



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



In the matter of:)
)
) ISCR Case No. 07-16833
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel
For Applicant: *Pro Se*

January 29, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her drug and alcohol use, criminal conduct, and personal conduct. Eligibility for access to classified information is granted.

On August 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, Criminal Conduct; Guideline H, Drug Involvement; Guideline G, Alcohol Consumption; and Guideline E, Personal Conduct. The action was 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 11, 2008, and requested a hearing before an administrative judge. The case was assigned to me on December 9, 2008.

DOHA issued a notice of hearing on December 19, 2008, and the hearing was convened as scheduled on January 7, 2009. The Government offered Exhibits (GE) 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through E, which were received without objection. DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

Procedural Rulings

Notice

Applicant works overseas. The notice of hearing went to her address in the United States. Her husband called her on January 5, 2009, and told her that her hearing was scheduled for January 7, 2009. She contacted our office telephonically on January 5, 2009, to request a continuance, but Department Counsel and I had already departed for the state where the hearing was to be located and the request was not received. Applicant flew to the site of the hearing on January 6, 2009. I advised Applicant at her hearing on January 7, 2009, of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She has worked for her current employer since 2001 or 2002. She served in the U.S. Army from 1997 through 2000, and was honorably discharged. She held a security clearance in the Army and during her current employment. She attended college classes but has not obtained a degree. She is currently married and was twice previously married. She has two children ages ten and eight from an earlier marriage and a five-year-old child with her current husband. Applicant is the wage earner in her family. Her husband minds the children.¹

Applicant smoked marijuana on several occasions in about 1996 to 1997, while she was in high school. She did not use any illegal drugs while she was in the Army. In about 2001, she started using illegal drugs. Between about February 2001 and June 2006, she used methamphetamine about five to ten times and cocaine about 50 times. Applicant drank alcohol to make her feel relaxed in social settings, but she did not like the feeling of being intoxicated. She used methamphetamine and cocaine so that she could consume alcohol but not feel as intoxicated.²

Applicant was arrested in January 2006, and charged with driving under the influence of alcohol (DUI) and driving with a .08% or higher blood alcohol level. Her blood alcohol was tested at .16% and a short time later at .14%. Applicant pled no contest to the second charge in July 2006, and she was sentenced in August 2006. She was out of the country and not present at either court session and was represented by

¹ Tr. at 34-36, 39-40, 46-47, 53; GE 1, 2.

² Tr. at 37, 40-45; Applicant's response to SOR; GE 1, 2.

counsel. She was sentenced to 30 days confinement, suspended on the condition that she attend ten Alcoholics Anonymous (AA) meetings per month for three months, fined \$1,900, and placed on probation for three years. Terms of her probation included that she complete an alcohol counseling program and not drink any alcohol for two years. Applicant was sentenced in August 2006, but the court records indicate that she started some of the terms of the probation before the sentencing and the probation started on March 6, 2006.³

Applicant's fine was ordered to be paid at the rate of \$50 per month starting on January 1, 2007. There was miscommunication between Applicant and her attorney as to when the fine was to start being paid and she did not make the initial payments. A bench warrant was issued in February 2007. Applicant was notified of the bench warrant and she paid \$2,227 to pay all her fine and costs. The bench warrant was recalled in April 2007. Applicant completed the terms of her probation that required attendance at AA meetings and an alcohol counseling program. She will remain on probation until April 2009.⁴

Applicant has been treated for anxiety and depression since 2001. The anxiety caused her to feel uncomfortable in social settings. She was treated by her primary care physician from 2001 through 2006. She started seeing a psychologist through her Employee Assistance Program (EAP) in October 2006, for drug and alcohol counseling, marital counseling, and for her depression. She saw him for weekly one-hour sessions for three months. He recommended she see a psychiatrist. She has been under the treatment of a psychiatrist since January 2007. He prescribed medication for her depression and anxiety. She started with weekly one-hour sessions, then every two weeks, and then once per month. She reported that she no longer had feelings of depression or anxiety.⁵

Applicant has not used any illegal drugs since June 2006. She continued to drink alcohol while on an overseas assignment. She returned from the overseas assignment in October 2006, and began drug and alcohol treatment. She drank a couple more times and then became totally abstinent. She has not had any alcohol since January 2007.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) on April 5, 2007. She listed her DUI arrest and fully listed her illegal drug use. She was questioned by an investigator from the Office of Personnel Management (OPM) on August 17, 2007, and fully discussed her drug and alcohol use. She was open, honest, and candid about her drug and alcohol use at her hearing. She admitted that she

³ Tr. at 26-27, 31-34, 37-39; Applicant's response to SOR; GE 1, 2, 3-6.

⁴ *Id.*

⁵ Tr. at 38-39; GE 1, 2.

⁶ Tr. at 27-29, 45; Applicant's response to SOR; GE 2, 3.

exhibited extremely poor judgment when she used illegal drugs and when she drove after drinking. She credibly testified that she will never use illegal drugs again.⁷

Applicant no longer associates with the people with whom she used drugs. Her husband does not use drugs and rarely drinks alcohol. She did not sign a statement of intent with automatic revocation of clearance for any violation before the hearing. I directed her attention to Drug Involvement Mitigating Condition AG ¶ 26(b)(4). She was unaware of this provision. She stated that she is willing to sign a statement of intent not to abuse any illegal drugs in the future with automatic revocation of clearance for any violation. Her family, close friends and company are aware of her drug and alcohol history.⁸

Applicant's company sends her on frequent deployments overseas. She has served in various locations, including a three-month and a six-month tour in Iraq. She received positive performance evaluations. One supervisor recognized her superior performance in Iraq. Another supervisor reported that she has done an excellent job and is a valued asset to their team.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

⁷ Tr. at 55; Applicant's response to SOR; GE 1, 2.

⁸ Tr. at 45-46, 54-55; GE 2.

⁹ Tr. at 29-30; AE A-E.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse 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 J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant’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. 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, or failure to complete a court-mandated rehabilitation program.

Applicant was arrested and convicted of driving with a .08% or higher blood alcohol level. A bench warrant was issued in February 2007, for failing to pay her fine. She remains on probation until April 2009. The evidence is sufficient to raise all of the above disqualifying conditions.

Two Criminal Conduct mitigating conditions under AG ¶¶ 32(a) and (d) are potentially applicable:

(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 only criminal arrest occurred in January 2006. The probation violation was due to a miscommunication between Applicant and her attorney and was quickly rectified by her payment of the entire fine. While this is her only arrest, I am also considering her illegal use of drugs as criminal conduct. She received drug and alcohol counseling and has not used illegal drugs in more than two and a half years and has not had alcohol in more than two years. She has been under the treatment of a psychiatrist since January 2007. Her employment record is commendable. I find there is evidence of successful rehabilitation and Applicant's criminal behavior is unlikely to recur. AG ¶¶ 32(a) and (d) are applicable.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Three are potentially applicable in this case:

(a) any drug abuse;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

(g) any illegal drug use after being granted a security clearance.

Applicant's drug possession and use are sufficient to raise AG ¶¶ 25(a) and (c) as disqualifying conditions. All of her drug use since she started working for her current employer in 2001 or 2002, has been while holding a security clearance. AG ¶ 25(g) is applicable.

Three Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence;

(4) a signed statement of intent with automatic revocation of clearance for any violation; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant stopped using illegal drugs in June 2006. She attended outpatient drug and alcohol counseling in October 2006 to January 2007. Her doctor is successfully treating her depression and anxiety. She disassociated herself from her drug-using friends and avoided the environment where drugs were used. She is willing to sign a statement of intent with automatic revocation of clearance for any violation. She clearly, unequivocally, and credibly committed to remaining drug free. I find an appropriate period of abstinence and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and (b) are applicable.

Applicant attended drug and alcohol counseling through her employee assistance program. AG ¶ 26(d) requires a favorable prognosis by a duly qualified

medical professional. There is no such prognosis in this case. AG ¶ 26(d) is not applicable.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. 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 was arrested in January 2006, and charged with DUI and driving with a .08% or higher blood alcohol level. She used illegal stimulants so that she could drink alcohol without feeling intoxicated. Her alcohol-related incidents and pattern of alcohol consumption are sufficient to raise AG ¶¶ 22(a) and (c).

Two Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a) and (b) 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; and

(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).

Applicant has not had a drink of alcohol in more than two years. I find that AG ¶¶ 2(a) and (b) are applicable under the same rationale discussed above under the Criminal Conduct and Drug Involvement sections.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's personal conduct was also alleged under the Criminal Conduct, Drug Involvement, and Alcohol Consumption Drug guidelines, as addressed above. She drove after drinking and used illegal drugs while holding a security clearance. She was well aware that drug use was wrong, illegal, and against DoD policy. She exercised extremely poor judgment. This constitutes credible adverse information in other adjudicative issue areas that may not be sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. It is also personal conduct that could create a vulnerability to exploitation, manipulation, or duress. AG ¶¶ 16(c) and 16(e) are applicable.

Conditions that could mitigate Personal Conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The discussion under the guidelines for Criminal Conduct, Drug Involvement, and Alcohol Consumption is equally appropriate for this guideline. Applicant has obtained drug and alcohol counseling and has been drug-free for more than two and a half years and alcohol for more than two years. I find that the behavior is unlikely to recur. Additionally, Applicant has been open and honest about the conduct which has reduced any potential vulnerability to exploitation, manipulation, and duress. AG ¶¶ 17(c), (d), and (e) are applicable.

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 common sense 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. Applicant is 30 years old. She used marijuana on a few occasions in high school. She remained drug free in the Army, but started using illegal drugs after her discharge. She suffered from depression and anxiety. She drank alcohol to make her feel relaxed in social settings. She did not like the feeling of being intoxicated and she used methamphetamine and cocaine so that she could consume alcohol without feeling as intoxicated. Most of her drug use was while holding a security clearance. She had a DUI arrest in January 2006, after which her blood alcohol level was tested at .16%. Her extremely poor judgment cannot be overstated.

Applicant decided a change was necessary in her life. She completely stopped taking illegal drugs in June 2006. She attended outpatient drug and alcohol counseling from October 2006 through January 2007. She has completely abstained from alcohol since January 2007. She has been under the treatment of a psychiatrist since January 2007. He prescribed medication and she reported that she no longer had feelings of depression or anxiety.

Some people take longer to grow up than others. Applicant clearly did not exhibit maturity when she used illegal drugs while holding a security clearance. Since that time she has done everything possible to mitigate her actions. She fully admitted her drug use on her SF 86 and to the background investigator. Her family, friends, and company know of her drug use. She candidly discussed her drug and alcohol use at her hearing and credibly testified that she has no intention to use illegal drugs in the future. Applicant is the sole wage earner in her family and is well aware that loss of her security clearance would adversely affect her employment. I also considered her favorable character evidence, employment record, and her deployments to a war zone.

Applicant is on probation for a few more months. I am convinced that she has matured and that her current record of abiding by the law is a result of her new maturity and not simply because she is on probation. She has further convinced me that illegal drug use is a thing of her past.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her drug and alcohol use, criminal conduct, and personal conduct.

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 H:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraph 4.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.

Edward W. Loughran
Administrative Judge