



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03887

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

03/31/2015

Decision

WESLEY, Roger C., Administrative Judge:

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

Statement of the Case

On October 2, 2014, the Department of Defense (DOD) Consolidated Adjudications facility (CAF), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether her 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 DOD on September 1, 2006.

Applicant responded to the SOR on October 17, 2014, and requested a hearing. The case was assigned to me on December 5, 2014. The case was scheduled for hearing on January 15, 2015, by video teleconference. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of two exhibits (GEs 1-2); Applicant relied on one witness (herself) and six exhibits (AEs A-F). The transcript (Tr.) was received on January 26, 2015.

Summary of Pleadings

Under Guideline G, Applicant allegedly was charged with (a) multiple alcohol-related incidents (four in all) between December 2009 and January 2011 and (b) failure to comply with police/flagman/fire fighter and obstruct law enforcement in August 2009. Under Guideline E, Applicant allegedly (a) indicated in a subject interview with an authorized investigator from the Office of Personnel Management (OPM) in June 2013 that he stopped consuming alcohol following his 2010 DUI arrest, after which he was charged again for an alcohol-related arrest in 2011.

In her response to the SOR, Applicant admitted the alcohol-related allegations of subparagraphs 1.c and 1.d, and in addressing subparagraph 1.e, she admitted to being arrested for failure to comply and obstruction. But she denied the allegations contained in subparagraphs 1.a and 1.b. She claimed that the 1.a and 1.b allegations did not involve new alcohol-related incidents, but only court processing related to her 2010 DUI incident. Addressing the allegations in subparagraph 2.a and 2.b, Applicant admitted the incorporated alcohol-related allegations in subparagraphs 1.c-1.d and to the incorporated allegations of subparagraph 1.e as revised, but denied the allegations related to subparagraphs 1.a and 1.b. She repeated her claims that she was not involved in any separate alcohol-related incidents in 2011.

Procedural Issues

Before the opening statements and presentations of evidence, Department Counsel moved to withdraw the allegations contained in subparagraphs 1.a and 1.b and 2.a and 2.b. There being no objections, and for good cause shown, Department Counsel's motion was granted.

Prior to Applicant's presentation of her evidence, Department Counsel moved to incorporate Applicant's opening statement in her case-in-chief. There being no objections, and for good cause shown, Department Counsel's motion was granted.

Findings of Fact

Applicant is a 30-year-old mobile assistant station manager 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 July 2008 and separated from her husband in January 2013. (GEs 1 and 2) At the time of her separation, she was deployed abroad by her current employer. (GE 2) Her divorce was finalized in September 2013. (Tr. 28) She has no children from this marriage.

Applicant attended college between May 2007 and May 2009 and earned a bachelor's degree in May 2009 from a recognized university. She earned college credits in 2011 and 2012 in pharmacy technician training and is currently pursuing a master's degree from a recognized university. (GE 1; Tr. 27)

In her employment as an assistant station manager for a world-wide disaster relief organization, Applicant works with volunteers, service members, and the community. (GE 1; Tr. 41, 54-55) She requires a security clearance in her current deployment for access to installation processing for locating military members on service networks. (Tr. 55-56) She has been employed by her current employer for four years. (Tr. 29)

Alcohol history

Applicant was introduced to alcohol at age 17 by high school friends. (GE 2) By the age of 21, she frequently engaged in binge drinking, once or twice a week on tequila, either at home or in bars. (GE 2) Alcohol consumption would often make her irrational and emotional. Still, Applicant did not think she had an alcohol problem. In retrospect, she recognizes that she was drinking excessively. (GE 2; Tr. 26) She attributed her excessive drinking to poor self esteem. Alcohol affected her home life. (GE 2)

In August 2009, Applicant was arrested for making false statements and obstruction of law enforcement. She had consumed alcohol and became intoxicated at home. (GE 2) After falsely calling police and telling the responder she had been attacked, she told police who arrived at her house that she had not made the call and verbally abused the investigating police officer. (GE 2) She was then arrested and transported to a local police station for processing. After holding Applicant for two days, she was released without any filed charges. (GE 2)

Four months later (in December 2009), Applicant was arrested and charged with driving under the influence (DUI). (GE 2) She had been out with a friend at a bar and became intoxicated. While driving home, she was stopped by police and administered a field sobriety test. Thereafter, the arresting officer transported her to a local police station where she was administered a Breathalyzer test. After recording a .28 BAC, she was charged with DUI, processed, and released to a friend. When she appeared in court, she pled guilty to the charge and was placed on two years probation, with the possibility

the charge would be dropped if she did not commit a repeat offense within a two-year period. (GEs 1 and 2)

Applicant continued to consume alcohol, and in November 2010, she was arrested and charged with DUI. She was out drinking and became intoxicated. While driving, she was pulled over by police. When she refused roadside sobriety and Breathalyzer tests, she was transported to a local police station and charged with DUI-Gross Misdemeanor. (GE 2)

When Applicant appeared in court with her retained attorney in January 2011 to answer the 2010 DUI charges, she was granted deferred prosecution status and ordered to attend an intensive outpatient treatment program for alcohol dependency. (GE2 and AEs E and F) Applicant was placed on four years of supervised probation, with the possibility that the charge would be dropped if she did not commit any repeat offenses within her two-year probation period. (GE 2 and AEs E and F)

Applicant's probation conditions included a five-year interlock requirement. (AE E) When preparing for an overseas assignment in 2011, she removed the interlock from her car and turned in her driver's license. (AE E; Tr. 45) In August 2012, her driving privileges were reinstated, subject to continued interlock requirements. (Tr. 45-46) Since relocating to her overseas post, though, she no longer has an interlock device on her car. (Tr. 46-47)

In January 2011, Applicant entered a two-year outpatient program for persons with alcohol problems and received a diagnosis of alcohol dependence. (GE 2 and AEs A-D; tr. 27) Her treatment plan included group psychotherapy sessions and individual counseling. (AE A) She completed a prime for life course (12 hours of alcohol and drug information), classes with a victim impact panel, and alcohol and drug education sessions. And she attended 12-step sober support group sessions. (AE B)

Applicant's treatment records confirmed that she was fully compliant with her treatment plan and completed her two-year plan with a diagnostic impression of alcohol dependence, in early full remission, in June 2012. (AE C). She was counseled to follow up with counseling and Alcoholics Anonymous (AA) meetings once she returned to the United States. (AE C) During her two years of outpatient treatment, she remained abstinent and expressed no intention to resume drinking.

Once Applicant returned to the United States, she self-referred herself to a licensed substance abuse counselor for a comprehensive clinical assessment. (AE D) After briefing her counselor on her alcohol history and outpatient treatment, her substance abuse counselor recommended that she address issues related to alcohol dependence. (AE D) Her counselor credited her with being completely cooperative, open, honest, and motivated to manage her life and address her daily stressors. He noted her initiated efforts to reach out to her community for support and to involve herself with her local AA chapter. (AE D) He credited her with complying with all treatment-related requirements.

Applicant attributed many of her most recent alcohol problems to her ex-husband. She characterized their relationship as one “built around alcohol.” (Tr. 52) Her ex-husband was never supportive of her recovery efforts and continued his drinking in her presence without her approval. (Tr. 53-54) His continued drinking around her presented an ongoing challenge to her own recovery efforts. (Tr. 53-54)

Applicant’s mother (a therapist and educator in the substance abuse field) and stepfather have remained very supportive of Applicant’s recovery. (Tr. 49-51) The mother credited Applicant with making “great strides in her recovery, building a life that demonstrates great promise of contributing to our society and our world.” (AE F) She expressed confidence in Applicant’s compliance with her court-imposed conditions associated with her 2010 DUI charges and corroborated her participation “in group and individual counseling as well as attending AA meetings.” (AE F)

Applicant continues to practice abstinence. She has not consumed alcohol since November 2010. (Tr. 44, 58-59) She has completed an AA-sponsored 12-step program with the support of her sponsors and found her AA participation to be very helpful in her efforts to maintain her abstinence. (Tr. 60) She participates in meetings with AA support groups when she is not working abroad. And she is confident in her ability to avoid any future slips or relapses. (Tr. 61-62) Although she remains under the court’s five-year probation order, she has no more reporting requirements to fulfill. (Tr. 47-48)

Endorsements

Applicant is well regarded by her station manager who credits her with an exceptional work ethic and a demonstrated desire to grow professionally. (AE F) She praised Applicant for overcoming obstacles with grace and courage and characterized her as a strong, kind, gracious friend who she can depend on. Colleagues and volunteers who know and have worked with Applicant extolled her strong character and demonstrated stellar moral guidance and professional judgment. (AE F)

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.”

These 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 revised 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 ¶ 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 adjudication policy concerns are pertinent herein:

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. AG ¶ 21.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for 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. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

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 showing of material bearing, 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, consideration must take account of 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 burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-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 is a conscientious and dependable mobile assistant station manager for a world-wide disaster relief organization who presents with a considerable history of alcohol-related arrests (three in all) over a two-year period spanning 2009 and 2010. Principal security issues raised in this case center on Applicant's history of alcohol-related offenses. While not alleged in the SOR, her ensuing alcohol dependence diagnosis raises additional security concerns.

Applicant's recurrent problems with abusive drinking and alcohol-related arrests (three in all) over a two-year period raise initial concerns over her risk of recurrent alcohol abuse. On the strength of the evidence presented, two 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.

Once she was diagnosed as alcohol dependent in her outpatient program for substance abuse, Applicant accepted comprehensive group and individual therapy sessions over the course of the ensuing two years. Her faithful commitments to her outpatient program earned her praise from her treatment counselors and ultimately her certification of completion of her two-year substance abuse counseling program.

Applicant's successful treatment efforts and sustained abstinence for over four years entitle her to the benefit 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," and MC ¶ 23(c), "the individual is a current employee who is participating in a counseling or treatment program, has no history of

previous treatment and relapse, and is making satisfactory progress,” MC ¶ 23(a) and MC ¶ 23(c) are fully applicable to Applicant’s situation.

Depending on the diagnosis, Applicant’s continued abstinence or drinking at light to abusive levels could be an important consideration in determining what weight to assign to her reformed drinking claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004). In Applicant’s case, she was diagnosed alcohol dependent, accepted her diagnosis, and pursued counseling and treatment of her condition. Her probative years of abstinence over a four-year period is impressive and reflects a concerted determination on her part to remain alcohol-free. Her completion of her two-year counseling program and continued abstinence with the aid of support groups (i.e, AA and family networks) augur well for her in her commitments to avert any future recurrence.

Considering Applicant’s demonstrated rehabilitation efforts over a sustained period of time, her favorable prognosis, and the absence of any recurrent alcohol-related arrests since 2010, she may take advantage of two additional 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.”

Historically, the Appeal Board has emphasized the importance of a strong rehabilitation program and a seasoned track record. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007). Applicant has met these requirements with an impressive showing of outpatient treatment and sustained abstinence over a four-year period with the aid of her AA and family support groups.

Taking into account both Applicant’s history of alcohol abuse and incidents away from work and corresponding solid probative evidence of a seasoned track record of abstinence (both with and without probation reporting requirements), the applicable guidelines, and a whole-person assessment of her avoidance of alcohol following her latest DUI in 2010, it is safe to conclude that Applicant’s alcohol dependence diagnosis is in full remission and likely to remain so for the foreseeable future.

Based on both Applicant’s showing of sustained abstinence, aided by counseling and continued support from her AA and family networks and a whole-person assessment of Applicant’s overall trust and reliability with her colleagues and family, conclusions are

warranted that Applicant has mitigated security concerns over her history of abusive drinking.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a and 1.b:	Withdrawn
Subparagraphs 1.c-1.e:	For Applicant

GUIDELINE E (PERSONAL CONDUCT) WITHDRAWN

Subparagraphs: 2.a and 2.b:	Withdrawn
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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