



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



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| In the matter of: |) | |
| |) | |
| XXXXXXXXXXXX, XXXXX |) | ISCR Case No. 12-07808 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: John Robert Campbell, Esq.

09/30/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has failed to mitigate security concerns pertaining to Guideline G (alcohol consumption). Clearance is denied.

Statement of the Case

On February 23, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On April 3, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline G (alcohol consumption). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be continued or revoked.

On May 2, 2014, Applicant responded to the SOR. On July 14, 2014, Department Counsel was ready to proceed on Applicant's case. On July 18, 2014, DOHA assigned Applicant's case to me. On July 30, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for August 25, 2014. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 and Hearing Exhibit (HE) I, which were received into evidence without objection. Applicant did not call any witnesses, testified, and did not offer any exhibits.

I held the record open until September 15, 2014, to afford the Applicant the opportunity to submit documents. Applicant timely submitted Applicant Exhibits (AE) A through C, which was received into evidence without objection. On September 4, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact¹

Applicant admitted all of the SOR allegations with explanation. After a thorough review of the record, I make the following findings of fact.

Background Information

Applicant is a 42-year-old contract administrator, who has been employed by a defense contractor since December 2005. She seeks to retain her secret security clearance, which she has held since June 2006. (GE 1, Tr. 14-16.)

Applicant graduated from high school in May 1990. She was awarded a bachelor of science degree in nursing in May 1996 and received her nursing license in June 1996. She worked in the nursing field "for a few years" until she began working as a contract administrator with her current employer. (GE 1, GE 2, Tr. 16-17, 26-27.)

Applicant was married from July 1994 to October 2010, and her marriage ended by divorce. She has two children, a 22-year-old son and an 18-year-old daughter. She supports her son who is a senior in college, and she and her former husband support her daughter, who plans to attend college. Applicant remarried in June 2012. Her husband sells industrial supplies. She did not serve in the armed forces. (GE 1, Tr. 17-20.)

Alcohol Consumption

Applicant has a history of problems with alcohol that began in her teen years and continued until recently. She was diagnosed as alcohol dependent in 2006 and 2009 at the same treatment center (TC) and was discharged both times against medical advice. In 2006, she entered the TC for inpatient treatment to keep her nursing license.

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

However, she left the TC because she was concerned that her absence would “affect [her] new job” and voluntarily surrendered her nursing license. After leaving the TC she attended Alcoholics Anonymous (AA) and remained sober for “approximately one year.” In 2009, she was separated and going through a divorce and began drinking. Applicant entered the TC again and left as a result of insurance coverage issues. (SOR answer, GE 4, Tr. 21-24, 27-34.)

In 2010, Applicant entered a second TC and was diagnosed with addiction to alcohol and klonopin. She successfully completed a 30-day program and has had no further issues with klonopin. (SOR answer, Tr. 34, 37-41.) Later that year, Applicant was again diagnosed as alcohol dependent with sustained full remission with an excellent prognosis by a third TC. In November 2011, Applicant failed to report to work as a result of drinking. She was honest with her employer regarding the reason for her absence, returned to AA, and remained sober for several months until she drank again in May 2013. (SOR answer, GE 3, GE 5, Tr. 24-25, 34-35, 41-46.) Her therapist provided her with a separate diagnosis of anxiety during the period of 2006 to 2007. She continues to see her therapist on a weekly to biweekly basis to treat anxiety. (SOR answer, Tr. 25, 39-40.)

Applicant did not have a drink from November 2011 to May 5, 2013 and “slipped” on July 3, 2014 by drinking a “few beers.” She remembers May 5, 2013 because she went to a concert with her husband and blacked out from drinking. She acknowledges that she has a problem with drinking. She regularly attends AA meetings, talks to her sponsor every day, has family support, and continues to see her therapist. She does not keep alcohol in her house and avoids social settings where there is alcohol. (Tr. 20, 45-49-59.)

Post-hearing, Applicant submitted a statement from her AA sponsor that she regularly attends AA meetings and is working through AA’s 12-step program. She provided a record of attending six AA meetings from August 27, 2014 to September 11, 2014. Her therapist submitted a five-sentence letter diagnosing Applicant as alcohol dependent with sustained full remission adding that her prognosis is excellent. The therapist’s letter did not discuss the underlying basis of his opinion. (AE A – AE C.)

Character Evidence

Applicant did not submit any character evidence.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant

applicant's eligibility for access to classified information "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.

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 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 Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating 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

Alcohol Consumption

AG ¶ 21 articulates the Government's concern concerning alcohol consumption, "[e]xcessive 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."

Four alcohol consumption disqualifying conditions could raise a security concern and may be disqualifying in this case. Guidelines ¶¶ 22(c), 22(d), 22(e), 22(f) provide:

(c) 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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(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; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's four separate diagnoses of alcohol dependence – in 2006, 2009, and twice in 2010 by various medical professionals, habitual alcohol consumption, and relapse after her 2010 treatment warrant application of these four disqualifying conditions. The Government produced substantial evidence supporting these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.²

Three alcohol consumption mitigating conditions under AG ¶ 23 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 good judgment;

²See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 20(a) does not define the sufficiency of the passage of time, and there is no “bright-line” definition of what constitutes “recent” conduct. Based on my evaluation of the record evidence as a whole³ and Applicant’s having consumed alcohol as recently as one month before her DOHA hearing, I am unable to apply AG ¶ 20(a).

Applicant has repeatedly acknowledged her drinking problem throughout the years and is refreshingly honest about the level of her alcohol problem. However, her inability to remain alcohol free for a significant length of time as well as her recent alcohol consumption precludes full application of AG ¶ 20(b). Applicant would be eligible for credit under AG ¶ 20(d) had she not returned to drinking.

Additionally, Applicant provided limited corroborating evidence suggesting that she has overcome her problem. Her assurances that her drinking problem is under control ring hollow given her recent return to alcohol consumption. I recognize this is an ongoing struggle for Applicant and I commend her for her continued efforts to achieve permanent sobriety. A longer period of sobriety and corroboration of such sobriety is required before my doubts regarding her alcohol consumption are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance 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

³See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)).

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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is supportive of her two adult children with a demonstrated track record of providing for them. She is a valued employee of a defense contractor to the point that she has been allowed to remain employed in spite of her known problems with alcohol.

However, Applicant's lengthy history of alcohol abuse and the related problems that alcohol consumption has caused her leaves me with doubt regarding her eligibility to hold a security clearance. Given her history, more is required than her assurances that her alcohol consumption problems are under control. I urge Applicant to continue in her efforts to remain sober and perhaps in a future reapplication, the outcome will be favorable.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole-person, I conclude she has not mitigated the security concerns pertaining to alcohol consumption. The evidence leaves me with doubts about Applicant's security eligibility and suitability.

To conclude, Applicant presented insufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant has not met her ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁴ and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude she is not eligible for access to classified information.

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:

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| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| Subparagraph 1.a to 1.f: | Against Applicant |

⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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.

ROBERT J. TUIDER
Administrative Judge