



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



In the matter of:)
)
-----) ISCR Case No. 20-02457
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

October 17, 2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, Applicant did not mitigate alcohol consumption concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On June 18, 2021, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on June 30, 2021 and requested a hearing. The case was assigned to me on June 22, 2022. A hearing was scheduled for July 18, 2022 by Teams Conference Services and was adjourned when Applicant failed to appear for her hearing. For good cause shown, the case was rescheduled for August 10, 2022, by Teams Conference Services, and was heard on the rescheduled date. At the hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on her own testimony and no exhibits. The transcript (Tr.) was received on August 22, 2022.

Procedural issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with additional medical records (inclusive of updates in her diagnosis and prognosis) and endorsements. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded four days to respond. (Tr. 14)

Within the time permitted, Applicant supplemented her treatment records covering the period of September 11, 2018, through September 2018, and again for the period of July 2019 through August 2019, with an intervening three-week period of treatment with B Facility. However, she did not provide any documentation of updated diagnoses and prognoses, continuing aftercare, inclusive of participation in Alcoholics Anonymous (AA), or endorsements from therapists, family, friends, supervisors, and coworkers who are familiar with her alcohol issues.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) consumed alcohol, at times in excess and to the point of intoxication, from about September 2018 to at least July 2019; (b) consumed alcohol to the point of intoxication daily; (c) received treatment at A Facility from about September 2018 to September 2018, for a condition diagnosed as Alcohol Use Disorder (Severe); received treatment at A Facility from about March 2019 to about April 2019, for a condition diagnosed as Alcohol Use Disorder (Severe); (e) received treatment at A Facility from about July 2019 to about July 2019, for a condition diagnosed as Alcohol Use Disorder (Severe); (f) failed to follow treatment advice as recommended by A Facility; and (g) continues to consume alcohol, notwithstanding her treatment for a condition diagnosed as Alcohol Use Disorder (Severe), as set for the in subparagraph 1-e.

In her response to the SOR, Applicant admitted most of the allegations without explanations or clarifications. She denied allegations covered by SOR ¶¶ 1.f and 1.g.

Findings of Fact

Applicant is a 37-year-old civilian employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in October 2013 (after eight years of being together) and divorced in October 2020. (GE 1; Tr. 21) She has one child, a daughter (age 6), from this marriage. (GEs 1-2 and AE C; Tr. 21) She earned a high school diploma in May 2003. (GE 1) Applicant attended college classes between August 2003 and July 2019 without earning a degree or diploma. (GE 1) Applicant reported no military service.

Since September 2014, Applicant has been employed by her current employer as an administrative assistant. (GEs 1-2) Previously, she worked for other employers in various jobs. (GE 1) She is currently sponsored for a security clearance by her current employer, but has never held a security clearance.

Applicant's alcohol background history

Applicant was introduced to alcohol at the age 21 and initially consumed alcohol one to two times a month prior to January 2017. (GE 2) Her alcohol beverage of choice ranged from beer to hard liquor that she typically purchased from a local liquor store. (GE 2) Between January 2017 and September 2018, Applicant consumed alcohol at the rate of two to three times a day and on an average of three to four days a week. Most of her alcohol was generally consumed in her home and was generally triggered by bouts of depression and anxiety stemming from the abusive actions of her husband. (GE 2; Tr. 20) Applicant's drinking, often to intoxication levels produced outbursts of anger, and adversely affected her friendships. (GEs 2-3)

Before seeking formal alcohol counseling, Applicant reached out to Alcoholics Anonymous (AA) and other support groups for help with her alcohol issues. (GE 2) Her efforts produced positive reductions in the amount of alcohol she regularly consumed. (GEs 1-2) It was only after she finally realized that her excessive drinking was causing her major adverse reactions and potential consequences at work that she first tried scaling back on her alcohol consumption before turning to AA and other support groups for help. (GE 2 and AE A)

Applicant's treatment admissions

Faced with some hard choices about addressing her alcohol issues she attributed to increasing levels of anxiety and depression, Applicant self-admitted herself to A Facility for inpatient detox and evaluation on September 11, 2018. (GE 3 and AE A) In her intake information assessment, she identified drinking "for a long time," citing marital conflicts and verbal abuse from her husband. (GE 3 and AEs A-C; Tr. 20-21)

Responding to her husband's physical and emotional abuse, Applicant turned to alcohol to "numb" her emotions. (GEs 2-3) She identified disturbances in sleep and appetite, feelings of isolation and withdrawal, loss of interest, loss of energy, and decreased motivation to her A Facility treatment counselors in her intake interview. (GE 3) Upon completing their pre-admission assessment of Applicant's drinking and mental

health status, A facility counselors admitted Applicant to the facility's inpatient crisis stabilization unit. (GE 3)

Applicant's three-day inpatient stay with A Facility consisted of medication protocols and guidance in increasing her effective levels of communication with staff and peers. (GE 3 and AE A) Over the course of her three-day inpatient stay with A Facility, Applicant displayed marked improvements in mood and daily functioning. Prior to discharge, she was diagnosed with co-medical disorders, with Alcohol Abuse Disorder (Severe) forming the primary diagnosis and Major Depressive Disorder following as a co-existing and secondary disorder. (GE 3)

Applicant was discharged from A Facility on September 14, 2018 with recommended follow-up appointments at a recovery and wellness facility for continued rehabilitation. (GE 3 and AE A) Before her discharge, A Facility counselors prescribed multiple psychiatric medications. Medical counselors at A Facility assigned a fair prognosis to Applicant upon discharge, contingent upon her continued follow-up with recommended outpatient treatment centers and resumption of her AA meetings. (GE 3 and AE A)

Applicant's assessed mental status preceding her September 14, 2018 discharge from A Facility was credited with improvement and increased stability in mood, with noted less anxiety and depression symptoms. (GE 3 and AE A) She was credited by her counselors on discharge with some improvements in insight and judgment. Follow-up appointments were recommended with the facility's recovery and wellness center for continuation of rehab follow-up. (GE 3 and AE A) And, continued psychiatric management was also required of Applicant, as a part of the discharge order entered by Applicant's attending A Facility physician. (GE 3)

Following her discharge from A Facility in September 2018, Applicant sought additional help and support through AA (timing and spacing of her meetings undisclosed) at meeting locations near her home. (GE 2 and AE B; Tr. 20-21) And, for a few months following her A Facility discharge, she was able to remain alcohol-free with the help of AA. (GE 2; Tr. 16)

By early 2019, Applicant relapsed and returned to consuming alcohol at the rate of two to three times per week (consuming two to three glasses of wine per sitting). (GE 2 and AE B; Tr. 17-18) Over the course of the ensuing four months, she increased her alcohol intake to three to four times a week (three to four beverages per sitting) Applicant's alcohol consumption during this period caused her to experience adverse physical and mental affects in the form of "staggering and anger." (GE 2)

Compounding Applicant's emotional disturbances and depression was a surgical procedure to her back that she underwent in September 2018. (GEs 2 and 3; Tr. 16) The recovery protocols for her procedure included painkillers that were sometimes challenging to tolerate. (Tr. 22) Unable to return to work following her surgery, she tried to self-medicate herself with alcohol to address her boredom. (GE 2) While she continued her AA meetings during these early months of 2019, she approached her

alcohol consumption with the single intent of becoming intoxicated (generally two to three drinks to place her in an intoxicated state).

In March 2019, Applicant voluntarily re-admitted herself to A Facility for renewed inpatient treatment and detox. (AE B; Tr. 18-19) A Facility's treatment records document an admission diagnosis for Applicant of alcoholism, triggered in part by diagnosed depression (a co-disorder diagnosis). (AE B) Applicant's indicated treatment plan formulated by her medical counselors at A Facility was designed primarily to address her alcohol relapse issues associated with her abusive marriage.

After spending two months in A Facility's outpatient unit (following her initial evaluation and detox in the Facility's inpatient unit between April and May 2019, Applicant was discharged from the facility in July 2019 with an updated diagnosis of Alcohol Use Disorder in remission and Major Depressive Disorder (recurrent, mild) and an assigned fair prognosis, and referred to a rehabilitation center (B Facility).

Applicant's medical records document B Facility attendance between July and August 2019. (AE B) After completing her outpatient therapy at B Facility in August 2019, she returned to A Facility for six additional sessions of outpatient therapy in August and September 2019. (AEs B-C; Tr. 19)

Applicant's A Facility discharge summary of August 23, 2019, credited Applicant with increased coping skills and more comfortable with AA meeting attendance. Her treatment sessions did not include any family sessions, and she was urged to work on her sobriety and depression issues, identify an outpatient group and family therapist to improve her coping skills and build her self-esteem. (AEs B-C)

Upon discharge from A Facility to her home. Applicant was assigned a discharge diagnosis of Alcohol Use Disorder (Severe, and in remission) and generalized Anxiety disorder. (AEs B-C) She was given a fair prognosis, contingent on her continuing her medications, keeping her follow-up appointments with a family counselor to help her with her coping communications, anxiety, depression, maintaining her sobriety avoiding relapses, and sustaining her abstention from alcohol use. (AEs B-C)

Since her discharge from A Facility in September 2019, Applicant assured that she has abstained from alcohol consumption since her last drink in July 2019. (AE C; Tr. 20, 52-53) She attributes her renewed and sustained abstinence to her release from her abusive marriage. (Tr. 20-23) With the dissolution of her marriage, she has found she does not need alcohol anymore to absorb her emotional distress issues and has not "had the urge to drink" or "even think about it" since her escape from her abusive marriage in October 2020. (Tr. 20-22) While Applicant's abstinence assurances are credible, they lack both documented updates from a substance abuse professional familiar with her drinking history and endorsements from therapists, supervisors and coworkers, family, and friends.

Asked to confirm her sustained abstinence for the past three years, Applicant freely acknowledged her three-years of sustained abstinence, with a last drink in July

2019. (Tr. 21, 52-53) Applicant also confirmed that she no longer takes any medications for her anxiety and depression since her divorce in 2020. (Tr. 50-51)

Divorced and no longer an abuser of alcohol, Applicant is a “lot happier and doing a lot better now.” (Tr. 23) She completed some counseling sessions with a therapist in 2021 following her divorce, but has not returned to AA for continued network support since her last AA attendance in February 2019. (Tr. 46-48) She has not been back to the A or B facilities for updated counseling and checkups nor participated in any identified outpatient counseling program since ending her therapy sessions in 2019. (AEs A-C; Tr. 49)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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.

Eligibility for a security clearance 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, these guidelines are applied 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 all available, reliable information about the person, past and present, favorable and unfavorable. The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information.

The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period

of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Alcohol Consumption

The Concern: 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. AG ¶ 21.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. See *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 ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a disqualifying condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s multiple years of alcohol abuse (to the point of intoxication), interspersed with brief periods of abstinence and relapses, that required both inpatient treatment admissions to detox and rehabilitation sessions to stabilize her and turn away from the cycles of recurrent alcohol abuse associated with her abusive marriage. Treatment admissions included both inpatient and outpatient sessions designed to promote her recovery from diagnosed alcohol-abuse disorder.

On the strength of the evidence documented in the record, four disqualifying conditions (DCs) of the alcohol consumption guideline apply. DCs ¶¶ 22(c), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder”; 22(d), “diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed social worker) of alcohol use disorder”; 22(e), “the failure to follow treatment advice once diagnosed”; and 22(f), “alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder,” are all applicable to the facts of record in Applicant’s case.

While recognizing her mistakes in judgment associated with her recurrent periods of abusive drinking, even after receiving counseling and treatment of abusing alcohol, Applicant’s abusive drinking is extenuated in considerable part by the abusive marital relationship she endured for over seven years. With her divorce in October 2020, she no longer feels any need to self-medicate with alcohol to overcome the emotional stresses in her life. Base on the evidence presented, Applicant may take advantage of several mitigating conditions MCs. MCs ¶¶ 23(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”; 23(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 23(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,” apply to Applicant’s situation in this case.

Based on the composite of demonstrated corrective actions taken by Applicant since she consumed alcohol in July 2019, especially her escape from an abusive marriage in 2020, Applicant can be credited with making considerable progress in the

management of her mental health and alcohol intake since her 2019 discharge from A Facility in 2019. Validation of her maintaining her sobriety over the past three years cannot be accepted on the basis of her assurances alone. Before she can be fully cleared of relapse risks, both an updated diagnosis and prognosis are needed to clear away any doubts about her recurrence risks.

Offered an opportunity to provide a medical update and endorsements from therapists, supervisors, coworkers, family, and friends who are familiar with her past alcohol issues and her progress in avoiding alcohol over the past three years, Applicant did not provide any updates or endorsements to corroborate her assurances and satisfy the post-discharge recommendations of her A Facility treating professionals.

The emotional distress that Applicant endured from her abusive and ultimately broken marriage is extenuating and mitigating. However, the circumstances that prompted her to turn to abusive drinking to self-medicate her emotional issues (both those triggered by her husband's abuse and those associated from her personal experiences of boredom) are not enough to relieve her of her responsibilities of satisfying the post-discharge recommendations of her A Facility treating professionals. Without an updated diagnosis and prognosis from an aftercare therapy group Applicant's abstinence assurances cannot be solely relied upon at this time that Applicant can (a) maintain her established abstinence and (b) is at no meaningful risk to return to alcohol abuse in the foreseeable future. At this time, there is not post-discharge information available to clear Applicant of potential recurrence risks based on the evidence developed in the record to date.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of recurrent alcohol abuse is incompatible with her holding a security clearance. Since her discharge from treatment and rehabilitation in September 2019, she has made considerable progress in managing her alcohol-related issues and shows good promise in sustaining her abstinence in the future. She deserves considerable credit as well for her contributions to the defense industry. Based on the evidence presented, though, it is still too soon to absolve of risks of recurrence based on the developed record.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude alcohol consumption and concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a-1-g:

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge