



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02751
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant was arrested four times between 1993 and 2012 for driving while impaired or driving while intoxicated. She also intentionally withheld information about her alcohol-related arrests from her most recent security clearance application. Applicant still consumes alcohol despite being advised by her counselor to abstain from alcohol and despite her own admission that she is an alcoholic. Applicant's request for a clearance is denied.

Statement of the Case

On June 1, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for her employment with a defense contractor. After reviewing the results of Applicant's background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest to continue Applicant's

access to classified information.¹ On October 28, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)² for alcohol consumption (Guideline G), criminal conduct (Guideline J), and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on May 4, 2015, and I convened a hearing on May 27, 2015. The parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 5.³

Applicant testified on her own behalf, and I granted her request to hold the record open after the hearing to afford her time to submit additional relevant information. DOHA received a transcript (Tr.) of the hearing on June 4, 2015. The record closed on June 19, 2015, when I received Applicant's post-hearing submissions consisting of a single-page letter from her licensed professional counselor (Applicant's Exhibit (Ax.) A), and 18 pages of character reference letters and various forms of recognition for Applicant's job performance (Ax. B). All exhibits were admitted without objection.

Findings of Fact

The Government alleged under Guideline G that Applicant was arrested and charged with driving while impaired by alcohol (DWI) in June 1993 (SOR 1.a), October 1997 (SOR 1.b), June 2004 (SOR 1.c), and August 2012 (SOR 1.d).⁴ Under Guideline J, the Government cross-alleged as criminal conduct the alcohol-related arrests alleged in SOR 1.a - 1.d (SOR 2.a). Applicant admitted these allegations. (Answer)

The Government alleged under Guideline E, that Applicant intentionally made a false official statement when she omitted the arrests alleged in SOR 1.a - 1.c,⁵ by answering "no" to the following question in EQIP Section 22:

Police Record (EVER): Have you ever been charged with an offense involving alcohol or drugs? (SOR 3.a).

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ An index listing each exhibit is included in the record as Hx. 1.

⁴ SOR 1.d originally alleged that Applicant was arrested in April 2012. Department Counsel at hearing moved to amend the date to comport with the evidence that showed an August 2012 arrest. Without objection, I granted the motion to amend. (Tr. 6 - 9)

⁵ SOR 3.a originally alleged that Applicant had also omitted the August 2012 arrest alleged in SOR 1.d. However, that arrests occurred after Applicant submitted her EQIP. Accordingly, I amended SOR 3.a at hearing to reflect that only the arrests at SOR 1.a - 1.c had been omitted. (Tr. 97 - 98)

Applicant denied having the requisite intent to make a false statement when she submitted her EQIP.

Applicant's admissions to SOR 1.a - 1.d, and 2.a are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 42 years old. Since late 2004, she has worked in the logistics management field for DOD and Department of State contractors in support of military and diplomatic missions. Except for the period between April 2011 and November 2014, almost all of her work over the past ten years has been performed at job sites overseas. In November 2014, Applicant was hired by her current employer and returned to an overseas job site. She appeared at her hearing while in the United States on leave, and has since returned to her job site. (Gx. 1; Tr. 43, 85 - 86)

Applicant's first DWI arrest occurred on June 26, 1993, after Applicant had been drinking while out to dinner. She was detained at a police station until her stepfather came to pick her up. She later pleaded guilty, was fined and given a 90-day suspended jail sentence, her driver's license was suspended, and she was ordered to complete 72 hours of community service. Applicant was unable at hearing to recount these details and claimed she thought the charges had been dismissed. (Answer; Gx. 2; Gx. 4; Tr. 53 - 59)

On June 20, 1997, Applicant again was arrested and charged with DWI. She was driving home from a bar and had, by her estimation, two or three drinks. She was stopped for not braking through a turn and her blood alcohol content (BAC) was found to be .08. As she was being pulled over, Applicant sprayed perfume in her mouth to try and mask the smell of alcohol on her breath. She did not have any gum or mints at the time. Available information does not reflect a disposition of that charge, which Applicant claims was later dismissed. (Answer; Gx. 2; Gx. 4; Tr. 59 - 65)

On June 20, 2004, Applicant was arrested and charged with DWI. Applicant had consumed at least four glasses of wine at a friend's house and was stopped for swerving on the way home. She was taken to a nearby police station where she was fingerprinted and photographed before being released after several hours. After three continuances, this charge was dropped because the arresting officer did not appear for the prosecution. (Answer; Gx. 2; Gx. 4; Tr. 66 - 71)

Applicant was most recently arrested and charged with DWI on August 14, 2012. After consuming three or four mixed drinks, she ran a red light and collided with another car. Applicant was arrested after she registered a .12 BAC at the scene. In December 2012, Applicant was convicted of DWI, given a 30-day suspended jail sentence and fined, her driver's license was suspended for 12 months, and she was ordered to complete an alcohol safety awareness program (ASAP). Applicant was subsequently allowed to drive to and from work, to and from her ASAP classes, and for other court-ordered travel. However, an interlock device was also installed on her car to prevent her from driving the vehicle if she had consumed alcohol. (Answer; Gx. 3; Gx. 5; Tr. 46, 71 - 76, 102 - 103)

Applicant started drinking in about 1990, when she was 18 years old. Until age 21, she drank less than five times a year. She claims she did not drink very much between 1993 and 2006, but that since 2007, she consumes about three or four glasses of wine in a single sitting. Applicant stated to government investigators in 2012 that it takes her more than five glasses of wine to become intoxicated, which happens at least three times a year. Applicant also stated that she feels she has a problem with alcohol and that she does not feel she can consume alcohol like a normal person. At her hearing, she admitted that she is an alcoholic. In April 2013, Applicant admitted to another investigator that there is a pattern to her problems with alcohol, but she also claimed that she was no longer drinking. Applicant admitted at her security clearance hearing that she is an alcoholic, but acknowledged that she had consumed alcohol as recently as May 2015 at a wedding just before her hearing in this matter. (Gx. 2; Gx. 3; Tr. 83 - 85, 86 - 87, 108 - 110)

As part of her 2013 ASAP requirement, Applicant's alcohol use was assessed and she was referred for alcohol treatment for six months. She received individual and group counseling, and attended Alcoholics Anonymous (AA) meetings. Of her own volition, Applicant also met with her ASAP counselor for additional sessions. That counselor's report at the end of Applicant's court-ordered counseling, viewed Applicant as an enthusiastic participant in AA and in counseling, and that she was determined to establish a lifestyle supportive of sobriety. Her counselor gave her an excellent prognosis. (Ax. A; Tr. 76 - 81, 103 - 106)

After Applicant's 2012 DWI arrest, she consulted three or four times with a therapist who specializes in addiction. Applicant has not been formally diagnosed with alcohol addiction or dependence, but she feels she must abstain from alcohol. (Gx. 3; Tr. 81 - 83, 106 - 107)

Applicant enjoys an excellent reputation in the workplace. The letters and awards she submitted after her hearing laud Applicant for her professionalism, her hard work, and her reliability. Supervisors and co-workers from her current and previous employers noted that Applicant is an expert in her field and that she has such command of the complexities of federal acquisition regulations and property management that she is able to mentor other more senior personnel in their assigned duties. (Ax. B)

Applicant did not disclose any of her DWI arrests that occurred before she submitted her June 2012 EQIP. In response to allegations that she intentionally tried to conceal that information from the government, and in her hearing testimony, Applicant has claimed alternatively that she thought she only had to disclose those arrests if she was convicted. Alternately, Applicant claimed she thought she only had to disclose the arrests if they had occurred in the preceding seven years. Further, she stated that she did not answer the question correctly because she was being rushed to complete the questionnaire. When Applicant was interviewed in July 2012, she did not acknowledge that she had been arrested or charged with DWI until the investigating agent presented her with the arrest information obtained during the background investigation records check. Having heard her testimony on this issue and observed her demeanor while testifying, I find that Applicant was not credible. Applicant remembered the general facts and circumstances of her arrests. On all three occasions before June 2012, she knew

she was being arrested and that she had to appear in court to answer the charges. Any reasonable person in her position knew or should have known that she was being charged with DWI. Given her expertise in a complex field such as logistics and acquisitions, and in light of her conflicting rationales for not disclosing her arrests, I conclude that she understood what was being asked in the Section 22 question at issue, and that she knew at the time she submitted her EQIP that her answers were false and that she intended to deceive the government about her use of alcohol and her arrest record. (Answer; Gx. 2; Gx. 3; Tr. 41 - 44, 48 - 52, 98 - 101, 113 - 118)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁶ with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, 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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive. 6.3.

⁸ See *Egan*, 484 U.S. at 528, 531.

has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Alcohol Consumption

Applicant began drinking when she was 18 years old. Between the ages of 21 and 39, she was arrested and charged with DWI four times. Her most recent arrest occurred after she drank enough to have a .12 BAC and ran a red light causing an accident. Applicant feels she has a problem with alcohol and that she may be an alcoholic. This information raises a security concern about alcohol consumption that is articulated at AG ¶ 21 as follows:

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.

More specifically, information about Applicant’s alcohol use requires application of the following AG ¶ 22 disqualifying conditions:

(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.

I also have considered the following AG ¶ 23 mitigating conditions, which may be pertinent to these facts and circumstances:

(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

⁹ See *Egan*; AG ¶ 2(b).

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.

Applicant partially benefits from both of these mitigating conditions; however that benefit is limited by a lack of information showing she has and will continue to abstain from alcohol consumption. In the course of Applicant's 2013 court-ordered ASAP counseling, Applicant was evaluated by a licensed counselor. According to a letter submitted by Applicant's counselor, she had an excellent prognosis for continued sobriety. His statements were based on Applicant's enthusiastic participation in the ASAP sessions and AA meetings. The record in this case does not contain a formal diagnosis of alcohol dependence or abuse. However, the clear implication of the counselor's letter at Ax. A, and Applicant's own acknowledgments, to investigators and at her hearing, about her drinking problem, is that she should no longer drink. However, Applicant has continued to consume alcohol as recently as May 2015. On balance, Applicant has not mitigated the security concerns about her consumption of alcohol.

Criminal Conduct

Applicant's four DWI arrests between 1993 and 2012 constitute serious and repetitive criminal conduct. Her conduct in this regard raises security concerns about her ability or willingness to comply with the rules and regulations, such as those governing the safeguarding of classified information. The security concern about criminal conduct is expressed at 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 31(a) (a single serious crime or multiple lesser offenses) and 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). Applicant was convicted of two of the four DWI charges. Her description of the circumstances of the charges that were dismissed or for which there is no information about the disposition shows, nonetheless, that she had been drinking before she decided to get behind the wheel.

Of the AG 32 mitigating conditions, the following are at least pertinent to these facts and circumstances:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (c) evidence that the person did not commit the offense; 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.

I conclude that none of these mitigating conditions apply. Applicant has a history of alcohol-related criminal conduct that spans her entire adult life. Her last DWI occurred in 2012, but she had the pattern of DWI arrests in this record shows that much more time must elapse before it can safely be concluded that her conduct will not recur. The fact that Applicant was not convicted of all of her offenses does not constitute evidence that she did not commit those offenses. Because her criminal conduct is a result of her alcohol consumption, successful rehabilitation can only be found through information that establishes Applicant will not drink in the future. While the letter from her counselor was encouraging, it was not informed by the fact that Applicant has recently consumed alcohol. On balance, Applicant has not mitigated the security concerns about the criminal aspects of her alcohol-related conduct.

Personal Conduct

Applicant deliberately omitted three of her arrests from her EQIP in 2012. This information is sufficient to raise a security concern about her personal conduct, which is addressed at AG ¶ 15, as follows:

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.

Specifically, the record requires application of the following AG ¶ 16 disqualifying condition:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's explanations for her omissions of that information are inconsistent and were not credible. Despite her denial of SOR 3.a, the circumstances surrounding her omissions form a sufficient basis on which to find that she intended to make a false statement to the Government. Applicant's denial essentially rests on her claim that she did not understand that the question was not limited to the previous seven years, or that she only had to disclose convictions, or that she was rushed into completing the EQIP. Such an interpretation of the question might be plausible from a less sophisticated applicant. But the Applicant in this case is a seasoned professional capable of administering complex logistics requirements and managing large budgets on behalf of

her government clients. Additionally, her claim regarding the plain meaning of “charged” fails because she was, in fact, convicted of DWI in 1993.

By contrast, only the mitigating condition at AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) is potentially applicable. However, Applicant did not make any corrections to her answer until her July 2012 subject interview. Unfortunately, those corrections occurred after she had confirmed her negative response in the EQIP and was confronted with the information from her arrest record. AG ¶ 17(a) does not apply.

I conclude that all of the information probative of Applicant’s intent when she submitted her EQIP shows that she tried to conceal her DWI arrests to protect her own interests, namely, the acquisition of a security clearance required as a condition of her employment. Applicant has not mitigated the resulting security concern about her honesty, judgment, and trustworthiness.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E, G, and J. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is now 39 years old and has established an excellent professional reputation for her expertise, hard work, and dedication to the missions she has supported in difficult conditions. However, all of the positive recommendations submitted on her behalf are not likely informed of the adverse information about her alcohol-related misconduct or her false statements to the Government. That adverse information established doubts about Applicant’s suitability for access to classified information. It then fell to Applicant to resolve those doubts; however, her continued consumption of alcohol and her false statements remain of concern. Because protection of the national interest is the principal goal of these adjudications, any remaining doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge