



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



In the matter of:)
)
) ISCR Case No. 19-00381
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*
03/31/2020

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of alcohol abuse, marked by four driving while impaired (DWI)-driving under the influence (DUI) of alcohol convictions, and numerous traffic offenses. Her last alcohol-related offense occurred in 2017. She has established a pattern of abstinence, modified behavior, and rehabilitation. Alcohol consumption and criminal conduct concerns are mitigated. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 5, 2017, seeking a clearance required for her position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 21, 2019, alleging security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). Applicant answered the SOR on July 11, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on November 20, 2019. DOHA issued a notice of hearing on February 4, 2020, setting the hearing for February 20, 2020. At the hearing, the Government offered 13 exhibits (GE 1 through 13). Applicant testified and submitted

two exhibits (AE 1 and 2). AE 2 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 28, 2020.

Findings of Fact

Applicant is a 46-year-old employee of a federal contractor. She is a high school graduate. She has never been married and has no children. She has been working for her current employer and security sponsor since October 2002. She is a level three (senior) research assistant. In 2003, the Office of Personnel Management (OPM) granted Applicant eligibility for a position of trust, and she has held it to present.

In her responses to Sections 22 (Police Record) and 24 (Use of Alcohol) of her 2017 SCA, Applicant disclosed a history of alcohol-related offenses. The background investigation provided additional details about the security concerns alleged in the SOR.

Applicant admitted all of the Guideline G allegations with some clarifications (SOR 1.a – 1.g), and denied all of the Guideline J allegations (SOR 2.a – 2.d). Her SOR admissions, and those at the hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

1. In 2006, Applicant was charged with drinking an alcoholic beverage in a retail area and second degree assault. Both charges were *nolle prosequi*. (SOR 1.a; GE 3).

2. In February 2008, Applicant was charged with driving while impaired by alcohol, assault second degree, disorderly conduct, and failure to obey a lawful order. She pleaded guilty to the charge of driving while impaired by alcohol, and was adjudged probation before judgment. The probation was extended until December 2009. (SOR 1.b; GE 4.a, 4.b, and 4.c) She was required to remain abstinent during the probation period. She successfully complete her probation.

3. Between April and May 2008, Applicant received alcohol-related counseling (a six week, 12 hour education program) and was diagnosed with an alcohol use disorder - mild. (SOR 1.c; GE 11)

4. In January 2011, Applicant was arrested for driving while impaired by alcohol, and she pleaded guilty to the offense. She was placed on supervised probation. (SOR 1.d; GE 5)

5. Between March and October 2011, Applicant received alcohol-related counseling (a 26-week treatment program) and was diagnosed with an alcohol use disorder - severe. She was required to remain abstinent during the probation period. (SOR 1.e; GE 11)

6. In June 2014, Applicant was arrested for driving while impaired by alcohol. She was found guilty of the offense in February 2015, and was sentenced to 60 days

confinement (58 days suspended), placed on a weekender's work program, and on supervised probation and parole. (SOR 1.f; GE 6.a - 6.c)

7. Between August and September 2014, Applicant successfully participated in a 28-day residential recovery and treatment program. In December 2015, she completed the subsequent 48-week aftercare group counseling program. (GE 12)

8. In April 2017, Applicant was arrested for driving while under the influence of alcohol. She was found guilty of the offense in February 2018, and was sentenced to one-year of supervised probation. She was also charged with failure to display her driver's license, failure to drive in right half, failure to stop at a stop sign, failure to drive to curb upon signal by police, and taking a left turn from improper position. All of these related traffic offenses were placed on a STET (inactive) docket following Applicant's guilty plea to DUI. (SOR 1.g; GE 7.a, 7.b)

9. In June 2017, Applicant was arrested and charged with driving a vehicle not equipped with an ignition interlock. She pleaded not guilty, and the charge was later *nolle prosequi*. She also was charged with driving on a suspended license. She pleaded guilty and was found guilty of the charge in January 2018. She was sentenced to one-year of confinement (suspended for 30 days). She appealed the sentence to the Circuit Court, apparently requesting a consolidation of other pending traffic offenses. The Circuit Court considered the appeal and entered its verdict in March 2018. Applicant was sentenced to two-years of supervised probation with conditions, and a \$1,000 fine, suspended. (GE 8, 10)

10. In September 2017, Applicant was charged with failure to display her driver's license to a police officer, driving on a suspended license, and driving without a license. All charges were *nolle prosequi*, apparently, as a result of a consolidation of traffic offenses and plea agreement concerning the offenses and court proceedings discussed in paragraph 9, above. (GE 8, 9, and 10)

11. In April 2018, Applicant was admitted to an outpatient recovery center and treatment program sponsored by the state. During the rehabilitation phase, she attended three-hour meetings, three times a week, for a total of 20-30 sessions over a period of two months. During the continued care phase, she attended 75 group therapy sessions, once a week, in addition to Alcoholic Anonymous (AA) meetings. There is no evidence of her return to alcohol use during the treatment program, as evidenced by her negative drug and alcohol screens, the last one taken in November 2019. Applicant was diagnosed with alcohol use disorder, moderate-severe. She is considered to have made excellent progress while in the treatment program. Her prognosis for continued sobriety is considered to be good with her continued investment in community meetings and utilizing a sober support network. (See GE 13, AE 1, and AE 2)

Under Guideline J, the SOR cross-alleged the alcohol-related offenses alleged under Guideline G (SOR 1.a, 1.b, 1.d, 1.f, and 1.g). For the sake of brevity, my findings

of facts related to all of the offenses alleged under Guideline G, above, are incorporated into my findings under Guideline J.

SOR 2.b alleged that in June 2017, Applicant was arrested and charged with changing lanes where prohibited, driving a vehicle not equipped with an ignition interlock, and driving on suspended license. The allegation of “changing lanes where prohibited” is not established by the documentary evidence. The other two traffic offenses are established by the evidence and are discussed above in paragraph 8.

SOR 2.c alleged that in September 2017, Applicant was arrested and charged with failure to display her driver’s license to a police officer, driving on a suspended license, and driving without a license. These charges are established by the evidence and discussed in paragraph 10, above.

SOR 2.d alleged that in January 2018, Applicant was arrested and charged with driving a vehicle not equipped with an ignition interlock and driving on suspended license. These two traffic offenses did not occur in January 2018. As discussed above in paragraphs 9 and 10, these offenses occurred in June 2017. The court adjudicated the offenses in January – March 2018. (GE 8, 9, 10)

At hearing, Applicant presented the testimony of two witnesses “WM” and “WA”. WM is Applicant’s onsite program manager at the federal facility where she works. WM has supervised Applicant since 2003. WM testified that through the years, Applicant has been instrumental in doing all the purchasing, preparation, and setting up the facilities to accomplish their mission. Applicant is also in charge of training all of the new lower-level research assistants. She described Applicant's work as intricate, and requiring planning, dedication, attention to detail, and reliability.

In 17 years, WM never had any trouble with Applicant showing up to work late or not doing her job. She is liked by the staff and their customers. There has never been any alcohol-related incidents at work.

Applicant was candid with WM and disclosed her alcohol-related problems. WM was surprised about Applicant’s alcohol problems because there was no indication in her work performance that she was having any problems. Applicant always comes to work on time, gets along well with coworkers and clients. WM would like Applicant to get her clearance and to come back to work. She believes it would be detrimental to her department and the research mission if Applicant was removed from her position. (Tr. 68-69)

WA has been Applicant’s direct supervisor since 2006. They have daily contact and interact with each other several times a day. She described Applicant as “one of my most important employees because she knows everything and does everything.” WA considers Applicant to be an extremely reliable and responsible person, not only within the work environment, but also when taking care of her team members and her family. WA considers Applicant to be an essential member of the team.

Applicant has oversight of logistics, training, equipment (purchasing and maintenance), and the trouble shooting of unexpected problems. She is a reliable custodian of controlled substances. Applicant disclosed her alcohol-related problems to WA when she was incarcerated as a result of one of her DWI convictions. WA has frequently followed up with Applicant about her attendance to meetings and participating in the therapy program.

Additionally, Applicant presented three favorable reference statements from colleagues and friends. The references consider Applicant to be highly skilled, knowledgeable, conscientious, ethical, dedicated to the mission, extremely dependable, reliable, and punctual. Applicant displays a high level of attention to detail regarding her duties. She is considered to be one of the top research assistants, and the go-to person for mentoring new staff. All of the references endorsed Applicant's eligibility for a clearance without reservations.

Applicant credibly expressed remorse for her alcohol-related misconduct. She understands that she needs help to control her alcohol consumption. She has learned a hard lesson and promised to be responsible in the future.

Applicant testified that she has been abstinent since May 2017. She is grateful for the intensive treatment she received at the outpatient recovery center and treatment program sponsored by the state between 2018 and November 2019. She was given medications and intensive therapy to develop the tools needed to stop consuming alcohol. She believes that the treatment she received at prior counseling-rehabilitation facilities was superficial, requiring only for her to show up, and did not assist her with her alcohol problems. She attributed her alcohol problems to a coping mechanism to deal with the loss of family members, and her emotional and financial problems.

Applicant has made lifestyle changes to stop her from consuming alcohol. She is now living with her family. Her family provides the emotional support she needs to remain abstinent. She believes that she has been working very hard in her recovery. She is committed to remaining sober, being healthy, and helping others with similar problems. She is concerned about not getting her clearance, losing her job, and not being able to provide financial support for her elderly parents and siblings. (Tr. 61-62) Applicant noted that her past alcohol consumption caused financial problems that led to her losing her house in a foreclosure. Applicant's family depends on her income and she does not want to fail or let her family down.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

Classified Information or Eligibility to Hold a Sensitive Position (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

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 SEAD 4, App. A ¶¶ 2(d) and 2(f). 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; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 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 G, Alcohol Consumption

The concern under this guideline 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.

Applicant has a history of alcohol abuse covering the period from 2006 through 2017. Her four DUI-DWI convictions and numerous alcohol-related traffic offenses demonstrate that she has consumed alcohol excessively and to the point of impaired judgment. She was diagnosed with alcohol use disorder. The record establishes the following disqualifying conditions under AG ¶ 22:

(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; and

(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.

AG ¶ 23 provides for mitigating conditions that may be applicable to this case:

(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

(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 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 last DUI-DWI offense occurred in April 2017, and there is no evidence of any alcohol-related misconduct after 2017. Between April and November 2018, Applicant successfully participated in an intensive alcohol detoxification and

rehabilitation program. She has continued with aftercare treatment and made lifestyle changes because she wanted to end the problems related to her alcohol consumption. She is now residing with her family. They provide her with the environment and support she needs to remain sober. I find that Applicant has demonstrated that her excessive consumption of alcohol and her alcohol-related criminal behavior are unlikely to recur.

I considered that Applicant participated in alcohol counseling programs in 2008, 2011, and 2014, and relapsed each time after a short period of abstinence following the completion of the counseling programs. Applicant credibly explained that those educational or counseling programs were not as effective as the last program she attended in 2018. She described the last program as more intensive, with medications to help her stop drinking, and extensive therapy sessions. Moreover, Applicant noted that her past alcohol consumption caused financial problems that led to her losing her house in a foreclosure. Applicant's family depends on her income and she does not want to fail or let her family down.

Applicant loves her job. She is very concerned about her eligibility for a clearance and being able to continue working as a research assistant for her employer of 17 years. She is also compelled to continue her sobriety by her parents' and siblings financial dependence on her. I believe that it is unlikely that Applicant will engage in any future alcohol-related misconduct. She credibly promised to avoid any further alcohol-related incidents. More importantly, as a result of the clearance process, she clearly understands that her eligibility for a clearance and her job depend on she remaining sober.

Applicant's long-term supervisors consider her to be extremely dependable, dedicated, reliable, punctual, trustworthy, and a great asset. She displayed leadership by mentoring and training new research assistants. I find that Applicant has demonstrated a sufficient pattern of modified behavior for me to conclude that the questionable judgment associated with his alcohol-related misconduct is behind her.

Guideline J, Criminal Conduct

Under Guideline J, the SOR cross-alleged the alcohol-related offenses alleged under Guideline G (SOR 1.a, 1.b, 1.d, 1.f, and 1.g). For the sake of brevity, my findings and conclusions related to all of the offenses alleged under Guideline G, above, are incorporated into my findings under Guideline J.

The concern under this guideline 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.

Applicant's history of criminal involvement is directly related to her alcohol consumption. She has four DUI-DWI convictions and was involved in numerous traffic offenses. Her driver's license was suspended numerous time as a result of her alcohol-

related offenses. Moreover, she was cited several times for driving without a license. She was diagnosed with an alcohol use disorder. Applicant's behavior raises the following disqualifying conditions under AG ¶ 31:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

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

The security concerns raised under this guideline could be mitigated under AG ¶¶ 32:

(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.

For the same reasons articulated under my discussion of the Guideline G mitigating conditions, incorporated herein, I find that the above mitigating conditions apply to this case and mitigate the Guideline J security concerns. Applicant has established a reputation for being trustworthy, loyal, and a great asset. She displayed leadership, and she is considered to be dependable and reliable.

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. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guidelines G and J in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 46, has been working for her employer, a federal contractor, since 2003. Two character witnesses described her as an excellent employee who is dedicated to mission accomplishment.

Applicant should have been more responsible consuming alcohol and obeying the traffic laws. Notwithstanding, I believe that after 2017, she has demonstrated a pattern of modified behavior and rehabilitation. Applicant is fully aware of the security concerns raised by her alcohol consumption and related criminal behavior. She promised to remain sober and to obey the traffic laws to ensure that she continues to be eligible for a clearance. She understands that if she is involved in any additional alcohol-related misconduct her clearance eligibility could be denied. The alcohol consumption and criminal conduct security concerns are mitigated.

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.g:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge