



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



In the matter of:)
)
) ISCR Case No. 14-02012
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate security concerns for criminal conduct under Guideline J and alcohol consumption under Guideline G.

Statement of the Case

On February 18, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the preliminary affirmative findings required to issue a security clearance. On July 17, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for criminal conduct under Guideline J and alcohol consumption under Guideline G. These actions were 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); and the adjudicative guidelines (AG). Applicant acknowledged receipt of the SOR on July 29, 2014.

Applicant answered the SOR on August 11, 2014. She admitted SOR allegations 1.a and 1.b concerning criminal conduct with explanation. She denied allegation 1.c. The alcohol consumption allegations are for the same incidents as listed under criminal conduct. Applicant admitted the part of the allegations concerning the underage and illegal possession of alcohol.¹ Department Counsel was prepared to proceed on September 23, 2014, and the case was assigned to me on September 26, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on October 24, 2014, for a hearing on November 20, 2014. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted into the record without objection as Government exhibits (GX) 1 through 7. Applicant testified. Applicant offered eight exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through H. DOHA received the transcript of the hearing (Tr.) on December 4, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is a 20-year-old high school graduate employed since January 2014 by a defense contractor as an electronics technician intern. She is single with no children and has not served in the military. She is taking college courses. Her plans are to eventually work for the National Aeronautical and Space Agency (NASA) as an engineer. This is her first application for a security clearance. (Tr. 11-12; GX 1, e-QIP, dated February 18, 2014)

The SOR alleges that Applicant was arrested and charged with underage possession of alcohol and open container in July 2013. The open container charge was dismissed and Applicant was sentenced to probation until December 2014, to complete an alcohol substance abuse program (ASAP), and to perform 50 hours of community service. (SOR 1.a)² Applicant admitted this allegation. The SOR further alleges that she was arrested in May 2014 for not complying with the provision of her sentence pertaining to ASAP (SOR 1.b). Applicant denied this offense. Applicant was again charged with illegal possession of alcohol in January 2014. In March 2014, she was found guilty and sentenced to have her driver's license restricted until August 2014 and fined \$500. Applicant admitted this offense. The allegations under alcohol consumption are exactly the same as the allegation under criminal conduct. Accordingly, Applicant's

¹ In her answer to the SOR, Applicant mixed up allegations 1.b and 1.c. However, it is clear from the explanation in her answer that she was denying allegation 1.b and admitting allegation 1.c.

² The SOR states that the sentence was for 100 hours of community service. The actual sentence was for 50 hours of community service.

answers to those allegations are the same as her answers to the criminal conduct allegations.

In July 2013, Applicant was a 19-year-old college student. She was partying on the beach with college friends and drinking an alcoholic beverage. She was apprehended by police for underage drinking of alcohol. Applicant admitted she was young and immature at the time and just wanted to party with her friends. She was tried on the offenses in December 2013. The charge of possession of alcohol was dismissed because she did not have alcohol in her hand when apprehended. She was sentenced to 50 hours of community service, probation for one year, and to complete an alcohol abuse program. At the time, Applicant did not believe her offense was serious. She was not intoxicated and not driving but only drinking alcohol with friends on the beach. She did not take seriously either the offense or the sentence imposed. (Tr. 25-30, 39-40; GX 2, Interview, dated March 10, 2014, at 5; GX 4 and GX 5, Court Documents, dated, December 10, 2013)

Applicant was to begin her new job with the defense contractor in January 2014. She was to also start to serve the sentence imposed. She talked to the personnel at the alcohol abuse program in January 2014, and told them she could not attend the classes as scheduled because of her job. She believed they agreed to let her start the classes after completing community service. (AX A, Work Sheet, undated; AX H, Authorization Form, dated March 15, 2014)

In early January 2014, after talking to the ASAP personnel but before starting work, she was at a party with friends drinking alcohol. She admits she was intoxicated when police arrived and she was arrested for illegal possession of alcohol. Applicant did not appear in court on this offense when ordered. Applicant was ordered to appear in court because of the January 2014 offense. (AX D, letter, dated February 27, 2014) When the first offense was heard in December 2013, one of the friends arrested with her did not appear in court as required. Her case was dismissed. Applicant had the option of paying a fine or appearing in court. She decided not to appear and hoped the case would be dismissed. However, she was sentenced to a \$500 fine, court costs of approximately \$200, and her license was restricted to work, school, and ASAP attendance only until August 2014. (GX 6, Court Document, dated February 3, 2014, at 6) After this offense, she realized the seriousness of her underage alcohol consumption. She also talked to her father who told her that the offense would negatively affect her record and employment. Applicant then took seriously the sentences imposed. (Tr. 18-25, 40-43)

She started and completed the court-ordered ASAP in March 2014, and completed 50 hours of community service. (AX B, Letter, dated August 17, 2014; AX E, Letter, dated July 25, 2014; AX F, Attendance Form, dated August 18, 2014; AX G, Attendance Form, undated). He also paid all court cost and fines for both offenses. (AX C, Receipt, dated March 25, 2014) The ASAP notified the court that Applicant completed the required alcohol abuse education program as well as the other

requirements of her sentence. Her probation until December 2014 has been completed. (Tr. 43-44; AX D, Letter, dated August 20, 2014)

Applicant admitted she was immature when she committed the alcohol offenses. She is now afraid to consume alcohol. Seeing other people in court for alcohol abuse caused her to be frightened for herself. She does not drink now and does not know if she will drink when she is of legal age to drink alcohol. Her job with the defense contractor has made her grow up quickly. She does not have the time or inclination to party like she did at the beginning of the year. She has now matured and she sees that her actions were serious and she has to change her behavior. (Tr. 42-44)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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. 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 for obtaining a favorable security decision.

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 the Applicant may deliberately or inadvertently fail to protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Criminal Conduct

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 ¶ 30). SOR allegation 1.b is not founded since Applicant presented evidence that she completed and complied with all requirements of the ASAP. Applicant was charged and convicted twice for underage or illegal possession of alcohol. This information raises security concerns and questions about Applicant's judgment, reliability, trustworthiness, and her ability and willingness to comply with laws, rules, and regulations. The following Criminal Conduct Disqualifying Conditions under AG ¶ 31 are of concern:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

I considered the following Criminal Conduct Mitigating Conditions under AG ¶ 32:

- (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 was a young college student in July 2013 when she was arrested and charged with underage consumption of alcohol. She had not started working for the defense contractor. As with most young people, her focus was more on partying and having a good time. She was sentenced for the offense in December 2013. She did not take the sentence seriously, and did not immediately start to complete the requirements of her sentence. She was again apprehended at a party for unlawful consumption of alcohol in January 2014. She was sentenced for this offense in March 2014. She then realized the seriousness of her conduct, and worked aggressively to successfully complete the sentences imposed for both offenses. She now realizes how her conduct

affects her employment with defense contractors. These offenses happened because Applicant was immature. She has seen how her conduct can affect her future, so such conduct is unlikely to recur. While her past conduct was criminal, it does not affect her current reliability, trustworthiness, or good judgment.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of a criminal issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. While the time is short from the commission of the offenses until now, there have been no other reported instances of consumption of alcohol. Applicant has seen from her time in court the ravages to others of alcohol abuse. She understands how her conduct affects her employment prospects. She demonstrated at the hearing a sincere remorsefulness for her conduct and a firm desire to mature and conduct herself appropriately. Her experiences have been her best teacher. Applicant presented sufficient information to mitigate security concerns for criminal conduct.

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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)

The same incidents that were criminal conduct security concerns were alleged as alcohol consumption security concerns. Applicant was charged with underage consumption of alcohol in July 2013 and illegal possession of alcohol in January 2014. These incidents raise Alcohol Consumption Disqualifying Conditions AG ¶ 22(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).

The mitigating conditions under alcohol consumption are similar to the mitigating conditions for criminal conduct. They consider the passage of time, the circumstances of the offense, and rehabilitation. I considered the following Alcohol Consumption Mitigating Conditions under AG ¶ 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 good judgment; and

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

As noted above for criminal conduct, sufficient time has passed since the alcohol consumption happened and Applicant completed her sentence to establish that excess alcohol consumption is unlikely to recur. The alcohol consumption took place because of Applicant's immaturity. She matured and learned that her conduct has consequences for her future aspirations. Her alcohol consumption no longer casts doubt on her reliability, trustworthiness, and good judgment. Applicant mitigated the security concerns for alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 a security clearance 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. I considered that Applicant was young and immature when she consumed alcohol while underage. She learned that the offenses were serious and completed all elements of her sentence to include community service, an alcohol safety program, paid all fines, and successfully completed probation. Applicant presented adequate information to establish that sufficient time has passed from the incidents to show she has been rehabilitated and ceased her consumption of alcohol. Applicant's history shows that she is reliable and trustworthy and has the ability to protect classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has to mitigated alcohol consumption and criminal conduct security concerns.

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 J: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge