



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 20-00845
)
Applicant for Public Trust Position)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*
03/22/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant’s alcohol consumption has not been mitigated. Eligibility for access to sensitive information is denied.

History of the Case

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on June 13, 2019. (Item 3) On December 10, 2020, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline G, alcohol consumption. Applicant answered the SOR on December 29, 2020, and requested a hearing before an administrative judge. (Item 1) On July 7, 2021, she amended her request and indicated she wanted a decision based upon the written record. (Item 2)

A copy of the file of relevant material (FORM), dated September 30, 2021, was provided to Applicant by letter dated October 1, 2021. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not respond to the FORM. On December 2, 2021, the case was assigned to me.

Findings of Fact

Applicant is 48 years old. She was married from 2014 until her divorce was finalized in July 2019, and she has no children. She graduated from college in 1995, and received a master's degree in 2018. Applicant has worked for her current employer since July 2001, and in February 2020, she was promoted to a senior level manager. (Items 1-4)

Applicant started consuming alcohol when she was 16. In 2011, she underwent gastric bypass surgery. As a result of the surgery, her body processed alcohol differently, and she also started consuming it in larger quantities. In subsequent years, her unhappy marriage and the stress of graduate school contributed to her desire to consume more alcohol. (Items 1-6)

In late 2015, Applicant was referred by her primary care physician to a psychiatrist specializing in geriatric psychiatry and addiction medicine "to determine if medication could assist with this behavioral issue". Starting on December 16, 2015, Applicant met with Dr. X weekly for 1 month. He diagnosed her with, Adjustment Disorder with Mixed Anxiety and Depressed Mood (Active); Alcohol Use Disorder, Severe (Active); and Insomnia Due to a Medical Condition (Active). Dr. X prescribed her with Revia and Vivitrol, which are used to prevent alcohol and drug relapses and Desyrel, an antidepressant. He recommended that she attend 90 Alcoholics Anonymous (AA) meetings in 90 days and referred her to a therapist. Their meetings decreased to monthly and then every six to eight weeks.

Applicant provided copies of the Dr. X's treatment records in response to DOHA's interrogatory request. For periods of time between December 2015 and March 13, 2020 (the most recent record provided), she claimed to be sober, but was often combining alcohol with her alcohol-cessation medication. She drank as much as a box of wine at night, and frequently she consumed two bottles of wine a night. Applicant continued to consume alcohol against her physician's advice to cope with the stress of her job, graduate school, and her unhappy marriage. She admitted to binge drinking due to stress; binge drinking while on medication; binge drinking over the holidays; and an unwillingness to go to AA meetings. Additionally, it was noted that because she worked from home, prior to the COVID 19 pandemic, Applicant's alcohol consumption blended from day into evening; she sometimes drank in the morning; and she suffered from blackouts. (Item 6)

While Applicant was being treated by Dr. X, her drinking escalated to the point that she voluntarily sought inpatient treatment. At the time that she was admitted to Facility A's detox unit on June 24, 2017, she was consuming two bottles of wine nightly. She sought treatment, in part, because the medication she had been prescribed, including double doses of Antabuse, was not working. At Facility A she was initially diagnosed with Alcohol Dependence, and it was noted in her treatment records that her potential for relapse was "at a high risk without residential treatment for Addiction."

Upon her discharge from Facility A on July 5, 2017, the treating health care provider recommended that Applicant avoid alcohol and all addictive mood-altering drugs; maintain abstinence; continued integration of 12-step recovery; and obtain a sponsor within two weeks of discharge. Additionally, she had a discharge intake appointment with a psychologist and was enrolled in a continued connection program with a referral to AA. Her diagnosis at discharge was, in part, Alcohol Dependence with withdrawal, uncomplicated and Alcoholic liver disease, unspecified. (Item 5)

There is no evidence in the record that Applicant complied with Facility A's treatment recommendations to attend AA meetings. She admitted to Dr. X on July 29, 2017, at her appointment following her release from Facility A, that despite receiving some follow-up psychological treatment upon leaving Facility A, she had relapsed and consumed alcohol. Applicant's extensive treatment records from Dr. X indicate that she continued to consume alcohol up until March 13, 2020 (the most recent record provided) despite his ongoing recommendation that she refrain from consumption, seek therapy, and attend AA meetings. As of March 13, 2020, Dr. X's diagnosis was, Persistent Depressive Disorder with intermittent major depressive depression (Active); Alcohol Use Disorder, Moderate (Active); and Insomnia Due to Medical Condition. (Items 5-6)

During Applicant's July 15, 2019 personal subject interview, she admitted that she was continuing to consume six to eight cans of beer nightly, but she believed that once her divorce was finalized her alcohol consumption would decrease. In her April 20, 2020 response to DOHA's interrogatory request, she provided updated information regarding her consumption of alcohol. At that time, she was consuming six to seven 12 ounce cans of hard seltzers every night of the week, and she had last consumed alcohol the night before she completed her response. (Item 4)

In her December 2020 response to the SOR, Applicant asserted that her drinking had improved after she started attending therapy in 2020. However, she provided no additional details as to how frequently she attended therapy, nor did she provide an explanation as to why she had not previously attended therapy, as recommended to her since 2015. She did not provide supporting documentation from her therapist in her SOR response, nor did she provide a response to the FORM. Additionally, she admitted that the longest period of sobriety that she was able to maintain was six weeks, but did not provide details as to when this period occurred. She also claimed that she no longer drank daily and described her drinking as a "habit" that she uses as a "wind down period from a busy day." (Items 1, 6)

In her response to the SOR, Applicant described herself as "a very highly functioning person" and denied that her alcohol-related issues raised concerns regarding her reliability and trustworthiness. However, she did admit that she drinks "too much, and it impacts [her] health and cognitive ability." She provided documentation related to her work performance, reflecting that she is a valued employee who consistently exceeds expectations in her performance ratings. (Item 1)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

Positions designated as ADP I/II/III are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Administrative Guidelines (AG) ¶ 2 (a). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), 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 access to [sensitive] information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the trustworthiness concern pertaining to 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.

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 22:

(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.

AG ¶ 23 provides conditions that could mitigate trustworthiness concerns raised under this guideline. Three are potentially applicable:

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and established a 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 or 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

patter of modified consumption or abstinence with treatment recommendations.

Applicant has been diagnosed multiple times with an alcohol-use disorder by duly qualified medical professionals. Despite receiving treatment from a psychiatrist since December 2015, and inpatient detox treatment in June and July 2017, she continues to consume alcohol against multiple physicians' advice.

In her December 2020 response to the SOR, Applicant claimed that had she modified her consumption of alcohol and was no longer consuming it on a daily basis, but failed to provide documentary evidence to support her claim. Nor did she provide a response to the FORM. Due to a lack of substantiation to support her claims, Applicant's lengthy history of alcohol abuse has not been mitigated.

Applicant provided evidence of treatment with Dr. X and at Facility A; however, the records also reflect relapses and minimal periods of sobriety. She self-admitted that her longest period of abstinence was six weeks. Additionally, her treating physicians recommended that she abstain from alcohol completely, and she has failed to follow these recommendations. After consideration of the whole record, I conclude there is not sufficient evidence to mitigate the trustworthiness concerns about her alcohol consumption given her history of diagnoses, treatment, relapses, and continued consumption of alcohol against treatment recommendations. AG ¶¶ 23(b), 23(c), and 23(d) do not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position 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 public trust position 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 favorable work history and performance record.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her alcohol consumption

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 (Alcohol Consumption):	AGAINST APPLICANT
Subparagraphs 1.a -1.c:	Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge