



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



In the matter of:)	
)	
)	ISCR Case No. 18-01325
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/14/2019

Decision

Gregg A. Cervi, Administrative Judge

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) dated July 26, 2017. On May 21, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline G.¹ She answered the SOR and elected a decision based on the administrative record. The Government’s written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 17, 2018.

¹ 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.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 25, 2018, and submitted a response dated August 9, 2018, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 10) and AE A are admitted into evidence without objections. The case was assigned to me on December 12, 2018.

Findings of Fact

Applicant is a 49-year-old logistics specialist employed by a government contractor since April 2016. She received a bachelor's degree in 1995. Applicant married in 1997, and has no children. She retired from the Air National Guard after serving from 1987 to 2008. Applicant has a history of holding various security clearances.

The SOR alleges Applicant has four alcohol-related arrests and convictions in 1995, 2007, 2016, and 2017. She admitted the allegations, and submitted documentation in explanation and mitigation.

In 1995, Applicant was arrested for driving while intoxicated after leaving a wine festival. She was convicted and incarcerated for 180 days (177 suspended), fined, placed on one-year probation, and ordered to attend a three-day alcohol counseling course. She stated in a 2006 personal subject interview (PSI) before a Government investigator that out of the three people involved, she drove the vehicle because she drank the least at the festival, and that she has not consumed alcohol and driven since the 1995 arrest. She also noted that her use of alcohol never affected her employment or personal life.

In 2007, Applicant was arrested for operating a vehicle under the influence of alcohol. She pleaded guilty, was fined, and attended a weekend intervention program where she was purportedly diagnosed as an alcohol abuser.² She also attended follow-up treatment at another facility, but no details of the treatment were provided.

In 2016, Applicant was arrested for operating a vehicle under the influence of alcohol after she lost control of her vehicle, left the road and hit a pole. The police report noted that upon approaching Applicant in her car, she was so intoxicated she nearly fell out of the car, could not perform roadside sobriety tests, could not stand on her own, and was nearly carried to the police station. Her breathalyzer sample revealed a .334 blood alcohol content (BAC). She was convicted and ordered to serve 33 days confinement (30 days suspended), fined, placed on one-year probation, and ordered to continue an alcohol treatment program already started. Details of the alcohol treatment program are not available in the record.

In October 2017, Applicant was arrested for operating a vehicle under the influence of alcohol following a traffic accident. Her attorney recommended she attend an alcohol treatment program. She pleaded guilty and was ordered to be confined for 180 days (170

² Applicant admitted the allegation, but the FORM does not contain documentation to support the diagnosis.

days suspended), home detention, supervised probation, fined, and ordered to undergo a drug and alcohol evaluation. She was released from probation in April 2018. There is no record of the results of the drug and alcohol evaluation.

Applicant provided a short, hand-written letter from her therapist, dated June 21, 2018. (AE A) The therapist noted that she was contacted after Applicant's "second OVI."³ She noted Applicant's hard work in therapy on personal issues that led to alcohol abuse, but did not expand on the issues involved, type and extent of treatment or therapy, or diagnosis. The therapist stated that Applicant no longer drinks alcohol and has resolved her personal issues satisfactorily. She stated that Applicant was doing extremely well in her life, and was not a threat to national security.

Applicant noted the support of her employer and the Air Force, but did not provide independent evidence of such support. She also noted her dedication to her work and years of holding a security clearance without a security violation. She also stated that in the 15 months preceding her 2017 arrest, she fell on "hard times" and life was extremely difficult, but that she learned a valuable lesson, grew as a person, and changed her habits. Since Applicant elected a decision without a hearing, I was unable to inquire further into her alcohol treatment and evaluations, personal issues that led to alcohol related arrests, and any changes in lifestyle.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

"[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).

³ At the time Applicant sought counseling with this therapist, she had four alcohol related driving arrests. Applicant's therapist did not disclose whether she was aware of Applicant's complete background of alcohol related criminal history or prior treatment.

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

The security concern 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.

The guideline notes several conditions that could raise security concerns under

AG ¶ 22. The following 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; and

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

Applicant has a history of drunk-driving arrests and convictions for over 20 years. In the 2016 arrest after an accident, her BAC was tested at .334%. One year later, she again was found guilty of drunk driving after another vehicle accident. The above disqualifying conditions apply.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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's history as detailed in the findings of fact, indicates a pattern of excessive use of alcohol and driving while impaired. Despite recurring incidents of alcohol-related arrests, probation, and court-ordered education classes, she has not shown sufficient evidence of abstinence or the ability to drink responsibly. Her current therapy is not conclusive since it is devoid of details of her alcohol use and treatment history, type and extent of therapy, and diagnosis. Because of the current therapist's incomplete report, her prognosis has little value. Additionally, Applicant has been treated

or counseled after previous drunk-driving arrests, but relapsed and returned to drinking to intoxication and driving. The record is devoid of substantial evidence of a change in behavior, and efforts to ensure that no further alcohol related incidents will occur. I am not convinced that her newly claimed abstinence is credible or will be sustained in the future. None of the mitigating conditions fully apply, and Applicant's evidence is not sufficient to overcome concerns about her established pattern of excessive alcohol use.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 nine adjudicative process factors listed at AG ¶ 2(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline G in my whole-person analysis. Applicant's history of alcohol-related incidents and failure to show credible rehabilitation and a changed lifestyle remain an ongoing concern.

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:	Against Applicant
Subparagraphs 1.a - 1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge