderly conduct charges and was ordered to attend an alcohol education program and complete 30

hours of community service. (Items 2-4) By all accounts, Applicant completed his court-ordered conditions.

While still in college, Applicant was arrested for a second alcohol-related incident. (Items 2-4) In May 2012, he was arrested and charged with public drunkenness. He pleaded guilty to the charges and was ordered to pay fines and charges. Records credit Applicant with satisfying the court's imposed fines and charges.

In January 2014 (seven months following his graduation from college) Applicant consumed alcohol to excess in a local tavern and got into a fight. For his role in the fight, he was arrested and charged with disorderly conduct, public drunkenness, recklessly endangering another person, and simple assault. (Items 2-4) He pleaded guilty to simple assault and was sentenced to 18 months of probation and was ordered to pay fines and restitution; to complete a drug and alcohol evaluation; and to complete 25 hours of community service. Records document Applicant's satisfaction of the court's probation conditions. (Items 2-4)

Applicant attributed his role in the 2014 fight to his own impaired judgment associated with his excessive alcohol consumption. (Items 3 and 4) Thereafter, he volunteered for alcohol counseling. He received alcohol counseling between January 2014 and February 2014, and from March 2014 to May 2014. During at least one of his counseling sessions, he was diagnosed as alcohol dependent and assigned recommendations to continue with his sessions and abstain from alcohol consumption. (Items 2-4) Records document that Applicant adhered to these recommendations for several months before abandoning his counseling sessions and returning to light drinking. (Items 2-4)

Currently, Applicant has no plans to discontinue his alcohol consumption or resume counseling. (Items 2-4) Without any updated information from Applicant on his current drinking status and dependence diagnosis, meaningful assessments of his drinking status cannot be made. At this time, it is still too early to make firm judgments about his drinking.

Endorsements

Applicant provided no character references on his behalf, either with his answer or with his response to the FORM. Nor did he furnish any performance evaluations or evidence of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern

and may be disqualifying” (disqualifying conditions), if any, and many of the “[c]onditions that could mitigate security concerns.”

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Alcohol consumption

The concern: 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.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant’s security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant’s eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant presents with a considerable history of alcohol-related arrests (three in all) and related counseling. Between January 2014 and February 2014, he attended outpatient sessions with substance abuse counselors who diagnosed him alcohol dependent.

Principal security issues raised in this case center on Applicant’s history of alcohol-related offenses and alcohol dependency diagnosis. Applicant has provided little detail about his diagnosis or updates about any changes. After a brief period of observed abstinence, he returned to drinking at reported light levels. Whether his continued drinking at any level poses risks to his recovery is unclear. Without an updated professional evaluation by a licensed substance abuse counselor, safe estimates cannot be made. Applicant’s recurrent history of alcohol abuse makes any predictions about recurrence avoidance hazardous.

Applicant’s recurrent problems with abusive drinking and alcohol-related arrests (three in all) over a compressed four-year period of time and associated alcohol dependence diagnosis raise concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, three disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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;” DC ¶ 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;” and DC ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence.”

Applicant accepted some of the recommendations of his counselors following his last alcohol-related incident and attended continuing counseling sessions while observing abstinence, but only for a very limited time of three months before abandoning his counseling sessions and returning to light drinking. Without more documented updates of his diagnosis and drinking patterns, meaningful assessments of his drinking patterns and risks of recurrence of alcohol abuse cannot be made at this time.

Applicant's limited counseling and brief observance of abstinence after completing his alcohol counseling sessions in 2014 entitle him to partial application of MC ¶ 23(a) of Guideline G, "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." Applicant's counseling sessions and resumption of drinking is too recent and too uncertain to warrant any more than minimal application of MC ¶ 23(a).

Considering Applicant's limited rehabilitation efforts over the past two years with a still active alcohol dependence diagnosis and no favorable prognosis for continued drinking, a sustained period precludes him from taking advantage of two potentially applicable mitigating conditions: MC ¶ 23(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)," and MC ¶ 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Too much uncertainty exists about the quality and pace of Applicant's recovery efforts to extend any mitigation credit to Applicant at this time.

Taking into account both Applicant's history of alcohol abuse and incidents away from work, outpatient counseling and evaluations, and corresponding lack of convincing probative evidence of a seasoned track record of generally sustained abstinence over the past two years, the applicable guidelines, and a limited whole-person assessment of his continued consumption of alcohol, even at reduced levels, it is still too early to make safe predictions about his ability to continue drinking without an updated diagnosis and favorable prognosis.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a through 1.d: Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

