



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



In the matter of:)
)
) ISCR Case No. 18-02205
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Attorney At Law

August 29, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 22, 2017, and September 18, 2006, Applicant submitted security clearance applications (e-QIPS). (Government Exhibits 1 and 2.) On October 19, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption; Guideline H, Drug Involvement and Substance Abuse; and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on December 10, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on March 19, 2019, and the hearing was convened as scheduled on May 8, 2019. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered seventeen exhibits, referred to as

Applicant's Exhibits A through Q, which were admitted without objection. Applicant called two witnesses and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on May 28, 2019.

Findings of Fact

Applicant is 46 years old, not married and has no children. She has two Master's degrees, one in business administration, and the other in project management. (Applicant's Exhibits C and D.) She is employed by a defense contractor as a Project Manager. She is seeking to obtain a security clearance in connection with her employment.

Guideline G – Alcohol Consumption

The Government alleges that Applicant has engaged in excessive alcohol consumption that 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.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Guideline E – Personal Conduct

The Government alleges that Applicant has engaged in conduct which shows a lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about her reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant has worked for her current employer since June 2009, almost ten years. She was granted a security clearance in 2007. In May 2010, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI) with blood alcohol level of .08 or higher. She explained that she and a work colleague were celebrating a milestone and went out to a restaurant for dinner and then to a bar for drinks. Applicant consumed three glasses of wine with dinner and five vodka drinks while at the bar. She admits that after consuming this amount of alcohol she was intoxicated. Applicant was pulled over while driving her car and given a field sobriety test, which she failed. Her blood alcohol level was .19%. In about July 2010, she pled guilty to misdemeanor DUI and was required to pay a fine, attend alcohol abuse training and serve three years of probation. She completed these court conditions. She states that she also learned not to drink and drive in the future. She no longer goes out to bars just to drink alcohol. (Tr. pp. 49-51.) Following this DUI, she abstained from drinking for

a while. Applicant states that she now consumes alcohol about once or twice a month, and when she drinks she has about two drinks each time, usually beer. (Tr. p. 73.)

Although not alleged, when confronted by Department Counsel as to whether she has a previous DUI in 1996, Applicant admitted that she had. At that time, Applicant's blood alcohol level was a .13%. As a result of that DUI, she was required to attend three months of MADD classes, AA meetings, pay a fine and placed on probation. Her driver's license was suspended and restricted to allow her to drive to work only. (Tr. p. 69.) Applicant complied with all of these conditions. Applicant states that following this DUI, she did abstain from drinking for a while.

Applicant has a history of illegal drug use that includes her use of marijuana from about January 1996 to about June 2004; cocaine use from about June 1995 to about December 2002, and in October 2015; and ecstasy in January 2016, while holding a security clearance.

Applicant used marijuana from January 1996 to about June 2004. At the beginning, she used it about once a day. It tapered off as her group of friends changed. She stopped using it in 2004, because she was going to school to get her Master's degree. She last used marijuana in 2004 while she was in Amsterdam. She did not hold a security clearance at the time. She use it with a group of friends. She no longer uses marijuana because it stopped being desirable to her. (Tr. p. 63.)

She also used cocaine from June 1995 to about December 2002. She states that she used it during this period about five times. From 2002 to 2015, Applicant states that she did not use cocaine because she lost interest in it and no longer associated with her friends that used it. (Tr. p. 54.) Applicant use cocaine again in October 2015. She explained that she was at a party at a friend's house. Some people were going into the garage randomly and she wandered in to see what was going on. A friend of a friend, who Applicant does not know, had some cocaine and Applicant used some. Applicant states that it never occurred to her that she held a security clearance at the time and should not be using illegal drugs. She states that she has never worked in a classified area and never used her clearance. She did not enjoy the experience and regretted using it. She no longer puts herself in those environments.

In January 2016, while holding a security clearance, Applicant used ecstasy on one occasion. She was in Las Vegas with a friend of hers, and his group of friends were all using ecstasy. They were getting ready to go out for the evening to a concert and Applicant was offered some. She did not feel pressured to use it, and again her security clearance was not in the forefront of her mind at the time. She states that she has no intention of ever using ecstasy again.

Applicant executed two sworn statements of intent promising never to abuse alcohol or any illegal drugs in the future. In the event that she does, her security clearance is subject to immediate revocation. (Applicant's Exhibits E and F.)

Applicant states that she now realizes the seriousness involved in holding a security clearance. Although she possessed a security clearance at the time she used cocaine and ecstasy in the past, she did not use her clearance to access classified information, and so she did not take the matter seriously. Applicant states that she now understands the responsibilities and obligations that come with holding a security clearance. This situation has been an eye-opener for her and she believes that she is “scared straight.” (Tr. p. 68.) Applicant does not believe that her employer has a separate (company) drug policy that prevents the use of illegal drugs.

Two witnesses testified on Applicant’s behalf. A principal systems engineer who works with the Navy met Applicant while taking a Master’s course class before 2007. He interacts with her once a month and talks with her once every two weeks. He states that she is responsible and reliable and he has no reservations about her holding a security clearance. They started hanging out socially in 2007 when he moved back to the city. She educated him on “good beer” in the city at the time. (Tr.pp. 21 - 33.)

The other witness, a senior project engineer, stated that she has known the Applicant for several years, they interact daily, and they are friends. She described the Applicant as a motivated employee who goes above and beyond her job to complete her responsibilities. She is considered to be a caring, trustworthy, honest, and dedicated employee. The writer does not believe the Applicant’s past actions are a threat to the national security of the United States, and she recommends Applicant’s retention of her security clearance. (Tr. pp. 45 - 68)

Performance evaluations of the Applicant for the periods from 2013 through 2018 all are favorable and indicate that she either “meets” her job requirements, or “highly” meets her job requirements in every instance. (Applicant’s Exhibit G.)

Letters of recommendation from previous coworkers, friends, and professional colleagues of the Applicant attest to her integrity, honesty and trustworthiness. She is described as intelligent, loyal and responsible. One letter also indicates that Applicant, in execution of her duties, has been exposed to sensitive information. (Applicant’s Exhibits I and M.)

A Substance Abuse evaluation of the Applicant prepared by a certified alcohol and drug counselor dated November 28, 2018, indicates that Applicant does not meet the criteria of substance abuse at that time, although her past consumption resulted in serious legal consequences. Her current consumption of alcohol at that time was in normal limits, however she is encouraged to self-monitor her consumption bi-annually. The report also indicates that Applicant’s alcohol-abuse history involves being drunk to intoxication about 50 times in her lifetime. She has blacked out from drinking at least four times in her life. She reported vomiting from drinking two times in her life and her pattern of consumption was bi-weekly and she would consume four drinks. (Applicant’s Exhibit L.)

Negative Drug Tests of the Applicant were provided on November 14, 2018, and November 30, 2018. (Applicant’s Exhibit J.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

- (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;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant was arrested for DUI in 2010 and prior to that in 1996. Following both convictions she completed two first offender DUI programs and abstained from drinking alcohol for a while. Her history of two alcohol-related arrests and convictions shows poor judgment and unreliability.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (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; 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.

Nine years has passed since the Applicant's most recent DUI. She has not abused alcohol to that level since then and has no plans of engaging in conduct of this sort in the future. Accordingly, this guideline is found for the Applicant.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

(a) any substance misuse (see above definition);

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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; and

(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; and

(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.

None of the mitigating factors demonstrate full mitigation. Applicant is not a young and immature woman, with little experience in the defense industry. In fact, she is 46 years old and has worked in the defense industry for his current employer for the past ten years. After receiving a security clearance in 2007, she continued to use cocaine and ecstasy. She last used cocaine in 2015, and ecstasy in 2016, while holding a security clearance. Applicant claims that she is not aware that her employer has any policy preventing the use of illegal drugs. There is no excuse for this misconduct, and her actions do no show the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(2) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon

the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's most recent illegal drug use while holding a security clearance occurred in 2016, just three years ago. Applicant's alcohol-related incidents coupled with her illegal drug use calls into question her judgment. Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, one is expected to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. Her conduct does not show honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information.

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):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline G, Guideline H, and Guideline E in my whole-person analysis. While holding a security clearance one is expected to show responsibility and good judgment. Applicant has not demonstrated the level of maturity needed for access to classified information. This is not an individual with whom the Government can be confident to know that she will always follow rules and regulations and do the right thing, even when no one is looking. She is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant failed to mitigate the Drug Involvement and Substance Abuse, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a, through 2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge