



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



In the matter of:)	
)	
)	ISCR Case No. 08-01744
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

September 5, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 27 May 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G.¹ Applicant answered the SOR 5 June 2008, and requested a hearing. DOHA assigned the case to me 25 June 2008, and I convened a hearing 29 July 2008. DOHA received the transcript (Tr.) 6 August 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the Guideline G allegations. She is currently a 44-year-old bio-metrics program manager employed by a defense contractor since 1994. She seeks to retain the clearance she has held since March 1989.

Applicant has an extensive history of excessive alcohol consumption that first surfaced as a security concern in November 2000. During a subject interview she disclosed that she drank 2-3 glasses of wine every day, drinking every 4-6 weeks to the point of intoxication. She had not had any alcohol-related incidents, but claimed to be watchful of her drinking habits because of a history of alcoholism in her extended family. However, she considered her drinking habits European rather than American (G.E. 5). Clearance adjudicators apparently agreed, as she continued her clearance.

Her excessive alcohol consumption again surfaced as a security concern in May 2003. During preparation for a polygraph examination at another government agency, Applicant revealed that she was currently drinking a bottle of wine by herself everyday. She later reported to one of her counselors that she had been drinking a bottle or more daily from December 2002 to May 2003 (G.E. 7). Encouraged by the agency to seek assistance for her alcohol issue, she enrolled in a 28-day inpatient treatment program in July 2003, where she was diagnosed as alcohol dependent. She completed the inpatient treatment successfully, and moved into the outpatient aftercare program. Although the outpatient program required her to abstain from drinking alcohol, Applicant relapsed twice in September 2003 (G.E. 7), a fact she disclosed to her outpatient counselor, who in turn reported it to the other agency. According to Applicant, she was not initially aware that attendance at Alcoholics Anonymous (AA) was a required, not optional, part of the aftercare program. When she learned that it was, she began attending AA as required. Nevertheless, the other agency considered her to have not completed the treatment program, and revoked her access to classified information in July 2003. Applicant thought about appealing that decision, but did not.

From July 2003 to February 2005, Applicant participated in a long-term aftercare program, where she was also diagnosed as alcohol dependent. Although she was recommended to abstain totally from alcohol consumption, she had resumed drinking shortly after leaving the inpatient program. In November 2003, she was arrested for DUI, with a blood alcohol content (BAC) of .15%. Part of her sentence included attending AA meetings. In March 2004, Applicant reported to her psychiatrist that she was working on the fourth step of AA (G.E. 6). However, she stopped attending outpatient aftercare in January 2005. In April 2005, she told her psychiatrist that after coming home from an evening of drinking, she got into a fight with her husband that was so loud that her neighbor heard it, and later contacted her about it. In July 2005, she reported that her going out drinking with her friends was causing friction with her husband. He wanted her to at least drink at home to avoid driving while intoxicated. Nevertheless, in February 2006, she was again arrested for DUI, with a BAC of .14%. The resolution of these charges included probation that does not end until May 2009 (G.E. 9).

Applicant continues to consume a glass of wine with dinner five to seven nights per week. She also has ongoing medical (hyperthyroidism) and psychological (depression) issues that are largely controlled when she takes her medications properly, but which have otherwise contributed to her alcohol problems from time to time. The underlying factors contributing to her psychological issues include being beaten by her baby sitter when she was three, being molested by a cousin, having date-rape experiences, multiple affairs with married men while she was also married, and at least one suicidal gesture.

Applicant states that she has never had a security violation, and feels like she has been presumed guilty until proven innocent. Yet, she acknowledges that the facts of her case meet the stated security concerns under alcohol consumption. She acknowledges that she has been recommended to abstain from alcohol consumption. In February 2008, she told her psychiatrist that she had not been going to AA, but was going to resume. She did not. She last consumed alcohol the night before her hearing. She claims that she can go without alcohol, but she does not.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.²

Analysis

The government established a case for disqualification under Guideline G, by demonstrating Applicant’s extensive history of alcohol abuse and dependence, illustrated by alcohol-related arrests in November 2003 and February 2006, inpatient and outpatient alcohol treatment between July 2003 and February 2005, and failure to fully follow treatment recommendations and court orders.³ Applicant failed to mitigate the security concerns, and meets none of the mitigating factors. Applicant’s alcohol problems are both recent and frequent. She has not accepted her alcoholism and remained abstinent. She is neither engaged in a program making satisfactory progress, nor following recommended treatment recommendations with a favorable prognosis.⁴ While Applicant recognizes her mistakes of drunk driving, she otherwise lacks insight into how her alcoholism has effected her life. With no rehabilitation program in place, not only can I not conclude Applicant is unlikely to abuse alcohol in the future, I conclude that she is at significant risk to resume abusive alcohol consumption. Accordingly, I resolve Guideline G against Applicant.

A whole person assessment of Applicant results in the same conclusion. Applicant notes that she has never had a security violation. But the government is not required to wait for a security violation before it acts on its security concerns, and Applicant provided no independent evidence of either her work or her character to bolster her argument. I noted her medical and psychological issues not as an

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶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; . . . (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; (d) diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member or a recognized alcohol treatment program; (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

⁴¶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; (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); © 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; 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, . . . 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.

independent basis for denying her access to classified information, but to demonstrate that her life has additional issues in her life not immediately addressed by the SOR that must incline any whole person assessment further against her. She should not have access to classified information.

Formal Findings

Paragraph 1. Guideline G: AGAINST APPLICANT

- Subparagraph a: Against Applicant
- Subparagraph b: Against Applicant
- Subparagraph c: Against Applicant
- Subparagraph d: Against Applicant
- Subparagraph e: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge