



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



In the matter of:)	
)	
)	ISCR Case No. 18-00686
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2019

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement and substance abuse, and Guideline J, criminal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on May 12, 2014. On March 21, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, H, and J.²

¹ Also known as a Security Clearance Application (SCA).

² The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on April 16, 2018, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on August 1, 2018, and the hearing was convened on August 29, 2018. Government Exhibits (GE) 1 through 7 were offered, however based on Applicant's objections, GE 2 through 4 (Personal Subject Interview summaries) were not admitted. GE 1, and 5 through 7 were admitted without objection. Applicant's exhibits (AE) A through C were admitted in evidence without objection. The record was held open after the hearing to permit Applicant to submit additional documentary evidence in mitigation. Applicant submitted AE D, which was admitted without objection. DOHA received the hearing transcript (Tr.) on September 7, 2018.

Findings of Fact

The SOR alleges under Guideline G, that Applicant has a history of excessive alcohol consumption, including after treatment. Applicant was also charged with alcohol-related offenses including: two charges in 1997 for underage possession of alcohol, and driving while intoxicated (DWI) with a minor under 15 years old. The SOR cross-alleged the DWI arrest under Guideline J, criminal conduct. Additionally, the SOR alleges under Guideline H that Applicant used marijuana from 1993 to at least 2015, including while holding a security clearance in 2015, and misused two prescription medications from September to October 2011, while holding a security clearance. In Applicant's answer, she admitted all of the allegations with explanations, except she denied the extent of her alcohol use after treatment, and denied use of marijuana after 2000, except for one time in May 2015. The record evidence substantially supports the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 40-year-old software engineer, employed by a defense contractor since 2001. She earned a bachelor's degree in 2001. She married in 2005 and divorced in 2013. She has two children, ages 12 and 17. She has held a security clearance since 2003.

Applicant was twice cited for underage possession of alcohol in 1997, while a 19-year-old college student, and also used marijuana on occasion until 2000. Applicant began working for her current employer after graduating from college in 2001. She was married in 2005 to a recovering alcoholic. Applicant struggled with her weight, and in 2010, she had gastric bypass surgery and was getting knee injections for arthritis. She was prescribed pain medications because she could no longer use over-the-counter pain medication after surgery. At times, she used the medications even after the pain subsided, so it was not in compliance with the prescription directions.

Applicant considered herself a social drinker, but her beer and wine use also increased after bypass surgery as a substitute for food. She stopped drinking in September 2011, but had increased anxiety and depression. She was having difficulty in her marriage and her children had behavioral issues. She stopped drinking in September 2011, sought counseling in October 2011 for anxiety and depression, and was

recommended to include treatment for alcohol abuse. She was tapered off the prescription medications as they were not permitted during treatment, and began treatment for alcohol abuse, anxiety, and depression. She denied ever receiving a diagnosis. She reported her treatment to her employer, continued with Alcoholics Anonymous (AA), and successfully abstained from her self-imposed alcohol use until she relapsed in 2015.

In 2013, Applicant and her spouse divorced, and, at the same time, her employer transferred her job to another state. She moved as a single mother of two children, with no friends, family, or other support. In 2015, Applicant's parents were visiting and helped her move from a rental property. After the move was completed, her father offered her alcohol. She had two mixed drinks, and, without feeling any effects, drove to a drug store for bath products when she suddenly felt the effects of the alcohol. Her nine-year-old son met her outside and insisted on riding to the store with her. She ran a red light, and was struck by another car. She was cited for driving while intoxicated (DWI) and was convicted of misdemeanor DWI, fined, ordered to complete community service, probation for two years, and required to use an ignition interlock device. One month later, after returning from work, Applicant stopped at a friend's house, drank, and used marijuana offered by the friend. This was her first and only use of marijuana since 2000, and was related to her drinking on that day.

On advice of her friend, Applicant checked herself into a hospital outpatient eight-week alcohol treatment program with a psychiatrist, and reported that she was suffering from anxiety, stress, and being counseled at work for taking too many sick days. In 2015, Applicant was diagnosed as alcohol dependent but met criteria for early partial remission. She was advised to stop drinking, and was prescribed Antabuse to assist her with cravings. She stopped using alcohol, has successfully continued Antabuse without incident, successfully completed the two-year ignition interlock program without incident, and regularly attends AA and counseling with a therapist. Her psychiatrist and therapist provided positive letters of support, indicating that she has been compliant with her medications, attendance at AA and church. She has an AA sponsor and she is making improvements in her mental health. Her AA sponsor wrote of her daily work with Applicant since 2015, and despite a one-day relapse at a cookout in July 2017, Applicant reestablished sobriety immediately and reported her relapse in her AA meeting and to her counselor.

Applicant's friend testified on her behalf, was aware of her history and relapses, and noted her efforts at sobriety as discussed above. Her friend, was very supportive of her recovery. Her psychiatrist noted Applicant has developed better insight and is using good judgment. With continued compliance with recommended treatment, Applicant's prognosis is "very good."

Applicant was straightforward, open and honest in her testimony. She acknowledged her struggle with alcohol, but was encouraged by her efforts at sobriety, abstinence, and treatment. She has made friends, and now has personal support that has substantially reduced her stress and anxiety. Applicant's ex-spouse, neighbor, friends,

church members, and employment team leader strongly support her, noting Applicant's friendship, love for her children, loyalty, and honesty.

Since 2017, Applicant noted that she has performed well at work, winning several awards, including a prestigious, global company-wide award from the company's chief executive officer. This award noted Applicant's energy, ingenuity, and integrity. She has exceeded performance standards, and has a history of receiving monetary awards. She believes her home-life is stable, understands how to deal with stress, regularly uses her Antabuse medication and meets with her counselor and sponsor, and vowed to continue to abstain from any further alcohol or drug use.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of

establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Three are potentially applicable in this case:

(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 the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant's drinking history, which includes alcohol-related offenses in college, a DWI in 2015, and relapse after treatment, meets the conditions set forth in AG ¶¶ 22(a), (c), (d) and (f).

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23, including:

(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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant acknowledges her history of struggles with alcohol. Her recognition of conditions that require intervention have resulted in her seeking treatment on two occasions. The first was in 2011 to address anxiety and depression, much of which was related to her marriage, and the second was in 2015 after her DWI and one-time use of marijuana. As a result of her 2015 treatment, she was diagnosed as alcohol dependent, and proceeded with an intense treatment regiment. She had a brief, one-day relapse in July 2017, but quickly recovered her sobriety and it has continued to date. She now has tremendous support and has had exceptional performance at work. She continues her medication, counseling, and AA participation. She keeps daily contact with her sponsor, and has vowed to remain abstinent.

I find that sufficient time has passed since her last alcohol-related incident and despite a one-day relapse, she has maintained substantial abstinence from alcohol and marijuana since 2015. I am persuaded that her life changes, counseling and abstinence support serve to mitigate her past behavior. Applicant's alcohol-related issues appear to be under control, and no longer cast doubt on her current reliability, trustworthiness, or good judgment as long as she maintains her compliance with her treatment regiment. I find AG ¶¶ 23(a) and (b) apply, and (c) and (d) partially apply.

Guideline H, Drug Involvement and Substance Abuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying condition applicable in this case is:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant reported her occasional use of marijuana in her youth, mostly while in college, and again one time in 2015 while drinking alcohol. She also reported her misuse of two prescription pain medications that she said were used outside of the label directions. These incidents implicate the disqualifying condition noted above.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future

involvement or misuse is grounds for revocation of national security eligibility; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

Applicant is a mature adult who reported in her misuse of prescription medication in her SCA, and self-reported her one-time use of marijuana while drinking in 2015. She acknowledged that her incidents of drug misuse were likely related to her alcohol abuse problem and from post-surgery and knee treatments. She has since abstained from any further illegal drug use or prescription misuse, and no longer associates with the person that supplied marijuana in 2015. She expressed her regret for her lapse in judgment, and provided a statement of intent to refrain from drug use or substance misuse. Applicant's 2011 misuse of prescription medication and one-time use of marijuana in 2015 while relapsing with alcohol was a temporary lapse in judgment that has not recurred. I am convinced Applicant does not desire to use marijuana again, and that her promise to refrain from future use and misuse of prescription medications is sincere. Her past use no longer reflects on her current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a), (b), and (c) apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, prosecuted or convicted.

Applicant's DWI arrest and conviction is sufficient evidence of criminal conduct. AG ¶ 31 (b) applies.

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

(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, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's DWI arrest and misdemeanor conviction occurred in 2015 and is an unusual circumstance. She has not had a similar offense before or after that incident. Since then, she has actively participated in group and individual counseling with a positive prognosis, completed a two-year ignition-interlock device program without violation, successfully completed probation, and has substantially abstained from alcohol use. She used her DWI incident with her son in the car as a wake-up call to change her behavior that led to criminal activity, and recognizes the impact that alcohol abuse has had on her life and her family. She continues to attend AA meetings and counseling, and stresses that alcohol use and resultant criminal conduct is behind her. I conclude that Applicant has shown successful rehabilitation through the actions she has taken to regain control over her life, and as long as she continues to completely abstain from further alcohol use and counseling recommendations, additional criminal activity is unlikely to recur. Her past criminal behavior no longer casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 32 (a) and (d) apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful 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 considered Applicant's stellar work performance over the past two years, and her alcohol-abuse treatment and follow-on assistance through active participation in AA and counseling. Gaining control over her alcohol problem has resulted in disuse of marijuana and drunk driving. Although Applicant

has struggled with her behavior when alcohol is involved, she appears to be on the right track with help from her substantial support network and counseling. I am convinced that Applicant has sincerely changed her behavior, has learned from her past transgressions, benefited from counseling, medication, and the prolonged use of the ignition-interlock device, and is committed to complete abstinence now and in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines G, H, and J.

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 G:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge