



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



In the matter of: )  
)  
) ISCR Case No. 12-10830  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

09/03/2015

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the alcohol consumption and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption, and Guideline J, criminal conduct. DOD CAF acted 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).

Applicant answered the SOR on February 6, 2015, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on May 4, 2015. The evidence included

in the FORM is identified as Items 1-4 and is admitted into the record. The FORM was mailed to Applicant, who received it on May 19, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She failed to submit any additional information. The case was assigned to me on August 3, 2015.

### Findings of Fact

In Applicant's answer to the SOR, she admitted the two Guideline G allegations, but failed to respond to the Guideline J allegation. The admissions are adopted as findings of fact and her non-response as a denial. After a careful review of the pleadings and evidence, I make the following additional findings of fact.<sup>1</sup>

Applicant is 30 years old. She has worked for a defense contractor since 2010. She is single and has one child. She has a high school diploma and received a vocational license. She has no military experience.<sup>2</sup>

Applicant's conduct raised in the SOR included: being arrested for driving while under the influence of alcohol (DUI) in June 2011 and pleading *Nolo Contendere* to the offense; and being arrested for a DUI of alcohol in October 2008 and pleading *Nolo Contendere* to the offense. (See SOR ¶¶ 1.a and 1.b). The conduct alleged in SOR ¶¶ 1.a and 1.b was also alleged as criminal conduct under Guideline J in the SOR. (See SOR ¶ 2.a).<sup>3</sup>

Applicant began drinking alcohol when she was 17 or 18 years old. When she was 19 she drank socially on a weekly basis. At age 21, she stopped drinking because she was pregnant, but began again when she was 22. She consumed about three to four drinks on a weekly basis. In October 2008, she was drinking at a local bar and as she traveled home, she was stopped by law enforcement. Law enforcement proceeded with a breathalyzer and her blood alcohol content (BAC) registered at .14%, above the legal limit of .08%. She was arrested for DUI. In January 2009, she pleaded *Nolo Contendere* to the DUI charge and was sentenced to a fine, attendance at Alcoholics Anonymous (AA) classes, and five years' probation. The terms of her probation included not driving a vehicle with any measurable alcohol in her system. During a security clearance investigative interview in July 2010, she told the investigator that she no longer drinks and drives.<sup>4</sup>

In June 2011, Applicant was stopped by law enforcement while driving home from a bar. She was given a breathalyzer test and it registered .07% BAC. Because she

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<sup>1</sup> Item 1.

<sup>2</sup> Item 2.

<sup>3</sup> Item 1.

<sup>4</sup> Item 1, 3.

was still on probation from her 2009 DUI conviction, she was arrested for DUI. In August 2011, she again pleaded *Nolo Contendere* and was convicted of DUI. She was fined and placed on five more years of probation, which ends in 2016. She voluntarily enrolled in an alcohol awareness school and completed the course in September 2013. There are no details of what the course involved. There is no evidence that she has attended any inpatient or outpatient alcohol treatment programs. As of April 2014, she continues to consume alcohol on a weekly basis and during special occasions, although she claims not to drink and drive.<sup>5</sup>

Applicant presented character letters from two coworkers (the facility security manager and her supervisor) who attested to her professionalism, dedication, and maturity. They believe she has learned from her past mistakes and recommend that her clearance be granted.<sup>6</sup>

### **Policies**

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 used 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 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 classified 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

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<sup>5</sup> Item 1, 3, 4.

<sup>6</sup> Item 1.

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 an 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 Executive Order 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**

AG ¶ 21 expresses the security 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(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.

Applicant's two DUI convictions in 2009 and 2011 support the application of the above disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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.

Applicant's last adverse alcohol incident occurred in June 2011 and she remains on probation for that offense. Her two DUI convictions in fewer than three years are not infrequent under these circumstances. She claims that she no longer drinks and drives, but she claimed the same thing prior to her 2011 DUI arrest. Insufficient attenuation exists to conclude enough time has passed since her last alcohol-related incident. Her second arrest while on probation casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation; and
- (e) violation of parole or probation . . . .

Applicant's two DUIs, including one while on probation, constitute criminal action on his part. She remains on probation until 2016. I find that all the disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or

restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's last criminal incident occurred in June 2011 and she remains on probation for that offense. She continues to consume alcohol despite her previous DUI history and therefore I cannot conclude that additional crimes will not recur in the future. Additionally, her history, including violating her first period of probation by drinking and driving, casts doubt on her current reliability, trustworthiness, and good judgment, and also shows a lack of successful rehabilitation. AG ¶¶ 32(a) and 32(d) do not apply.

### **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) 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guideline 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 character references and the circumstances that led to her arrests. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines G and J.

### **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:  
Subparagraphs 1.a - 1.b:

AGAINST APPLICANT  
Against Applicant

Paragraph 2, Guideline J:  
Subparagraph 2.a:

AGAINST APPLICANT  
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.

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Robert E. Coacher  
Administrative Judge