



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04825
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

04/11/2016

Decision

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

Statement of the Case

On February 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under 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; DOD 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 her SOR Response of February 21, 2015, Applicant admitted all allegations without elaboration. She also requested a determination based on the written record in lieu of a hearing. On July 6, 2015, the Government issued a File of Relevant Material (FORM) containing seven attachments (“Items”). Applicant timely submitted a Response containing additional information. The case was assigned to me on October 9, 2015. Based on my review of the case file and submissions, I find Applicant mitigated alcohol consumption and criminal conduct security concerns.

Findings of Fact

Applicant is a 61-year-old assembly technician with special industry certifications in advance proficiencies. She has worked for the same defense contractor since 2006.¹ Applicant earned a high school diploma. Divorced in 2013, Applicant raised two children; one of her children died and the other is an adult. Applicant has maintained a security clearance since 1992. She has a history of alcohol-related incidents and legal violations. She was first cited for a legal infraction at age 32, when, in January 1987, she was cited for Failure to Comply Restricted Driving and Failure to Wear Seatbelt.

From about age 15 through December 2012, Applicant consumed alcohol, at times to excess and to the point of intoxication. In April 1986, she was arrested and charged with Driving While Impaired (DWI) and Hit-Run Property. The following month, she pled guilty and was sentenced to 60 days (suspended), two years probation, community service, \$137 in fines and costs. Nearly a decade later, in September 1995, she was again arrested and charged with DWI, as well as Civil Revocation Driver's License. The following month she pled guilty and was sentenced to 60 days (suspended), one year probation, and \$165 in fines and costs. In December 2004, she was arrested and charged with DWI, Possessing an Open Container-Alcohol, and Civil Revocation of Driver's License. In March 2005, she pled guilty and was sentenced to 120 days (suspended), one year probation, and charged \$238 in fines and costs.

More recently, in February 2012, Applicant was arrested and charged with Fail to Stop Sign/Flashing Red Light and Reckless Driving to Endanger. That May, she pled guilty to a lesser charge and was sentenced to \$238 in fines and charges. In December 2012, Applicant stated she consumed three or four whiskey and sodas, went to the grocery store, and was pulled over by police en route. A breathalyzer test revealed a blood alcohol content of 0.20. She was arrested and charged with DWI, Possessing an Open Container, and Failure to Maintain Lane Control. In December 2013, she pled guilty to those charges and was sentenced to 120 days jail (suspended), one year probation, suspension of driver's license 45 days, 48 community service hours, and charged \$690 in fines and costs.

From August 2013 to November 2013, Applicant, on her own initiative and before sentencing, received out-patient treatment at a counseling facility staffed with licensed alcohol clinicians. She was diagnosed with Alcohol Abuse. Applicant admits she abused alcohol. She then availed herself of her employer's employee assistance program (EAP) regarding her alcohol abuse. In December 2013, however, she had three or four cocktails before bed. In the morning, she received a reprimand at her workplace stating that she smelled like alcohol. She then revisited the EAP counseling, enlarging the scope of her counseling to address belated grief issues related to her 20-year-old son's untimely death in 2010. Today, she attributes her ability to deal with her son's death to that counseling. (FORM Response) Around the same time, she began attending

¹ Applicant experienced a brief layoff from her work in early 2013 before resuming the same or a similar position. (FORM, Item 4 at 10-12/40)

Alcoholics Anonymous (AA). During this timeframe, she also was forced to deal with the end of her marriage and the ultimate divorce.

In her January 2014 security clearance application (SCA), Applicant disclosed the majority of the incidents described above. As of that time, she was still receiving counseling for both alcohol abuse and grief. She has not abused alcohol since at least December 2013, nearly two-and-a-half years ago. Due to her positive prognosis, she completed the year long period of probation imposed in December 2013 by March 2014, over two years ago.

The “real test of Applicant’s progress toward rehabilitation would occur when Applicant is off probation and not subject to monitoring or supervision.”² Here, she has been incident-free for over two years, continues with EAP support counseling and AA, and, in almost three-and-a-half years (since December 2012), and has only had one incident indicating probable alcohol use or abuse (December 2013). She has found solace and effective support through EAP counseling and AA support group. She continues with those resources. Now age 61, Applicant understands how her acts have compromised her long and successful career, and fully appreciates the seriousness of her past conduct. She regrets her past abuse of alcohol. She credibly wrote of her commitment to comport her behavior in such a manner that she will not again jeopardize her position or security clearance.

At her job, Applicant is a well-regarded worker. Her superiors are aware of her past alcohol and legal issues, which were also disclosed on her recent security clearance application (SCA). Applicant told her employer that she wanted and needed help, noting that her life and her belated grief had made her life unmanageable. (FORM, Item 6 at 3) While it advised Applicant that it had an EAP program, the company did not require her to attend. Applicant attended EAP on her own volition.

In response to a questionnaire regarding her last DWI, the company wrote: “[Applicant] is a long-standing employee working on classified hardware. She possesses critical assembly skills which are vital in meeting customer requirements for high reliability classified hardware. . . . [She] does not pose a threat to classified work. The Company recommends that she retain her clearance at this time.” (FORM, Item 6 at 2) It also noted that Applicant was truly remorseful about her behavior and that she understood the seriousness of her situation with regard to her continued employment and the ability to retain a security clearance. While the report noted that a supervisor cited Applicant for having the smell of alcohol on her breath, her employer noted that she has never exhibited behavior that she was impaired or that adversely affected her work. (FORM, Item 6 at 2)

² See, e.g., ISCR Case No. 96-0710 at 2 (App Bd. Jun. 20, 1997); DISCR OSD Case No. 90-1115 at 2 (App. Bd. Oct. 6, 1992).

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.

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, 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. 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 G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

Applicant has a long history of alcohol abuse, of which she was diagnosed by licensed clinical staff. As a result of this condition, she was convicted of alcohol-related driving incidents multiple times in the past 20 years. Except for one incident where she reported as having smelled of alcohol at her workplace, her other alcohol-related incidents were while driving. There are three Disqualifying Conditions that apply to this case under AG ¶ 22:

AG ¶ 22(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 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

AG ¶ 22(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant admits she abused alcohol. She notes that she has not abused alcohol in nearly two-and-a-half years. She was released from her last period of probation early, over three years ago, due to her progress. She sought help through an out-patient facility, then through EAP counseling complemented by AA. She extended her counseling to grief counseling, which she credibly urges was needed to help address an underlying problem. Following her out-patient program in November 2013, however, Applicant was accused of having alcohol on her person at work a couple of weeks later. Applicant has not specifically addressed this. It is, therefore, unclear if this was the result of a true relapse, poor hygiene, or another reason besides alcohol abuse. Regardless, the following mitigating conditions are available:

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;

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);

AG ¶ 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; and

AG ¶ 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 [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Because it is unclear whether Applicant's workplace incident was the result of a relapse or happenstance, AG ¶ 23(c) cannot apply. However, AG ¶ 23(b) does apply. The rest are inapplicable.

Guideline J, Criminal Conduct

The security concern regarding criminal conduct is explained at AG ¶ 30. 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. Applicant's multiple arrests between 1986 and 2012, including multiple convictions, are sufficient to raise criminal conduct security concerns. They trigger application of the following Guideline J disqualifying conditions:

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.

The guideline also sets forth a number of conditions that may mitigate the criminal conduct concern. Under AG ¶ 32, there are three conditions that may apply:

AG ¶ 32(a) so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(c) evidence that the person did not commit the offense; and

AG ¶ 32(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 development.

Applicant has not been involved in any illegal activity since 2012. Due to her positive progress, she finished her year of probation over two years ago after only serving only two months of the court-ordered year of probation. She no longer abuses alcohol and now comports her behavior appropriately. She is remorseful of her past difficulties with the law and alcohol. She continues with EAP and AA on her own volition. She understands the gravity of her past behavior, how it can jeopardize her remaining years in her present career track, and is committed to maintaining sobriety. In light of the facts in this case, AG ¶ 23(d) applies. The rest are inapplicable.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 61-year-old assembly technician with special area skills who has worked for the same defense contractor since 2006. Her employer values her special talents and has not seen alcohol ever adversely affect her work or behavior. She has a high school diploma, recently divorced, and has one grown child. Another child died a couple of years ago at age 20. His death still leaves her grief-stricken and has necessitated counseling.

Between 1987, when the 32-year-old Applicant was cited for failure to comply with a driving restriction and failing to use a seatbelt, and 2012, when the 58-year-old Applicant was arrested for her fourth DWI in the past 30 years, Applicant had multiple arrests. In 2013, she received out-patient counseling and treatment, possibly had one relapse of drinking to excess, and started to take her alcohol and behavioral problems seriously. She reentered her EAP program with a fresh zeal, now addressing both her abuse of alcohol and her grief over her son's loss. She has complemented this counseling with AA. She openly discussed her problems with her employer, admitted her need for help, and noted that she is now receiving effective counseling. She also expressed her intent to do what it takes to keep her job and security clearance, and related genuine remorse over her past behavior.

Applicant has managed her alcohol consumption, if any, responsibly for, at least, the past two-and-a-half years. The court ended her last probation because of the "positive progress" she demonstrated. She also has earned the support of her employer, which recommends she continue to maintain a security clearance. Given

where she is at this point in her career, and her credible descriptions of both her contrition and her desire to continue working, I find it highly unlikely she will again jeopardize her employment or her security clearance by abusing alcohol or violating the law. I find Applicant mitigated alcohol consumption and criminal conduct security concerns.

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 F:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.f:	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