



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



In the matter of:)	
)	
)	ISCR Case No. 20-02462
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
 For Applicant: Hilary S. Cairnie, Esq., Matthew Fay, Esq.,
 Courtney Munnings, Esq.

05/02/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant has a history of alcohol abuse. Although she has thrived on the job and has not been intoxicated since the episode that prompted her to seek intensive outpatient treatment in 2016, she continues to drink alcohol despite a diagnosis of alcohol dependence. Under these circumstances, the potential of relapse generates an unacceptable security risk. Clearance is denied.

Statement of the Case

On February 19, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, alcohol consumption. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue her security clearance eligibility. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 1, 2021, admitting the allegations and requesting a hearing. On November 2, 2021, the case was assigned to me. On January 6, 2022, DOHA scheduled the hearing for January 19, 2022. Applicant waived the 15-day notice requirement. The hearing was held as scheduled. I received two Government exhibits (GE 1 and GE 2) and 13 Applicant exhibits (AE A – AE M). Also, at the Government's request, I took administrative notice of the section of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (DSM V) relating to alcohol-related disorders. (GE 3) And I considered the testimony of Applicant and three character witnesses. At the end of the hearing, I extended the record until February 4, 2022, at the parties' request to allow them the opportunity to submit additional exhibits, and through February 9, 2022, to provide Department Counsel with the opportunity to submit rebuttal exhibits. (Transcript (Tr.) 196) On February 4, 2022, the government submitted two exhibits, marked as GE 4 and GE 5, as follows:

GE 4. Website of outpatient program where Applicant attended; and
GE 5. *Smart Recovery* website.

Also that day, Applicant's counsel submitted five additional exhibits. I have marked and identified them as follows:

AE N: Smart Recovery Fast Facts;
AE O: *New York Times* Article;
AE P: *Atlantic Monthly* Article
AE Q: Letter from Applicant's family physician; and
AE R: *Cutback Coach* Download.

On February 9, 2022, Department Counsel submitted two rebuttal exhibits, that I marked and identified, as follows:

GE 6. E-mail from program manager of outpatient program that Applicant attended, dated February 8, 2022; and
GE 7. Resume of outpatient program psychiatrist who diagnosed Applicant.

Also, at Applicant's request, I took administrative notice of AE S, Alcohol Consumption Chapter of Adjudicative Desk Reference, version 4, issued March 2014. The transcript was received on February 4, 2022.

Findings of Fact

Applicant is a 44-year-old single mother of two children, ages 20 and 17. Applicant has been married twice previously. Her children are from her first marriage. She earned an associate degree in 1999 and she earned a bachelor's degree in 2006. She has been working with her current employer, a defense contractor, since 2017.

Applicant is highly respected on the job and in her community. According to the person who has supervised her since 2017, Applicant is a trustworthy employee who "completes all of her work requirements and has an excellent work record." (Tr. 50) Moreover, she characterized Applicant as "a high contributor who adds excellent value to the team." (Tr. 48) All of Applicant's annual evaluations since beginning work with her current employer have been stellar. (AE K – AE M) Per a coworker, Applicant is "everything you could hope for in a co-worker," and demonstrates sound judgement in her research and analytical assessments. (AE E)

Applicant has a drinking problem. She began drinking alcohol in 2007. At that time, she drank "a couple of drinks a couple nights per week," primarily to help her sleep. (Tr. 111; Answer at 1) Her drinking gradually increased over the years. By 2014, she was drinking up to eight shots of vodka daily, and drinking continuously from 6 pm, when she came home from work, to bedtime. (Tr. 114; 187) Alcohol use contributed to the deterioration of her marriage. (GE 2 at 28)

One night in July 2016, Applicant fell down the steps in her home while intoxicated. (GE 2 at 38) She required emergency medical treatment. (*Id.*) For the next few months, Applicant tried to reduce her alcohol consumption, but was unsuccessful. In October 2016, she voluntarily enrolled in an intensive outpatient alcohol treatment program. (Answer at 1; Tr. 73) Such programs are less intensive than an inpatient program, but more intensive than a traditional outpatient program. (GE 3) She attended the program for three months. While receiving treatment, a psychologist diagnosed her with alcohol dependence. (GE 2 at 39; Answer at 1)

Applicant's outpatient program included group counseling and alcoholics anonymous (AA) meetings. (GE 2 at 8, 15) While abstinent from alcohol, Applicant experienced "normal recovery symptoms," including emotional outbursts, decreased appetite, and weight loss. (GE 2 at 32) She was actively involved in group therapy, offering constructive and valuable feedback to other group members. (GE 2 at 14)

During New Year's Eve of 2016, while out of town, Applicant drank two cocktails. (Tr. 86) She was still working with the intensive outpatient program at the time. Applicant characterized her decision to have the drinks as "somewhat intentional." (Tr. 87) By February 2017, Applicant began to believe that she had overcome her addiction to alcohol. (Tr. 142)

In April 2017, Applicant resumed drinking alcohol. (Tr. 90) By this time, she had enrolled in another alcohol-addiction recovery program. (Tr. 91) Unlike AA, it was secular,

and per Applicant, it was based upon developing the ability to consume alcohol in “a responsible way,” as opposed to abstaining from alcohol, as prescribed by the intensive outpatient program. (Tr. 91) She found what she understood to be the moderation model to be better than the abstinence model. Specifically, she found the faith-based AA component to be ineffective. (Tr. 87) Her opinion about the inefficiency of faith-based alcohol recovery programs is supported by research. Specifically, a study published in *Journal of Substance Abuse Treatment* concluded that individuals with a more secular worldview may find it difficult to fit into a spiritually-based recovery program and are more likely to be engaged in a secular group, “thus improving the prognosis for long-term abstinence.” (AE K at 3)

Under the moderation model, users plan how many drinks they are going to have in a week, together with the days that they are going to drink. (Tr. 93, 161) They then record their drinking on an app and record whether they are on target or over target. (AE O) Using this model, Applicant has been consuming approximately one to two drinks per sitting, three days per week. (Tr. 163) She has not been intoxicated since the incident when she fell down the stairs.

Contrary to Applicant’s testimony, the alcohol-addiction program that she is participating in is not moderation-based. Rather, per the program’s online profile, it is “organized to support people who have chosen to abstain or who are considering doing so.” (GE 7) Furthermore, the program’s online profile states, as follows:

Despite participant statements about ‘cutting back’ or moderating, **the working time of the meeting[s] [are] devoted to how to achieve abstinence . . .** (GE 7) (emphasis added by publisher of online profile)

Another Smart Recovery program outline, submitted by Applicant’s counsel, states that Applicant’s recovery plan is equally effective as conventional programs in helping people overcome alcohol disorders. (AE N) Per the manager, a licensed social worker with the outpatient treatment program that Applicant attended between 2016 and 2017, “if you were diagnosed with the chronic disease of addiction/alcoholism, one is never cured.” (GE 4) Such people need ongoing recovery activities, including maintaining abstinence. (GE 4)

Applicant has been seeing her family doctor since 2006. (AE P) He is aware that she participated in an intensive outpatient program for alcohol dependency. She continues to have regular follow-up visits with him. Per the family doctor, she “does not currently have a diagnosis of alcohol dependency . . . , is maintaining a safe and healthy lifestyle,” and has no indicators of high-risk behaviors or substance abuse.” (AE P)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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. 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 to obtain a favorable security decision.

A person who seeks access to classified 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 classified information. 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. Section 7 of EO 10865 provides that 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

Under 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." In the mid-2010s, Applicant frequently consumed alcohol to excess. During the high point of her drinking problem, she was drinking up to eight shots of vodka daily. A fall down the stairs while intoxicated precipitated emergency medical care. It also prompted Applicant to enroll in an intensive outpatient program where a psychiatrist subsequently diagnosed her with alcohol dependence.

Although Applicant generally complied with the addiction recovery program, she relapsed while in treatment and she resumed drinking alcohol in April 2017. Under these circumstances, the following disqualifying conditions under AG ¶ 22 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); and
- (e) the failure to follow treatment advice once diagnosed.

The following mitigating conditions under AG ¶ 22 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 the treatment recommendations.

Applicant drank two drinks on New Year's Eve, approximately one month after she began the treatment program in 2016. She resumed alcohol consumption in April 2017, approximately one month after completing the program. AG ¶ 23(d) does not apply.

Although Applicant is currently participating in a treatment program, she has a history of relapse, as she resumed drinking after completing an alcohol treatment program in 2017. Consequently, AG ¶ 23(c) is only partially applicable.

After the episode where Applicant tripped down the stairs while intoxicated, she acknowledged her drinking problem and enrolled in intensive outpatient therapy. Although she has not been intoxicated since the tripping incident, and has been drinking in moderation since then, this modified consumption has not been in accordance with treatment recommendations. Consequently, AG ¶ 23(b) is only partially applicable.

The crux of her case is that Applicant believes she has learned to drink in moderation based upon ongoing therapy she is receiving from an alcohol recovery program, which focuses on moderation rather than abstinence. Information presented by both parties shows Applicant's contention is fundamentally flawed. The goal of the program in which she is now involved, like the traditional AA model, is based upon abstinence, not moderation.

Applicant additionally contends that faith-based programs, such as AA are ineffective for people who are not religious. This argument is a red herring because both AA and Applicant's secular program are predicated upon abstinence, and Applicant is currently not abstinent from alcohol. Whether the program is religious or secular is irrelevant.

Applicant's family doctor evaluated her in January 2022 and concluded that she is no longer dependent on alcohol. There is no record evidence, however, that her family doctor is an addictions specialist. Moreover, there is no record evidence that he reviewed Applicant's previous health record of alcohol addiction before reaching his conclusion. Under these circumstances, this report has limited probative value, and as such, does not establish that Applicant's drinking problem is unlikely to recur or does not cast doubt on her reliability, trustworthiness, or judgment. I conclude that AG ¶ 22(d) does not apply.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

- (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.

Applicant has not been intoxicated in six years. She is excelling on the job and is highly respected, both at work and in the community. However, she is alcohol dependent and is still drinking alcohol. Although her consumption is moderate, it is not consistent with the recommendation of the intensive outpatient program that she attended in 2016, to abstain from alcohol consumption. The nature and seriousness of Applicant's decision to drink alcohol despite her alcohol dependence diagnosis outweighs the positive information about her work performance and the length of time since she was last intoxicated. Under these circumstances, I conclude that Applicant has not mitigated the security concerns about her use of alcohol.

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.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge