



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-18413  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison, O'Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 27, 2009

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Alcohol Consumption (Guideline G), and Personal Conduct (Guideline E). Clearance is granted.

**Statement of the Case**

On August 2, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance. On August 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, (Directive). 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, are applicable.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant

or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement on September 24, 2008. She admitted all five of the factual allegations relating to alcohol consumption, and denied the one allegation under personal conduct relating to falsification of material facts to an official investigator. She requested a hearing before an administrative judge.

The case was assigned to me on January 30, 2009. DOHA issued a notice of hearing on February 2, 2009, for a hearing on February 18, 2009. It was held that day. At the hearing, the government offered eight exhibits (Exhs. 1-8) that were admitted in evidence without objection. Applicant submitted no exhibits but testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on February 25, 2009.

### **Findings of Fact**

Applicant is a 20-year-old employee of a defense for whom she has worked since August, 2007. Her work involves testing equipment. The three alcohol related incidents upon which this matter is based occurred in a six-month period between August 2006 and February 2007. The last incident was six months before her present employment began. The three incidents and the actions taken on each are as follows:

The first incident (SOR ¶ 1.b.) occurred in August 2006 when Applicant was 18 years old and she was arrested while holding an open beer can in a parking lot of an Indian casino where a rodeo was being held. She was arrested for under-age consumption of alcohol, fined \$250 (Exh. 5), and jailed briefly until a friend's mother obtained her released. She was also banned from the casino grounds until she reached age 21 which is their policy about minors.

The second incident (SOR ¶ 1.c.) occurred in November 2006, when she was arrested by county police for driving over the speed limit on an interstate highway, "minor possession of alcoholic beverage", and "possession of an open alcoholic container in the car" (Exhs. 3 and 4). She had one passenger in the car who was also cited. The car was impounded but Applicant was not prosecuted (Tr. 32, 33). The investigative report for this incident (Exh.3) also led to the allegation of giving false information to an OPM investigator (SOR ¶ 2.a.)

The third incident (SOR ¶ 1.d.) occurred in February 2007 after Applicant went with friends to watch her mother compete in a benefit rodeo event for hospice. The group went to a friend's house for 1-2 hours of drinking. They returned to the rodeo for a concert and then went back to the friend's house and drank more alcoholic beverages. When she left the party she drove and was arrested and charged with four different DUI offenses (Exhs. 7). Three were dismissed and she plead guilty to the fourth charge of having a blood alcohol content (BAC) of .08 or more. She was ordered to spend 24 hours in jail and was fined \$1800 to be paid in \$50 per month installments for 36 months. They started in April 2007, at sentencing so she is still paying the fine. She was

also ordered to receive Level II alcohol treatment and education classes for three months in 2007 which she completed successfully (SOR ¶ 1.e.).

Applicant has a history of youthful drinking. She first drank a wine cooler at age 14. At age 16, she snuck out of the house to drink but was usually caught and punished by her mother (Tr. 47). Since the last incident in 2007, she has had a drink once or twice at a birthday party, but soon decided she should not drink at all and has not done so. The above incidents occurred soon after high school graduation when she rebelled at parental authority and left home to live with her boyfriend for a year. She has since resolved parental problems and has been living with her parents for the past two years. She is enrolled in college, studying chemical engineering, and has completed three semesters of studies (Tr. 16).

Applicant is highly regarded by her employer for her attitude, work ethic, and exceptional contribution to the work of her office (Exhs. A, Items 1 and 2). In addition to her employment, she frequently works as a baby-sitter for neighbors. She also rides her horse and is ambitious to become a rodeo contestant. She no longer has contact with the friends she was with when the three incidents occurred (Tr. 49). She no longer sees her former boyfriend. Her activities outside work now are family related (Tr. 62-66). She regrets her conduct during the first year after high school. One of her moments when she recognized the need to change her ways was seeing some of the children she baby sits and thinking her conduct could have endangered them (Tr. 50). She no longer chafes at parental guidance and restrictions, and recognizes that living at home and following rules isn't a bad thing (Tr. 62).

The arresting officer for the second incident reported several facts in his report that Applicant disputes. One was that she admitted that she was drinking while driving and that she had exceeded 100 miles per hour. She denied this information in her statement to the government investigator in this matter. She contended that she was not drinking while driving but that only her passenger was drinking and there was alcohol in the car (Exh.2). In her answer to the SOR, she also denied the allegation that she was drinking while driving. These were the only facts in the government exhibits disputed by Applicant, and they related to the only one of the three arrests or charges that did not result in prosecution.

### **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 useful 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 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,” demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that the following Adjudicative Guidelines provide the standard for resolution of the allegations set forth in the SOR.

## **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption in that, “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 relevant ones to this matter are:

(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;

(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;

The evidence submitted clearly raises these potentially disqualifying conditions.

AG ¶ 23 provides three conditions that could mitigate security concerns based on the facts of this case:

(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;

(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,

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress.

Applicant's alcohol consumption began at an early age and continued until she found that it interfered with her ambitions and her employment. The offenses she committed were serious and involved others with whom she was driving. However, they occurred during a period in her life when she, like many others of her age, commit youthful indiscretions that they come to regret. While she should have learned from the first incident and certainly the second, she did have the problem driven home to her forcefully after the third incident. She has had over two years of conduct free of incidents since that time. She acknowledges her past problems and has taken steps to insure that such will not occur in the future. She has had counseling sessions and from

her conduct since that time, she has changed her lifestyle. I find that Mitigating Conditions in AG ¶¶ 23 a, b, and c are applicable.

### **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, and unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information (AG ¶ 15).

Conditions that could raise a security concern and be disqualifying include deliberately providing false or misleading information concerning relevant facts to an investigator or other official government representative (AG ¶ 16(b)). Applicant's statements to an investigator prompted security concerns under Guideline E (Personal Conduct).

The guideline requires that the statements be deliberately false or misleading. I conclude that they were not. Applicant admitted the relevant facts surrounding the other two alcohol related incidents that resulted in prosecution and punishment. This one was not prosecuted, and it is difficult to see any motivation to falsely dispute the facts at this point when there is nothing to gain from by doing so.

### **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. Applicant is young but has found her niche and is applying herself in college and in her work. She has promise, a good job and ambition to succeed and avoid the mistakes she made two years ago.

She has family support and is intelligent enough to recognize the need she still has for that family structure.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns of the government.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the adjudicative process, and interpretation of my responsibilities under the guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

### **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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2, Guideline E: 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 national security to grant Applicant eligibility for a security clearance. Access to classified information is granted.

Charles D. Ablard  
Administrative Judge