



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



In the matter of:)	
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)	ISCR Case No. 13-00251
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.

08/07/2013

Decision

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

Applicant mitigated the Government’s security concerns under the guidelines for drug use, alcohol consumption, and criminal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

In June 2012, Applicant completed a security clearance application (SCA). On March 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Use), Guideline G (Alcohol Consumption), and Guideline J (Criminal 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 (AG) effective within the DOD on September 1, 2006.

In an April 9, 2013, response to the SOR, Applicant admitted all allegations raised under Guideline H, two of the four allegations raised under Guideline G, and the

sole allegation raised under Guideline J. He also requested a hearing before an administrative judge. The case was assigned to me on May 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 7, 2013, setting the hearing for June 25, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1-4. They were accepted without objection. Applicant gave testimony and offered six documents, which were accepted into the record as Applicant's Exhibits (AX) A-F without objection. The transcript (Tr.) was received on July 8, 2013, and the record was closed.

Findings of Fact

Applicant is a 31-year-old junior program analyst working for a defense contractor. He graduated from high school in 2000. He has since earned an associate's degree in business administration, is currently completing a bachelor's degree, and recently was accepted into a master's program in a related area of study. Applicant is married. In anticipation of the hearing, Applicant executed a Statement of Intent not to use illegal drugs in the future that conforms to the description set forth in AG ¶ 26(b)(4).

Born in 1982, Applicant is the product of a broken home. His mother was briefly married to a stepfather with whom Applicant remains close. In the past couple of years, the stepfather became a significant and positive influence in Applicant's life with regard to Applicant's educational field and professional aspirations.

During high school, Applicant began using drugs. At about age 15 in May 1997, he started using marijuana, a drug he would continue to use intermittently before quitting its use in September 2011. At times, he purchased marijuana for personal use. In March 1998, when he was 16 years of age, Applicant was arrested for felony possession with intent to distribute marijuana. At court, in September 1998, he was found guilty of misdemeanor possession of marijuana. He was fined and his driver's license was suspended for a year.

Following high school graduation in 2000, Applicant began a series of full-time jobs as a waiter or bartender. When he could afford it, he would simultaneously take college courses. He fell prey to the party lifestyle often associated with bars and the service industry, which protracted his educational program. He first bought and used cocaine in January 2002, a drug he sporadically would use within the restaurant and bar milieu until January 2008. (Tr. 41, 58) On or about June 10, 2002, Applicant was arrested for driving under the influence (DUI) while operating a motor vehicle, then found guilty of that offense in October 2002. He was fined, sentenced to 30 days in jail with 30 days suspended, and his license was suspended for a year. He attended an alcohol awareness class following his conviction.

On or about July 1, 2006, Applicant was in his early 20s and driving home. (Tr. 34) He had consumed some alcohol but did not think he was under the influence. He was pulled over for a broken headlight. He was asked to take a sobriety test, which he failed to pass. Applicant was arrested for DUI and operating while impaired. He pled

guilty to a charge of DUI, while the lesser charge was dismissed. He was fined \$300, charged \$200 for a suspension, and ordered to pay \$100 to a victim impact panel. He was sentenced to 90 days in jail, with all time suspended. He was also placed on probation for a year and ordered to attend alcohol awareness classes. He has not driven after using alcohol since that time. During his alcohol class, he was advised to abstain from alcohol use, which he did for the duration of the course. (Tr. 37, 65-66) Applicant does not recall being diagnosed as an alcohol abuser (Tr. 52), but materials from an alcohol course reflect he was. (Tr. 66-67). He recalls no aftercare suggestions, but knows he attended Alcoholics Anonymous (AA) during and after the 2006 class.

Applicant was arrested for reckless driving in August 2006 while driving home from work. It was dark, the road was not busy, and he had no idea how fast he was going. He did not believe he was speeding, so he later had his speedometer checked. It was found to be faulty. Consequently, he was only found guilty of speeding and fined. (Tr. 30-31) By the end of the year, he had finished his alcohol class. His "major takeaway from" the class was that "he needed to wise up" and mature. (Tr. 52) Finally, between March 2009 and June 2011, he used Vicodin prescribed for another person three times, to relax and to treat genuine back pain.

By 2011, Applicant made the conscious decision "to get serious" about his future. (Tr. 45) He belatedly began to demonstrate signs of maturity as he faced both graduation and his engagement to a fellow program analyst who does not approve of drugs. (Tr. 57) His lifestyle choices had protracted his education and almost ended his engagement. He accepted that "there was no possibility of having a good future while continuing to use drugs." (Tr. 45) He willingly became committed to not letting his former lifestyle adversely impact his life again. (Tr. 59) Applicant married in June 2011.

By the time he graduated with his associate's degree in late 2011, Applicant had moderated his alcohol use, quit using all illegal drugs, and distanced himself from the party lifestyle. Applicant's wife does not permit drugs in or around their home and has been highly supportive. (Tr. 57, 78) He has made new friends. (Tr. 53) He initially chose to continue working at one upscale bar only because it was lucrative. Shortly after graduation, he began a professional position as a junior program analyst. Mentored by his stepfather, he earnestly dedicated his efforts to the challenging position. Success in that position led Applicant to an offer by his present employer for a position as a specialized program analyst. Despite the easy income supplement, he quit bartending in December 2012 to focus on his new job and professional lifestyle. (Tr. 47)

Applicant no longer follows the club and bar scene. He continues to drink alcohol responsibly. About twice a month, he will imbibe if he goes "out to dinner with my mom or something special like that I'll have a pre-dinner drink. . . . (on) special occasions or something." (Tr. 36). He actively eschews drugs and those who use them. (Tr. 28-29) He has "had to end quite a few friendships because of their use of drugs and heavy drinking." (Tr. 29) The few friendships he maintains from before graduation are with people who "no longer use drugs or never did in the first place." (Tr. 29) He attributes his turnaround to maturation and the onset of adult responsibilities related to his

profession and marriage. He does not miss drugs or the party lifestyle. He has no intention to use drugs again or to relapse to that type of life. He recognizes that to do so would undermine his job, his marriage, his current happiness, and any security clearance granted. Applicant fully appreciates that using drugs and abusing alcohol demonstrate poor judgment, which is an important security concern. (Tr. 85) He credibly stated that “there is nothing that would make me go back to using drugs.” (Tr. 84) He looks back on his period of alcohol and drug abuse as being “miserable” and an “embarrassment.” (Tr. 88) In contrast, he has never been as happy and content as he is presently. (Tr. 88) He will not jeopardize that happiness, his marriage, or his career. At work, he is a valued employee noted for his dedication, loyalty, and skills. (Exs. A-D)

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, 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 derived from the evidence contained in the record.

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 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.

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 H - Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. (AG ¶ 24) “Drugs” are defined as mood and behavior altering substances and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances. (AG ¶ 24(a)(1-2)) “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24(b))

Here, Applicant admits intermittently using marijuana, cocaine, and Vicodin, as well as occasionally purchasing marijuana for personal use. Such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*); 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*); and 25(d) (*diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of a drug abuse or drug dependency*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

For Applicant, high school experimentation with marijuana expanded as he embraced the service industry lifestyle after graduation. That lifestyle perpetuated a degree of immaturity, as he protracted completion of an associate’s degree in favor of a string of restaurant and bar jobs. Maturity did not strike him until, almost simultaneously, he completed his associate’s degree, almost lost a fiancée who opposed the use of drugs, and he faced the fact it was time to complete a bachelor’s degree and start a professional career. With marriage and his profession as his main motivators, he quit using drugs, separated himself from the bar scene, made a new set of friends, eschewed those friends he formerly associated with drug use, and concentrated on his wife and work. He accepted guidance from his stepfather and changed his life. He became committed to keeping both his wife and his job no matter what it takes. He will not jeopardize either by returning to drug use. He credibly expressed his intent to remain drug-free. He has stayed drug-free for nearly two years. He executed a Statement of Intent not to use drugs in the future in conformance with AG ¶ 26(b)(4). I find Drug Involvement Mitigating Conditions AG ¶ 26(a) (*the behavior happened so long*

ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); AG ¶ 26(b)(1) (disassociation from drug-using associates and contacts); AG ¶ 26(b)(2) (changing or avoiding the environment where drugs were used); AG ¶ 26(b)(3) (an appropriate period of abstinence) and AG ¶ 26(b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) apply.

Guideline G – 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 ¶ 21) In this case, Applicant was twice charged with DUI and once with reckless driving between 2002 and 2006. He was determined to be an alcohol abuser during an alcohol awareness class. He admits that he has imbibed to the point of excess. Although seven years have passed since he made a concerted effort not to drive if he has imbibed any alcohol, and generally began moderating his use of alcohol, such facts are 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*) and AG ¶ 22(c) (*the 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*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Although Applicant does not recall receiving a diagnosis for alcohol abuse, he concedes that he used alcohol in excess in the past. He acknowledges that after receiving alcohol instruction in 2006, he intentionally took steps to not drive while drinking and to generally moderate his alcohol consumption. Today, he remains a moderate imbiber of alcohol. Alcohol has not adversely impacted his life in nearly seven years. Keeping his wife and his job provide him with high incentives for actively monitoring his alcohol use. He will not relapse or do anything that might jeopardize his marriage, job, or career. Alcohol Consumption Mitigating Conditions 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*) and AG ¶ 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)*) apply.

Guideline J – Criminal Conduct

The concern under this guideline is that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. (AG ¶ 30) In this case, Applicant intermittently used and purchased marijuana, used

cocaine, abused Vicodin, was twice arrested for DUI, and was charged with reckless driving, but fined for speeding. This is sufficient to raise both Criminal Conduct Disqualifying Condition AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). Consequently, it is Applicant's burden to mitigate the security concerns raised.

Applicant admits the criminal conduct noted above. He only distinguishes the reckless driving charge because, after his speedometer was determined to be faulty, it was ultimately dropped in lieu of a speeding ticket. As noted under Guideline H and Guideline G, above, however, Applicant has turned his life around with regards to drugs and alcohol. He has used alcohol responsibly for several years and been drug-free for two years. He avoids people and places associated with drug and alcohol abuse. He has met a new circle of friends. His old, immature habits have been replaced by the adult responsibilities associated with marriage and responsible work position. He is thriving at work and is soon to complete his bachelor's degree. He is committed to both his marriage and his job. He will not do anything to jeopardize either. He relishes his new life and is appropriately contrite over his years abusing alcohol and drugs. In light of these factors and Applicant's overall turnaround, supported by both his stepfather and wife, I find that AG ¶ 31(d) (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or high education, good employment record, or constructive community performance*) applies.

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). 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 the three above-referenced guidelines in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a 31-year-old junior program analyst working for a defense contractor. He graduated from high school in 2000. He is currently completing a bachelor's degree and has been accepted into a master's degree program. He is married. The alcohol, drug, and criminal-related activities of issue occurred between the time Applicant was about 15 until his late 20s. During that period, Applicant was a waiter and bartender at various establishments who took occasional college courses. He meandered without direction or focus for a number of years, until the prospect of graduation, marriage, and adult responsibilities came simultaneously into view in 2011.

Applicant learned to handle alcohol in moderation in his mid-20s. It was the prospect of facing adult responsibilities at the end of his 20s, however, that directly led him to turn his life around for the better. He quit using drugs, turned away from the bartending lifestyle, and made new friends. He married a supportive woman who has zero tolerance for drugs. He accepted his stepfather's mentorship in moving away from the service industry in favor of a professional career path. He embraced the positions he found in his chosen field and has quickly adapted to the professional lifestyle. He fully recognizes that a security clearance is a privilege built on trust, and appreciates the meaning of his signed Statement of Intent. He will not jeopardize his marriage or career. I am confident that Applicant will not again abuse alcohol or drugs, or conduct himself in any way that raises genuine security concerns. For all these reasons, I conclude Applicant mitigated the security concerns arising under drug involvement, alcohol consumption, and criminal conduct guidelines.

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 H:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge