



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



In the matter of:)
)
) ISCR Case No. 14-03855
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under the guidelines for alcohol consumption and criminal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On August 22, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). DOD CAF took that action under Executive Order (EO) 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) implemented on September 1, 2006.

The SOR set forth reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. On

September 6, 2014, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On December 21, 2014, Department Counsel submitted the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 5.

On December 30, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on January 7, 2015, and did not submit any objections or additional matters within the allotted period. The case was assigned to me on March 12, 2015.

Findings of Facts

Applicant is a 56-year-old engineer who has been working for a defense contractor since April 2001. She graduated from high school in 1976 and did not list any higher education on her security clearance application. She has been married twice. Her current marriage began in 1996. She has one adult child. She applied for her first security clearance in October 2009.¹

The SOR set forth four Guideline G allegations, including three instances in which Applicant was charged with driving under the influence of alcohol (DUI). The three DUI incidents were also cross-alleged under a single Guideline J allegation. In her Answer to the SOR, Applicant admitted the four Guideline G allegations and did not respond to the Guideline J allegation.²

In Section 22 (Police Record) of her Electronic Questionnaire for Investigations Processing (e-QIP) dated October 20, 2009, Applicant disclosed that she was charged with DUI in February 1982. In the "action taken" block of that section, she listed "fine and classes."³

Through Applicant's SOR admissions, the following allegations were established:

a. Applicant consumed alcohol, at times to excess and the point of intoxication, to at least August 2012;

b. On August 24, 2012, Applicant was arrested and charged with DUI. On January 9, 2013, she pled guilty to that offense and was sentenced to 230 hours of community service, 18 months of DUI classes, five years of probation, and ordered to pay \$2,600 in restitution; and

¹ Item 4.

² Items 1 and 3.

³ Item 4.

c. On February 11, 2011, Applicant was arrested and charged DUI. On March 29, 2011, she was found guilty of that offense and was sentenced to a \$1,952 fine, ordered to perform two days of public service, volunteer for 100 hours of community service, and placed on probation for five years.⁴

A Joint Personnel Adjudication System entry dated January 22, 2013, reflected that Applicant's sentence for her 2012 DUI consisted of a fine of \$2,600, five years of probation, 96 hours of home detention, 230 hours of community service, and 18-month multiple conviction program.⁵

In her Answer to the SOR, Applicant stated:

I admit that I have consumed alcohol at times in excess and to the point of intoxication. I was in denial that I had a problem with alcohol up until a DUI arrest on August 24 of 2012. On August 27th 2012 I made a decision that I had to stop consuming alcohol completely. I am pleased to declare that I celebrated my second year of sobriety August 28th 2014. With the help of SMART recovery, I acquired tools for self-management of my addictive behavior. I attended 18 months of . . . a Court ordered DUI program. I was made aware of the damaging effects alcohol has on my body, relationships, finances, career, and self-esteem. Addiction can be an ongoing battle and it is comforting to know that there is always the fellowship of AA meetings throughout the country. Utmost and foremost I receive strength from my relationship with God.⁶

Applicant presented documentation showing that she completed an 18-month court-ordered DUI program on August 23, 2014.⁷

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 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

⁴ Item 3.

⁵ Item 5.

⁶ Item 3. Smart Recovery is an addiction recovery support group. See <http://www.smartrecovery.org/?gclid=CNqxpKrZrcQCFUU8gQod9poA3w>.

⁷ Item 3.

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 based on 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, the 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.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

AG ¶ 21 expresses the security concern for 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.

The guideline notes several disqualifying conditions that could raise security concerns under AG ¶ 22. Two are potentially applicable in this case:

(a) alcohol-related incidents away from work, such as driving 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

(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.

Applicant consumed alcohol to excess and to the point of intoxication until August 2012. She was convicted of DUI offenses that occurred in 1982, 2011, and 2012. The above disqualifying conditions apply.

Three mitigation conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur or does not cast doubt on the individual's 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); 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.

Besides Applicant's admissions to the SOR allegations, no details concerning the frequency and nature of her alcohol consumption were provided. Her 1982 DUI occurred over 33 years ago when she was about 23 years old and is of limited security significance. Her latest DUI offenses occurred between 2½ and 4 years ago when she was in her 50s. As indicated in her Answer to the SOR, she did not realize that she had an alcohol problem until her most recent DUI offense. Since then, she has completed an 18-month court-ordered DUI program and participated in the SMART Recovery program. She acknowledged that she has an addiction. Most importantly, she has not consumed alcohol for over the past 2½ years. She recognizes that her alcohol problem is an ongoing battle and relies on AA meetings as a means of confronting her problem. She is well along the road to recovery and has established a pattern of abstinence. No prognosis of her condition from a qualified professional has been provided. AG ¶ 23(b) applies. AG ¶¶ 23(a) and 23(d) partially apply.

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern for criminal conduct:

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.

The following disqualifying conditions under AG ¶ 31 are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole and probation, or failure to complete a court-mandated rehabilitation program.

Applicant has been convicted of three DUIs. Her most recent DUI occurred while she was on probation. She will remain on probation until approximately January 2018. The evidence is sufficient to raise the above disqualifying conditions.

I have considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and following are pertinent:

- (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
- (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 higher education, good employment record, or constructive community involvement.

The main security concern is Applicant's alcohol consumption. All of her criminal conduct resulted from her consumption of alcohol. As discussed under Guideline G, Applicant no longer consumes alcohol and has not done so for over 2½ years. Her criminal conduct is unlikely to recur because she has ceased consuming alcohol. She is remorseful for her wrongdoing. AG ¶¶ 32(a) and 32(d) apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about

the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁸ In this case, I gave due consideration to the information about Applicant in the record, including her 14 years of employment in her current job. I find that Applicant has met her burden of persuasion and mitigated the alcohol consumption and criminal conduct security concerns. Overall, the record evidence leaves me with no questions or doubts as to her eligibility to access classified information.

Formal Findings

Formal findings 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.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge

⁸ The nine adjudicative process factors listed at AG ¶ 2(a) are:

(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.