



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00049

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

12/31/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding his alcohol consumption and criminal conduct. Eligibility for access classified information is granted.

History of the Case

On March 16, 2018, the Department of Defense (DoD) Consolidated Adjudications 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 (Exec. Or.)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); Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4).

Applicant responded to the SOR on April 4, 2018, and requested a hearing. The case was assigned to me on May 24, 2018. The Government's case consisted of three exhibits that were admitted without objection (GEs 1-3). Applicant relied on one witness (himself) and three exhibits that were admitted without objection (AEs A-C). The transcript of the proceedings (Tr.) was received on August 2, 2018.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documentation of early termination of his non-supervised probation and expungement. For good cause shown, Applicant was granted 60 days to supplement the record. Department Counsel was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with the following documentation: summary of charges and disposition of a March 2016 DUI charge, character references, a DoD award recognizing Applicant's meritorious service as part of a DoD response to a 2015 cyber-security incident, and a minute order approving early termination of Applicant's probation. Applicant's submissions were admitted without objection as AEs D-G.

Summary of Pleadings

Under Guideline G, Applicant allegedly committed four alcohol-related offenses between March 1991 and March 2016. Specific allegations are as follows: (a) March 1991 DUI charges with conviction of alcohol-related reckless driving; (b) October 1996 DUI charges followed by conviction of the offense and sentencing of 30 days to home confinement and placement on probation for three years; (c) April 1997 DUI charge followed by conviction of the offense and due to a previous probation violation, sentencing of 270 days of confinement and placement on probation for five years; and (d) March 2016 DUI charge followed by conviction of alcohol-related reckless driving and placement on probation until 2019. Alcohol-related allegations covered by Guideline G were incorporated under Guideline J.

In his response to the SOR, Applicant admitted each of the alcohol-related allegations with explanations. He claimed lapses in judgment that he deeply regrets. He further claimed he enrolled in an alcohol management program to help reinforce what he knows to be the correct decision-making when addressing alcohol issues completed alcohol counseling, and provide him with additional tools for avoiding alcohol-related incidents in the future.

Findings of Fact

Applicant is a 48-year-old chief technologist 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 married in October 2003 and has three children from this marriage. (GEs 1-2; Tr. 43) He attended a local community college between June 2008 and June 2010, but did not earn a diploma. Between June 2010 and May 2012, he attended an accredited four-year university and earned a bachelor's degree. (GEs 1-2) Applicant reported no military service. (GEs 1-2; Tr. 50)

Since March 2016, Applicant has been employed by his current defense contractor. (GEs 1-2; Tr. 21, 47) Between March 1993 and March 2016 he was employed as a division director for a DoD agency. Applicant has held a security clearance since approximately 1995. (GE 1; Tr. 49)

Alcohol-history

Applicant presents with a lengthy record of alcohol-related offenses dating to 1991. In March 1991, he was cited for DUI and later pled guilty to a reduced charge of alcohol-related reckless driving. (GEs 1-3) He had attended a local party with 50 to 60 people in attendance and consumed three to four beers. (GEs 2-3) Not convinced he was intoxicated he headed home. On his way home, he was pulled over by police for speeding. After acknowledging he had been drinking, the investigating officer at the scene administered a sobriety test to Applicant. Police thereafter escorted Applicant to a county sheriff's office where Applicant was booked and fingerprinted before being released. In court, Applicant pled guilty to an alcohol-related reckless driving charge and was fined. (GEs 2-3)

In October 1996, Applicant was cited for DUI after being stopped and administered a field sobriety test. Appearing in court, Applicant pleaded guilty to DUI. (GEs 2-3) He was fined \$1,250 and sentenced to 31 days in jail. Records confirm that he accepted an option from the court to serve 30 days of home confinement with an ankle bracelet with three years of probation. Based on his probation violation, the sentencing court placed Applicant on three years of probation. Applicant is credited with successfully completing his court-ordered home confinement. (GE 2)

Appellant was cited for a third DUI offense in May 1997. (GEs 2-3) Returning home from a party where he consumed alcohol with friends and family members, he stopped to rest. When approached by an inquiring police officer, he acknowledged he had been drinking and was escorted by the officer to a local police station where he was booked, fingerprinted, and released. Applicant later pleaded guilty to DUI and was given the option by the court of serving 270 days of home confinement, and was placed on probation.

Appellant accepted the home confinement option offered by the sentencing judge in connection with Applicant's 1997 alcohol-related incident and took concerted steps to change his drinking habits during the confinement period. (Tr. 24, 32-41) Additionally, Applicant was required to complete an alcohol education program to retain his drivers license, and was placed on probation by the sentencing court. (Tr. 23-24)

In March 2016, Applicant was cited for DUI after being stopped by police. (GEs 2-3) Applicant assured he did not exceed .08 BAC levels with his pre-arrest drinking. His assurances are not challenged and are accepted. In court, Applicant pleaded no contest to the DUI charges and was convicted of alcohol-related reckless driving. (GEs 2-3 and AE G) He was fined \$1,683, required to complete an alcohol education program, and placed on probation until 2019. (GEs 2-3; Tr. 23)

Upon Applicant's September 2018 motion for early termination of probation, Applicant's motion was granted, and Applicant's probation was terminated, effective September 18, 2018. (AE G) While his registered BAC level was only .07 percent, and under the legal limit for driving with reported alcohol in his system, Applicant acknowledged his registered .07 BAC level was enough to support an alcohol-related reckless driving charge under his state's driving restrictions. (Tr. 31-34, 45-46)

Following his 2016 alcohol-related reckless driving conviction, Applicant self-referred himself to an outpatient alcohol counseling program. (AEs A-C) His recovery program consisted of 36 counseling sessions over a four-month period, along with required participation in meetings of Alcoholics Anonymous (AA). (AE C) Applicant was credited with successfully completing the program in June 2018. (AE A)

Between March 2016 and January 2018, Applicant continued to consume alcohol on an occasional basis (never to intoxication) without any further alcohol-related incidents. (Tr. 45-46) Since January 2018, he has ceased drinking altogether. (Tr. 45-46, 52)

Endorsements and awards

Applicant is highly regarded by his chief executive officer (CEO) and former colleagues. (AE E) His CEO, who has known him for many years, attested to Applicant's strength of character and compassion for others. He credited Applicant's efforts in training wounded warriors and people with disabilities to integrate into common working environments. (AE E) He described Applicant as a cherished friend and all around great person who is thoughtful, reliable, and open in his professional and family relationships.

A senior operating executive with Applicant's current defense contractor employer who has known Applicant for a number of years credited Applicant with developing a working pipeline of training and job placement of person's with disabilities on to information technology service contracts with the DoD. (AE E) He praised Applicant for his enthusiasm in promoting his firm's organizational mission and culture of taking care of people. (AE E)

Applicant has been hailed as a featured speaker for federal law enforcement agencies. (AE E) A former colleague and current chief technology officer for Applicant's former DoD agency who has known Applicant for many years extolled Applicant's technical contributions to upgrading his agency's security systems. (AE E) This current DoD agency head credited Applicant with having a limitless talent for finding solutions

and expressed his personal honor in having the opportunity to work with Applicant. (AE E)

Among Applicant's many awards is a bestowed award for excellence in 2016 from a DoD under secretary of defense in recognition of Applicant's exceptional support of a DOD cyber-security project. (AE F) This award credited Applicant with exceptional meritorious service in leading his DoD agency's contract action to provide identity protection and restoration services in connection with a noted adverse cyber-security incident. (AE F)

Policies

The AGs list guidelines to be used 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 conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the conditions 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(d) 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(d) 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 guidelines are 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.

Criminal Conduct

The Concern: 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.

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 comes to these proceedings with a considerable history of alcohol-related incidents over a 25-year period dating to 1991. Between March 1991 and March 2016, he pled guilty to four alcohol-related offenses. Principal security issues

raised in this case center on Applicant's alcohol-related offenses covered by Guideline G and incorporated under Guideline J.

Alcohol consumption concerns

Applicant's problems with recurrent alcohol-related incidents over a 25-year period raise concerns over his risk of future alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DCs) 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol abuse disorder," and 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder."

Applicant's completion of a self-referred alcohol counseling program in June 2018 followed his last alcohol-related conviction in March 2016 based on a separate provision in his state's vehicle code for drivers who do not meet the legal requirements for driving over the established .08 BAC limits, but otherwise qualify for driving while intoxicated. Still, Applicant felt enough concern about his slip in March 2016 to self-refer himself to a an outpatient counseling program. After reducing his drinking to occasional drinking following his March 2016 incident, he ceased drinking altogether in January 2018 and has remained abstinent to date.

Based on the findings of the court considering his March 2016 incident and his proactive efforts since his March 2016 offense, he may take full advantage of the following Guideline G mitigating conditions: MC ¶¶ 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 judgment," and 32(d) "the individual has successfully completed a treatment program along with required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations." Applicant's circumstances and subsequent actions following his last alcohol-related incident are sufficient to facilitate safe predictions that he will avoid any abusive drinking in the foreseeable future.

Criminal conduct concerns

Security concerns are also raised with respect to Applicant's alcohol-related incidents under the overlapping coverage of Guideline J. Disqualifying conditions applicable to Applicant's alcohol-related offenses under Guideline J (criminal conduct) are twofold: DC ¶¶ 31(a), "a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness," and 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was

formally charged, prosecuted, or convicted.” Each of these cited offenses are cross-referenced under Guideline G and are considered to be alcohol-related for purposes of Guideline J analysis.

Applicable mitigating conditions covering Applicant’s alcohol-related offenses under Guideline J are as follows: MC ¶¶ 32(a), “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” and 32(d), “there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.” Passage of time since Applicant’s last alcohol-related offense in March 2016 exceeds two years and provides enough time to mitigate these alcohol-related offenses under Guideline J as well.

Whole-person assessment

Applicant’s lengthy civilian service with DoD (23 years) is respected and appreciated. Endorsements from his current employer and previous DoD agency document Applicant’s strong character, trust, and reliability. His credits include letters of appreciation of his service as a speaker for a federal law enforcement agency and a DoD undersecretary recognizing his contributions to the DoD’s cyber-security restoration efforts.

Applicant’s recognized service contributions and letters of appreciation when considered in conjunction with the positive steps he has taken to mitigate security concerns associated with his lengthy history of alcohol-related offenses are enough to dispel concerns about risks of recurrent abusive drinking. Considering the record as a whole, safe predictions can be made at this time about Applicant’s ability to avoid alcohol-related incidents in the foreseeable future. Alcohol concerns are fully mitigated and enable favorable conclusions to be made in connection with the allegations covered by Guidelines G and J.

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): FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Subparagraph 2.a : For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

