

DATE: December 16, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-00612

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old computer software instructor who has worked for a federal contractor since 2003. Applicant was convicted of two driving while intoxicated offenses during a sixteen month period from October 1999 to March 2001. At the time, Applicant was recently divorced and was going through a difficult time. Applicant has not had any other incidents since March 2001. She took complete responsibility for her actions and no longer drinks and drives. Her family, friends and employer know of the incidents and she uses them as a way to counsel others not to do what she did. Applicant has successfully mitigated the security concern under Guideline G, alcohol consumption. Clearance is granted.

STATEMENT OF CASE

On September 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G, alcohol consumption.

In a sworn statement dated September 19, 2005, Applicant responded to the SOR allegations, and requested a hearing. In her SOR response, Applicant admitted all of the allegations under Guideline G.

The case was assigned to me on October 17, 2005. A notice of hearing was issued on October 18, 2005, scheduling the hearing for November 10, 2005. An amended notice was issued on October 27, 2005, changing the date of the hearing to November 9, 2005. Applicant agreed to the change and the hearing was conducted as scheduled. The government submitted two exhibits that were marked as Government Exhibits (GE) 1-2. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, had one witness testify, and submitted four exhibits that were marked as Applicant's Exhibits (AE) A-D. The exhibits were admitted without objection. The transcript was received on December 1, 2005

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 41-year-old instructor for a computer software solution team, who has worked for a federal contractor since 2003. Applicant was married from 1984 to 1992, divorced and remarried from 1993 to 1998, divorced and remarried again in 2004. Applicant has a daughter from her first marriage, who is 17 years old, and an 8-year-old stepson who resides with her and her husband.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from at least October 1999 to at least January 2004. Applicant was arrested on October 17, 1999, and charged with (1) Driving Under the Influence (DUI), (2) Open Container, (3) Making an Improper Turn and (4) Weaving in Traffic. She plead guilty and was sentenced to four hours jail confinement, 12 months probation, 40 hours of community service and fined \$750.00 on Count (1), was fined \$75.00 and 6 months probation on Count (2), was fined \$54.00 and 6 months probation on Count (4). Applicant also had her driver's license suspended for 6 months, but was permitted to drive to and from work, and was to attend alcohol awareness classes. All sentences ran concurrently. Applicant completed all the requirements of her sentence.

Applicant had been recently divorced when the October 1999 DUI occurred. Prior to her divorce, she only drank alcohol occasionally. She was going through a difficult time in her personal life and started to drink alcohol more often. She had approximately 6 beers prior to the incident, but did not think she was impaired. She took her sentence seriously, attended the alcohol classes, and solicited family and friends to drive her when she needed transportation.

Applicant was arrested on March 31, 2001, and charged with DUI. She pled not guilty and was found guilty. She was sentenced to four days confinement, eleven months and 26 days probation, community service, a \$1,400.00 fine, and her drivers license was suspended for a year. Applicant claimed she had two glasses of wine prior to this arrest, and because she did not believe she was impaired, chose to drive. She based her decision to drive on information she had received from her alcohol awareness classes and believed she was below the legal limit. Applicant registered over the legal limit on the breathalyzer. Applicant admits she was stupid to drink and drive, resulting in the 2001 arrest. Applicant paid her neighbor's daughter and her niece to provide transportation for her while her license was suspended. She took her driver's license suspension seriously and never once drove during her two suspension periods.

Applicant's family, friends, neighbors, and employers are aware of her two DUI convictions. Applicant told her daughter about both arrests and convictions. Although ashamed of her actions, Applicant has used these incidents to educate others to the dangers of drinking and driving. She is now convinced she can not drink any alcohol at all and then drive. Applicant credibly testified that although she still consumes alcohol in moderation, usually with her husband on the weekends, she has not once driven after any consumption of alcohol since her last arrest. Applicant tells everyone she sees that may be drinking and contemplating driving about her arrests. Applicant stated that being arrested for DUI might have been the best thing to happen to her. She had been single for seven years, and if she had continued on the course she was on, she could have ended up becoming an alcoholic, jeopardizing her life and responsibilities. Applicant believes she has changed her life positively because of these two DUIs.

Applicant received awards for her performance from her employer. Her supervisor considers her stable and reliable. She has always been in control of herself and her work. She is active in her work community committed both to the project and to the morale and welfare of her fellow employees.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4)

the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence.⁽⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist because excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G.

Based on all the evidence I considered all the disqualifying conditions and especially considered Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*), and conclude it applies. Applicant had two alcohol related incidents during a 16-month period from October 1999 to March 2001.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). Applicant had two alcohol related incidents in a 16 month period when she was going through a difficult time in her life. These two incidents during a relatively short period of her life do not constitute a pattern. She has demonstrated for the past four and half years that she is making responsible decisions concerning her consumption of alcohol. Applicant fully accepted responsibility for her actions, has been forthright and honest with her family, friends, and employer about her transgressions, and credibly testified that she never drinks and drives now and counsels those contemplating such. Applicant still drinks alcohol, but does so in moderation and usually at home with her husband on the weekends. Applicant's last DUI occurred over four and half years ago and there is no indication that there is a recent problem. Applicant has made positive changes in her life that demonstrate her commitment to responsible behavior. Applicant is in a happy and supportive relationship and is devoted to her family.

She has completely grasped the enormity of her past actions and saw it as a wake-up call to changing her life in the right direction, which she has done. For these reasons, I find all of the above mitigating conditions apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I have considered Applicant's honesty in telling those people around her about her past alcohol incidents. I have also considered that Applicant was going through a difficult time in her life and has moved past that and understands the importance of her responsibilities. I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant has mitigated the security concerns caused by her alcohol consumption. Accordingly, Guideline G, pertaining to alcohol consumption is decided for Applicant.

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: Alcohol Consumption (Guideline G) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
7. *Egan*, 484 U.S. at 531.
8. *Id.*

9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

10. Executive Order 10865 § 7.