



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



In the matter of:)	
)	
-----)	ADP Case No. 05-13208
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Curt McCrory, Personal Representative

April 28, 2008

Decision

HOWE, Philip S., Administrative Judge:

On September 20, 2004, Applicant submitted her Questionnaire for Public Trust Position (SF 85P). On October 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 11, 2007. She answered the SOR in writing on November 6, 2007, and requested a hearing before an administrative judge. DOHA received the request on the same day. Department Counsel was prepared to proceed on November 29, 2007, and I received the case assignment on December 13, 2007, after it was transferred from another administrative

judge because of caseloads. DOHA issued a Notice of Hearing on January 25, 2008. An amended Notice of Hearing was issued January 31, 2008, changing the location of the hearing. I convened the hearing as scheduled on February 13, 2008. The Government offered Exhibits (Ex.) 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted no exhibits. DOHA received the transcript of the hearing (Tr.) on February 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Findings of Fact

In her Answer to the SOR, dated November 16, 2007, Applicant admitted the factual allegations in ¶¶1.b to 1.g of the SOR. She denied the factual allegations in ¶¶1.a and 2.a of the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Applicant is 46 years old, married, and has two stepchildren and one child from her second marriage. She works in data processing for a defense contractor in the health care business. She started there in September 2004, and now earns \$12.00 per hour. She divorced her first husband in 1990 at the age of 28. (Tr. 37, 41; Exhibits 1 and 4)

Applicant started drinking alcohol when she was 13 years old. She drank infrequently. She became a more serious drinker when she was 19 or 20 years old. She continued to drink alcohol, up to and including the present day. She abstained from alcohol from 1985 to 1990. When she was divorced in 1990, she started drinking again. Applicant's drinking increased between 2003 and 2005. (Tr. 18-33, 44-54; Exhibits 1-4)

In 2005, Applicant was admitted to the hospital for detoxification and for treatment after a suicide attempt which occurred when she was intoxicated. She ingested Prozac and Prilosec to attempt suicide. Applicant was in alcoholic rehabilitation for four weeks, from May 26 to June 13, 2005. At the time she was admitted to rehabilitation, she had been drinking a fifth of vodka a day, her alcohol of choice after 2004. She was diagnosed as alcohol dependent during her 2005 hospitalization. She attended Alcoholics Anonymous (AA) for one year, from June 2005 until August 2006, during which time she also was in a counseling program for alcohol dependence. She had an aftercare treatment recommendation beyond August 2006, but she did not participate in further treatment. Applicant took three prescription medications, including Anabuse, for one year after her 2005 hospitalization to help control her alcohol addiction. She stopped taking the medications on her own initiative. She did not drink alcohol for about eight months after August 2006. Since April 2007, when she resumed drinking alcohol, she has two drinks a week. She admits she is an alcoholic. Applicant admitted the craving for alcohol never goes away, that alcoholism is a disease, and that she could not explain why she started drinking again. She also could not explain how an alcoholic, such as herself, could start drinking again and not

lose control. Applicant admitted her drinking was a problem in the past, but does not think it is a problem for her now. (Tr. 18-35, 44-54; Exhibits 1-4)

Applicant was arrested on March 6, 1992, on charges of operating a motor vehicle with a blood alcohol content of more than .1%, and operating the vehicle while intoxicated (OWI). She was found guilty of the OWI, fined an unknown amount, ordered to enroll in a six-month alcohol counseling program, and had her driver's license suspended for six months. The first count was dismissed. (Tr. 21; Exhibits 2-4)

Applicant was arrested again on September 30, 1997, and charged with the same offenses as were made against her in 1992. Again, she was found guilty of OWI, fined \$611, ordered to have an alcohol assessment completed, and ordered to undergo any recommended treatment for six months, and had her driver's license again suspended for six months. The first count was again dismissed. (Tr. 22; Exhibits 2-4)

Applicant was arrested on October 30, 2003, and charged with operating a motor vehicle with a blood alcohol content of more than .1% (third offense), and OWI (third offense). Again, she was found guilty of the OWI charge, sentenced to 90 days in jail, which sentence was suspended, fined \$2,090, and ordered to report to a treatment facility for an alcohol assessment and any recommended treatment. Applicant's driver's license was suspended for 29 months and she was placed on probation. Again, the blood alcohol count was dismissed. (Tr. 23; Exhibits 2-4)

Applicant completed her SF 85P on September 20, 2004. In her answer to Question 20 about any arrests or convictions in the past seven years, Applicant stated, "Yes," and disclosed the October 2003 alcohol related incident. She did not disclose the September 30, 1997, alcohol and driving arrest. That incident was 10 days within the seven year period. Applicant claims she miscalculated the time back seven years and did not intentionally falsify her SF 85P. (Tr. 34-36; Exhibit 1)

Policies

Positions designated as ADP I and ADP II 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 AG. 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 over-arching adjudicative goal is a fair, impartial and common sense 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 to obtain 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.

Section 7 of Executive Order (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 F, Alcohol Consumption

The trustworthiness 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 notes several conditions that could raise trustworthiness concerns in this case. Under AG ¶ 22(a), “alcohol-related incidents away from work, such as driving while under the influence, fighting, . . . , or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent” is a trustworthiness disqualifying condition. Applicant has three OWI arrests and convictions in an 11-year period. ¶ 22(c) pertains to “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Applicant went into detoxification in 2005 after attempting suicide while consumption alcohol. She was drinking a fifth of vodka a day at that time. Under ¶ 22(e), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program” is applicable because of the 2005 diagnosis. ¶ 22(f) addresses, “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program. She was in alcohol rehabilitation in 2005 and 2006, diagnosed with alcohol dependence, taking Anabuse to control her craving to drink, attending AA, and then started drinking again after completing all those efforts to cease drinking. She drinks alcohol currently. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from alcohol consumption. None of them apply to Applicant. AG ¶ 23(b) to (d) do not apply because they encompass abstinence or responsible use, participation in a current counseling or treatment program, with no relapses, satisfactory progress, or completion of counseling or rehabilitation programs on an outpatient or inpatient basis, a pattern of modified consumption or abstinence, participation in AA, and a favorable prognosis from a professional member of a recognized treatment program. ¶ 23(a) requires the passage of so much time, or infrequent behavior, or unusual circumstances under which the behavior occurred that it would be unlikely to recur. Applicant does not meet this mitigating condition either.

Guideline E, Personal Conduct

The trustworthiness concern pertaining to Personal Conduct is set forth 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.

Applicant disclosed on her trustworthiness application that she had been arrested, and one of her arrests that occurred in 2003. It is reasonable to believe that she miscalculated the time period by 10 days and missed including her 1997 OWI arrest. She put the Government on notice she had a criminal record, and denies she had any intention to falsify this form. I believe her statement. Therefore, there are no

disqualifying conditions under AG ¶ 16 that apply. Consequently, no mitigating conditions under AG ¶ 17 need be applied.

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(a): "(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) 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. Applicant has a life-time struggle with excessive alcohol consumption, being diagnosed as alcohol dependent, and admitting to alcoholism, yet continuing to consume alcohol with no support mechanism for abstinence. (See AG ¶ 2(a)(1).) She knew she was drinking alcohol and becoming intoxicated, and that she had three OWI arrests in an 11-year period. (See AG ¶ 2(a)(2).) Her consumption of alcohol is recent and weekly. (See AG ¶ 2(a)(3).) She was a minor when she first sampled alcohol at 13, but an adult during her most serious drinking periods. Her alcohol consumption is voluntary, as was her decision to stop taking Anabuse and other medications to help control her alcohol dependence. (See AG ¶ 2(a)(4) and (5).) Applicant was in rehabilitation in 2005 and 2006, and stopped attending any more counseling sessions. There is no evidence of current rehabilitation and permanent behavioral changes. (See AG ¶ 2(a)(6).) Applicant is motivated to drink by her craving for alcohol. (See AG ¶ 2(a)(7).) She has great potential for coercion, pressure, exploitation, or duress because of her alcohol dependence. (See AG ¶ 2(a)(8).) Finally, there is the greatest likelihood of continuation or recurrence of Applicant continuing to consume alcohol because of her dependence on that substance, and thus demonstrating a pattern of poor judgments. (See AG ¶ 2(a)(9).)

Overall, the record evidence leaves me with questions and 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. She did mitigate the trustworthiness concerns under the personal conduct guideline. I conclude the "whole person" concept against her.

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 to 1.g:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge