



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



In the matter of:)
)
) ISCR Case No. 14-05542
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire
For Applicant: *Pro se*

12/21/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's driving under the influence (DUI) conviction was an isolated alcohol-related criminal offense. There is no other evidence of alcohol-related or criminal conduct. Her good service to her employer and selfless community work serves as evidence of her rehabilitation. Clearance is granted.

Statement of the Case

Applicant submitted her first security clearance application (SCA) on January 2, 2014. The Department of Defense (DOD) issued her a Statement of Reasons (SOR) alleging security concerns under Guideline J (criminal conduct) on February 20, 2015.¹ Applicant answered the SOR on April 1, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 18, 2015, and reassigned to me on September 17, 2015. The Defense Office of Hearings

¹ The DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

and Appeals (DOHA) issued a notice of hearing on August 28, 2015, scheduling a hearing for September 17, 2015.

At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified, presented the testimony of two witnesses, and submitted two exhibits, marked AE 1 and 2. AE 2 was received post-hearing. I also note that Applicant attached to her SOR answer 13 pages of documents related to the completion of her community service and probation and reference statements. Applicant's documents and the Government's exhibits were made part of the record without objections. DOHA received the hearing transcript (Tr.) on September 25, 2015.

Findings of Fact

In her response to the SOR, and at her hearing, Applicant admitted the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 41-year-old systems engineer employed by a federal contractor. She entered the United States at age eight in 1982, and became a naturalized U.S. citizen in 1996. She attended college and received her bachelor's degree in mathematics and industrial engineering in 1997. She also completed about two years of post-graduate studies. Applicant married in 1998, and divorced in 2003. She has a 16-year-old son.

Applicant has been working for her current employer, a federal contractor, since February 2011. This is her first security clearance application. Aside from the pending SOR allegations, there is no evidence of any other security clearance issues or concerns.

In June 2014, Applicant was convicted of DUI and being involved in an accident with two pedestrians. She was sentenced to 90 days confinement (suspended), placed on 12-months supervised probation, fined \$1,000 (\$750 suspended), and ordered to attend a 26-week alcohol counseling program.

Applicant explained that between 2011 and 2014, she was suffering from depression and anxiety. A number of close relatives had passed away, and she was having difficulty dealing with her losses. In 2010, she lost her mother; in 2011, she lost an uncle; in 2012, she lost her grandmother; and in 2013, she lost an aunt and her stepmother. Because she has a young son, Applicant always placed the priority on taking care of him, and she had not had the opportunity to grieve for her relatives. Between October 2011 and 2013, Applicant sought a physician's help and she was prescribed medication for her depression and anxiety.

In March 2014, Applicant met a friend for dinner and they had an emotional conversation. Applicant forgot that she had taken her depression and anxiety

medications that morning, and during the course of the dinner she consumed three glasses of wine. The dinner ended at around 10:30 – 11:00 p.m., and it was raining when Applicant started to drive home. She was upset and crying while driving. Applicant stopped at a red light and was distracted with her radio, working with the GPS (she did not know where she was), and trying to make a phone call.

When the traffic light turned green, Applicant let off the brakes and allowed the car to move forward without paying attention to the road. She hit two pedestrians that were crossing the intersection and knocked them down. Applicant claimed the pedestrians only suffered minor bruises and scrapes, and they were able to walk after the incident.

Applicant credibly testified that this is the first time she has been involved in alcohol-related or criminal misconduct. She does not consume alcohol on a frequent basis because she has a sister that is an alcoholic and an addict. Moreover, she is always concerned about setting the right example for her young son.

Applicant expressed sincere remorse and regret for her alcohol-related conviction. She believes that she is a responsible and conscientious parent with the important responsibility of raising her son. Applicant successfully completed all court-ordered treatment, community service, and probation conditions. Because of her hard work, she was released from probation ahead of schedule in April 2015. Additionally, she attended approximately eight Alcohol Anonymous sessions.

Applicant submitted a number of reference letters and presented the testimony of two character witnesses. She is foremost considered to be a loving and dedicated mother with significant parental and work responsibilities. Her long-time friends do not believe Applicant is a habitual alcohol drinker. They all consider Applicant's alcohol-related misconduct as an aberration.

Applicant's work references believe her to be a tireless, dedicated, hard-working, and respected professional. Her performance evaluations indicate Applicant meets or exceeds expectations, and makes significant contributions to her employer. Most impressive was Applicant's selfless desire to help two of her neighbors during significant periods of time while they were recovering from cancer. Applicant unselfishly visited her neighbors on a daily basis caring for them and doing their chores, such as buying their groceries.

Applicant likes her current job and believes that she is a valuable asset to her employer. She understands the responsibilities associated with maintaining eligibility for a security clearance. Applicant promised to never drink and drive in the future. Applicant is no longer suffering from depression and anxiety symptoms, and she is not taking any medications.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline J, Criminal Conduct

Under Guideline J, the concern is that 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.” AG ¶ 30.

In June 2014, Applicant was convicted of DUI and for being involved in an accident involving pedestrians. Applicant's criminal behavior raises security concerns under 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."

AG ¶ 32 lists two conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

(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.

Both mitigating conditions apply. Applicant's DUI occurred almost two years ago. There is no evidence to show that Applicant had an alcohol problem before her March 2014 DUI, or that she currently has one. On the contrary, the evidence shows Applicant has a reputation for consuming alcohol sparingly. She is considered to be a loving and dedicated mother with significant parental and work responsibilities. Applicant's alcohol-related misconduct appears to be an aberrational occurrence caused by unwittingly mixing her medications with alcohol. She is no longer consuming medications, and consumes alcohol sparingly.

Applicant expressed sincere remorse for her misconduct. There is no evidence of any additional alcohol-related misconduct or of any other issues of security concern. Applicant has a good employment record and an exemplary community involvement. I believe that Applicant's alcohol-related misconduct happened under unusual circumstances, it is unlikely to recur, and does not cast doubt on her current reliability, trustworthiness, or judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) I have incorporated my comments under Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant, 41, has been working for her employer since 2011. Her good service to her employer and selfless community work serves as evidence of her rehabilitation. There is no evidence of Applicant having an alcohol problem before or after her 2014

DUI, and there is no indication of any other criminal conduct. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant mitigated the security concerns pertaining to criminal conduct.

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 J: FOR APPLICANT

Subparagraph 1.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. Clearance is granted.

JUAN J. RIVERA
Administrative Judge