Date: November 13, 2023

In the matter of:	)	
-----	)	ISCR Case No. 19-03380
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Milton C. Johns, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 1, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On August 31, 2023, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Bryan J. Olmos denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guidelines G and E, the SOR cross-alleged that Applicant received treatment for conditions diagnosed as Alcohol Dependency and Alcohol Use Disorder in 2015, but that she discontinued treatment against the advice of her providers and continues to consume alcohol despite the diagnoses. The SOR further alleged under Guideline E that Applicant deliberately failed to disclose the 2015 alcohol-related treatment on her 2016 security clearance application (SCA), that she falsified material facts regarding her diagnosis in her response to the SOR, and

that she falsified material facts regarding her 2015 treatment and diagnoses during a privately-obtained mental health evaluation that was submitted for consideration in her security clearance processing. The Judge found against Applicant with respect to the allegations that she falsified material facts in her 2016 SCA and 2021 alcohol use disorder evaluation, and found in her favor on the Guideline G and remaining Guideline E concerns.

Findings of Fact and Analysis

Applicant is in her late 30s. She earned her bachelor's degree in 2008 and has held a security clearance since 2010. Applicant has been employed by her company since 2015 and currently works as a business analyst.

In about 2014, Applicant began binge drinking due to stress and anxiety stemming from an emotionally abusive relationship. She attended counseling with a licensed clinical professional counselor (LCPC) from about April 2014 through February 2015, at which time she changed medical providers and a psychiatrist diagnosed Applicant with generalized anxiety disorder, major depressive disorder, and alcohol dependence, with bipolar disorder ruled out. The psychiatrist also opined that Applicant was an addictive shopper and struggled with impulse buying.

In March 2015, Applicant was prescribed mood stabilizers and, later, medication to curb her alcohol cravings. She received several recommendations to continue the medication to address her alcohol dependency. In December 2015, Applicant discussed her struggles with compulsive shopping and alcohol abuse with another counselor from the psychiatrist's practice, who recommended that Applicant continue regular therapy to focus on depression and anxiety management, improving her self-esteem, and managing her alcohol consumption and other compulsive behaviors. Applicant did not return for treatment, and she did not participate in mental health treatment from 2016 through 2018.

Applicant completed an SCA in 2016, wherein she disclosed that she had received counseling with the LCPC and psychiatrist, but she failed to note that the treatment was alcohol-related and separately denied ever voluntarily seeking counseling or treatment due to her alcohol use. During a subsequent security clearance interview in February 2018, Applicant described her earlier psychological counseling but again failed to note that the counseling was related to her voluntary alcohol treatment. She later relayed to the investigator that she was ashamed to list her treatment for alcohol use and proceeded to describe her period of binge drinking from 2014 to 2016 and asserted that she successfully completed counseling.

In June 2019, in order to address her anxiety regarding relationships, Applicant underwent a psychiatric evaluation with a physician assistant, certified (PA-C), wherein she described her previous therapy as being related only to her prior abusive relationship. She also relayed having been diagnosed with acute bipolar disorder and prescribed medications, but that she rarely took them and did not take them seriously, and asserted that she was drinking one alcoholic beverage per day. Applicant was thereafter diagnosed with obsessive compulsive disorder, major depressive disorder, and unspecified anxiety disorder, while diagnoses of alcohol abuse disorder and bipolar disorder were ruled out.

In September 2019, Applicant returned to the PA-C with complaints of high anxiety related to work and personal issues. The related treatment notes contain no indication of alcohol-related issues or treatment. Applicant was prescribed medication and a treatment regimen was established, both of which she followed for the next two years, and her anxiety and depression decreased.

In her January 2020 response to Government interrogatories, Applicant confirmed her 2015 alcohol dependence diagnosis, that she had been prescribed medication to assist with her alcohol cravings, and that she had discontinued treatment in 2016 against medical advice. In August 2021, after receiving an initial SOR, Applicant informed the PA-C that her clearance application had been revoked because she previously saw a psychiatrist in 2015 and was diagnosed with alcohol abuse. She reported drinking one or two glasses of wine several nights per week, up to three glasses on weekends. The PA-C's assessment and treatment of Applicant remained unchanged and unrelated to Applicant's alcohol consumption.

Also in August 2021, Applicant participated in an alcohol use evaluation with a licensed clinical social worker (LCSW) wherein she claimed she never sought services associated with alcohol while treating with the psychiatrist, and she was adamant that no provider in the psychiatrist's office ever told her that she had a drinking problem or needed alcohol treatment. Applicant also claimed that the psychiatrist's prescription for the alcohol-related medication was to curb her desire to shop online and that she only took one or two of the pills but did not like the side effects and stopped taking them. She relayed that she had reduced her alcohol consumption from two-to-four glasses of wine four-to-five times per week, to one-to-two glasses of wine two-to-three times per week. The LCSW concluded that Applicant did not have an alcohol use disorder.

In her subsequent August 2021 response to the SOR, Applicant acknowledged having been diagnosed, in part, with alcohol dependence and alcohol use disorder, but asserted those were overdiagnoses and that she was only seen a few times by the psychiatrist and discontinued treatment. She claimed that she continued to consume alcohol at a level that her psychiatrist and therapist believed did not meet the criteria for alcohol use disorder.

In December 2021, Applicant participated in a psychological evaluation with a licensed clinical psychologist wherein she disclosed that she began drinking excessively in 2015 as a coping mechanism for her relationship and asserted that she stopped drinking excessively when the relationship ended in 2017. She informed the psychologist that she consumed one or two glasses of wine, primarily on the weekends. Applicant was diagnosed with major depressive disorder (recurrent, in remission), generalized anxiety disorder, and alcohol use disorder (in remission), and bipolar disorder was ruled out.

In April and May 2022, the PA-C and another provider from her office issued letters noting that Applicant remained compliant with treatment for major depressive disorder, anxiety disorder, and obsessive-compulsive disorder. The second provider opined that Applicant's symptoms were not related to a substance use disorder.

Applicant submitted a second response to the SOR in May 2022, wherein she denied having ever received treatment for a condition related to alcohol, and claimed she was only treated for anxiety and depression. She asserted that she was unaware of having been diagnosed with alcohol

use disorder or alcohol dependence until well after the fact, and that the medication she was prescribed in 2015 was to address her shopping impulses. Applicant also denied providing false information during her August 2021 alcohol use evaluation.

At hearing, Applicant acknowledged seeing the psychiatrist in 2015 for therapy, but denied it was due to problems related to alcohol use and again claimed the medication prescribed by the psychiatrist was to curb her shopping impulses. Applicant also denied ever being treated for an alcohol use disorder or knowing that the psychiatrist diagnosed her with an alcohol use disorder until she received the SOR; however, when confronted with her January 2020 interrogatory response that reflected her awareness of the diagnosis and treatment, Applicant claimed she could not remember completing the questionnaire. Applicant was also unable to recall discussing with the psychologist her history of seeking treatment for alcohol abuse during the December 2021 evaluation, responding instead that, "I believe it is not who I am anymore, so I understand that the records say it, but it is not really that prevalent in my memory right now." Decision at 5, quoting Tr. 29-32, 39-40.

With respect to the unfavorable Guideline E concerns, the Judge found that Applicant's failure to disclose her voluntary alcohol treatment on her 2016 SCA was a deliberate omission for which disqualifying condition AG ¶ 16(a) applied, especially in light of her statement during her 2018 background interview that she had been ashamed to list the alcohol treatment on her SCA. Further, Applicant asserted during her August 2021 alcohol use evaluation that she never sought services associated with alcohol while treating with the psychiatrist and she was "adamant" that neither the psychiatrist nor any therapist in that office ever told her that she had a drinking problem or needed treatment for alcohol. These statements, however, were rebutted by her earlier January 2020 interrogatory response, wherein Applicant confirmed her awareness of her alcohol diagnosis and treatment, and her subsequent December 2021 psychological evaluation, wherein she described drinking excessively in 2015 and receiving alcohol treatment. Accordingly, the Judge determined that Applicant deliberately failed to disclose her history of alcohol diagnoses and treatment during her August 2021 evaluation, which warranted application of AG ¶ 16(b). The Judge concluded that Applicant's significant progress in mental health treatment and overcoming the security concerns about her alcohol consumption did not "overcome her refusal to provide a complete history of her treatment in her SCA or during the security investigation process." Decision at 12.

Discussion

On appeal, Applicant asserts that the Judge applied the wrong standard in denying her security clearance eligibility and failed to properly apply the mitigating conditions. Consistent with the following, we affirm.

Initial Versus Continuing Security Clearance Determinations

Applicant's first argument stems from her position that there is a distinction between the denial of an initial security clearance and the revocation of an existing security clearance, and a judge's failure to recognize that distinction constitutes harmful error. Appeal Brief at 3. She argues

that the Judge's use of the "clearly consistent" standard[1] was improper and that her case's posture requires a different legal analysis because Applicant "already held a security clearance and was applying for a higher level." *Id*. at 2. Applicant goes on to assert that the Judge's "consideration of the facts is made from the posture of merely denying access to an applicant rather than revoking existing access," which she argues "makes a legal difference in that denying access would not take way [sic] a privilege that is already vested." *Id*. Applicant cites no authority for these arguments, which lack merit for several reasons.

As an initial matter, Applicant contends that "the Agency," which we presume to mean DoD, "has treated the decision to deny her application for a higher clearance level as a revocation of her access." *Id*. Applicant appears to misunderstand the distinction between possessing a security clearance and being granted access to classified material. The issuance of a security clearance is a determination that an individual is eligible for access to classified national security information up to a certain level. While an *eligibility* determination is generally made at the agency level and is subject to various regulatory due process requirements, an *access* determination is most often made at the local level without any due process guarantees. *See* ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022). Eligibility for access to classified information – *i.e.*, a security clearance – is an underlying element necessary to an individual subsequently being granted access to classified materials.

Applicant also attempts to draw a distinction between initial and continued clearance determinations, arguing that the latter both requires something more than the "clearly consistent" standard and involves a vested interest in a clearance. The Directive, however, recognizes no such distinction. Eligibility for access to classified information will only be granted when the evaluation of all information bearing on an individual's loyalty and allegiance to the United States demonstrates that such eligibility is clearly consistent with the interests of the United States. SEAD 4 ¶ E.4. When DoD "cannot affirmatively find that it is clearly consistent with the national interest to grant *or continue* a security clearance, the case will be referred to DOHA" and, as appropriate, assigned to an Administrative Judge to issue a clearance decision. Directive ¶¶ E3.l.l (emphasis added), E3.1.7, E3.1.8. The Administrative Judge is thereafter required to make a written decision setting forth "whether it is clearly consistent with the national interest to grant *or continue* a security clearance for the applicant." Directive ¶ E3.1.25 (emphasis added). Contrary to Applicant's argument in this regard, the "clearly consistent" standard applies in both initial and continued (e.g., renewals, higher level applications, etc.) clearance determinations.

Applicant's next contention that, because she currently holds a security clearance the privilege is vested, is also unfounded. There is no right to a security clearance, and it has been long established that a prior favorable security clearance decision does not give rise to a vested right in keeping a security clearance or preclude the Government from reassessing the individual's security eligibility in light of current circumstances. *See, e.g.*, ISCR Case No. 99-0511 at 8 (App. Bd. Dec. 19, 2000) (citing *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988)); ISCR Case No. 03-24144 at 6 (App. Bd. Dec. 6, 2005). The prior favorable adjudication of Applicant's security eligibility does not entitle her to continued retention of a clearance, nor does it modify the standard applicable in security clearance eligibility determinations.

[1] The Judge concluded that "[i]n light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance." Decision at 13.

Applicant also challenges that there is "no discussion of how the Judge's finding that [Applicant] made a deliberate omission in 2016 . . . should require revocation of an existing clearance for which she has a spotless record. Appeal Brief at 2. Applicant's challenge in this regard is misplaced, however, as the Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security suitability. *See, e.g.*, DISCR OSD Case No. 92–1106, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Application of Mitigating Conditions

Applicant also disagrees with the Judge's weighing of certain evidence and application of the mitigating factors, which is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). For example, she argues that mitigating condition AG ¶ 17(c) must apply in this case because "the underlying therapy at issue occurred in 2014-2015" and "the original [SCA] was made in 2016." Appeal Brief at 5. AG ¶ 17(c) addresses the timing, significance, and circumstances of an applicant's concerning conduct and affords mitigation when "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Applicant appears to argue that, because the therapy at issue and the SCA in which she failed to disclose said therapy both occurred years ago, her conduct should be found mitigated through the passage of time. This is unpersuasive.

The Judge found not only that "Applicant omitted her alcohol treatment history in her July 2016 SCA," but that her denials continued throughout her latter security clearance processing, including that she "denied any history of alcohol treatment during her August 2021 evaluation with [the LCSW,] further denied any history of alcohol treatment in her May 2022 SOR Answer" and, at her May 2023 hearing, "claimed not to recall her history of alcohol treatment because she believed it was not who she was anymore and that it was not 'prevalent' in her memory." Decision at 11. The repeated and recent nature of Applicant's failures to fully disclose information requested during her security clearance investigation undercut any argument that the conduct occurred long ago. Nor can the omissions be deemed minor insofar as the Directive itself states that failure to provide truthful and candid answers during the security clearance process is of "special interest" in evaluating an applicant's security worthiness. *See* AG ¶ 15. Based on the foregoing, the Judge reasonably concluded that AG ¶ 17(c) did not apply and that determination is sustainable.

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Egan*, 484 U.S. at 528. "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board