



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



In the matter of:)	
)	
)	ISCR Case No. 08-04055
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

March 24, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on November 2, 2007. On November 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct, for Applicant. 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.

On December 4, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 15, 2009. The case was assigned to me on January 23, 2009. On February 6, 2009, a Notice of Hearing was issued scheduling the hearing for February 24, 2009. The hearing was held, as scheduled. The Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 - 9 without objection. The Applicant testified, and offered five exhibits which were admitted as Applicant Exhibits (AE) A – E without

objection. The transcript was received on March 3, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant denies the allegation in SOR ¶ 1.b, but admits all of the other SOR allegations.

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. She has worked for her current employer for five years. During that five-year period she has been promoted twice. She is a high school graduate with some college credit. She has held a security clearance for 18 years. She is married but in the process of a divorce. She has two adult daughters, ages 23 and 27. (Tr at 6-7, 25-26, 50; Gov 1)

Applicant started drinking alcohol when she was 15. She began to drink heavily in 1998 after her first marriage ended in divorce. She would drink approximately 4-6 drinks on weekends. Her heaviest period of drinking occurred in 2004. She would drink until she blacked out at times. Her father unexpectedly passed away in 2004. Her second husband, a truck driver, was on the road for months at a time. Her children were grown and Applicant was left alone. (Tr at 43-44, 50-51)

On November 17, 2004, Applicant was drinking at a bar with some friends. She drank approximately four to five beers over a four hour period. She left the bar and started to drive home. A police officer pulled her over after observing her cross the center line. Applicant refused to take a breathalyzer test. She failed a field sobriety test. She was arrested for Driving While Under the Influence (DUI). On February 25, 2005, Applicant pled and was found guilty. She was ordered to pay a fine, serve one year probation, attend DUI Level I course, and complete 25 hours of community service. Her license was revoked for six months. She took the DUI course on her own volition based on the advice of her attorney prior to appearing in court. (Tr at 27-30; Gov 2; Gov 3; Gov 4; Gov 8)

Applicant attended alcohol classes at the Harbor City Counseling Center. She attended 12 group sessions and six Alcoholics Anonymous meetings. Her license was restricted. No one told Applicant that she should not drink alcohol during these counseling sessions. (Tr at 31, 45; Gov 2 at 4)

On June 27, 2007, Applicant was driving home after going to dinner with some friends. She drank approximately four to five beers over a three hour period. A police officer observed her crossing the center line and she was pulled over. She refused a breathalyzer test. She failed a field sobriety test. She was charged with DUI – second offense. On January 31, 2008, a jury found Applicant guilty of DUI – second offense. She was ordered to serve 30 days in jail, 11 month supervised probation, ordered to pay \$990 in fines and court costs. She was ordered to complete DUI School Level 2 and

undergo an alcohol and substance abuse evaluation. Her driver's license was revoked for five years. An ignition interlock device was placed on her vehicle for one year. (Tr at 33-37; Gov 2 at 3, 7-19; Gov 5; Gov 6; Gov 7; Gov 8)

Applicant's second DUI offense was a wake-up call for her. She realized that she had a lot of issues that she needed to confront. She immediately sought help through her company's Employee Assistance Program. On September 4, 2007, she voluntarily entered in-patient treatment at an alcohol treatment center. She was discharged on September 6, 2007. This was the detoxification stage of the program. The treatment records indicate that Applicant was drinking a 12-pack of beer a day until she blacked out. Applicant disputes this amount. She was diagnosed by a physician as being alcohol dependent. She also was diagnosed with depressive disorder not otherwise specified. When Applicant completed detox, there were no beds available in the rehabilitation center. Applicant entered the alcohol rehabilitation program in October 2007 when a bed was available. (Tr at 38-40, 55-57; Gov 9; Answer to SOR)

On October 28, 2007, she entered the in-patient alcohol rehabilitation program. Upon successful completion of the program, Applicant continued to see an out-patient therapist for awhile. She attends AA meetings once or twice a month. She completed a court-ordered Level II alcohol counseling program on November 24, 2008. She successfully completed the terms of probation for her second DUI offense on December 30, 2008. (Tr at 37, 40-41, 48, 57-59; Gov 2; AE A; AE D; Answer to SOR)

Applicant acknowledges that she cannot drink alcohol again. She has no intention of drinking alcohol again. She feels great about her sobriety. She admits to relapsing in June 2008. On that day, she was informed by a friend that her husband was having an affair. She was very upset and drank a six-pack of beer. Applicant's brother is a recovering alcoholic and provides a lot of support. Her mother and her daughters also support her. She told them of her relapse and they have been very supportive. She is in the process of divorcing her husband. She is working the 12 steps. She is on step 4 which is cleaning out your inventory. (Tr at 46-50, 52-53, 60)

The proposal and process manager at Applicant's company wrote a letter on her behalf. He supervised her for several months in 2004 and 2005. He states that Applicant is one of the most consistent, reliable, dependable and honest people he knows. She is dedicated to her responsibilities and can always be counted on to do the right thing. He is aware of her recent personal difficulties but states that she has made great strides over the past year and a half to overcome these difficulties. She is a trustworthy individual with a high degree of personal integrity and loyalty. (AE B)

Applicant's current supervisor wrote a letter on her behalf. She has worked with Applicant for 11 years. She states Applicant is a huge asset. She demonstrates a sense of optimism, ownership, and commitment to the job. She is aware of Applicant's personal issues but states that Applicant's personal issues never impacted work. She earned the respect of her co-workers and is an extremely professional and hard working individual. Applicant has kept her informed of her personal situation. She sought help

through the Employee Assistance Program and counseling. She has taken a negative situation and used it to make her a better person. She recommends her for a security clearance. (AE C)

Applicant's most recent performance report was favorable. Her immediate supervisor noted in the comments " [Applicant] has done a terrific job of transitioning into the new organization....She is looked to as a leader in the group and is regularly called upon to assume the lead role, in my absence. She is always willing and very capable of the responsibilities of this role. [She] provides consistent, timely, and accurate support to upper management....." (AE E)

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.

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 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 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 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 disqualifying conditions that could raise security concerns.

Alcohol Consumption Disqualifying Condition (AC DC) ¶ 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) applies because of Applicant’s November 15, 2004, and June 27, 2007, arrests for Driving While Under the Influence.

AC DC ¶22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant admits to drinking heavily on the weekends. Her heaviest drinking occurred in 2004. She admits to drinking until she blacked out on several occasions. On occasion, her alcohol use was excessive and impaired her judgment.

AC DC ¶22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence) applies. A physician at the treatment center where Applicant attended in-patient treatment in October 2007 diagnosed Applicant as alcohol dependent with a depressive disorder, not otherwise specified.

AC DC ¶22(f) (relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program) applies. Applicant completed

outpatient alcohol treatment on November 2007. She remained sober for approximately seven months. In June 2008, she relapsed as a result of the shocking news that her husband was having an affair. It is acknowledged that this was a one-time incident and Applicant has not drank alcohol since that date.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

Alcohol Consumption Mitigating Condition (AC MC) ¶ 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 and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies. While serious concerns are raised pertaining to Applicant's relapse in June 2008, after being advised not to drink alcohol during her inpatient treatment in the fall 2007, her relapse is understandable. She reacted to some unfortunate news that she was not expecting. She drank a six-pack of beer after she learned her husband was having an affair. She told her daughters and her brother that she relapsed. They support her in her efforts to remain sober. She has not drank since the June 2008 relapse and has no intention of drinking in the future. She attends AA and is working on the 12-step program. The recommendations from her supervisors indicates that she is reliable, trustworthy and demonstrates good judgment.

AC MC ¶ 23(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) applies. Applicant acknowledges that she is an alcoholic. She admits that she did not deal with the issue seriously until after her second DUI. She successfully completed in-patient treatment, she attends AA, and is alcohol free. Her one-time relapse is understandable. She acknowledged what she had done by telling her daughters and brother and continues to deal with her alcohol problem by attending AA meetings. She has not drank alcohol since June 2008 and does not intend to drink alcohol again.

Applicant mitigated the security concerns raised under alcohol consumption. Guideline G is found for Applicant.

Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

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.

There are two Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant's case. CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted) apply. Applicant was arrested and convicted for Driving Under the Influence on two occasions. Driving Under the Influence is a serious criminal offense.

The Government produced substantial evidence by way of exhibits and testimony to raise CC DC ¶¶ 31(a) and 31(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns (Directive ¶E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005).)

The following Criminal Conduct Mitigating Conditions (CC MC) potentially apply to Applicant's case:

CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies. More than a year and half has passed since Applicant's second DUI offense. She has had no subsequent arrests. She successfully completed the terms of her probation on December 30, 2008. Although she has struggled to remain sober, she has been proactive in her efforts to maintain sobriety. She has learned a difficult lesson as a result of her past drinking and driving. It is unlikely that she will repeat similar behavior again. Her past conduct, while serious, no longer casts doubt on Applicant's reliability, trustworthiness or good judgment.

CC MC ¶ 33(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) applies. Applicant successfully completed probation in December 2008. She has had no subsequent arrests. She expressed much remorse about her past two arrests. She successfully completed several counseling programs and attends AA meetings. She has an excellent employment record. Applicant has mitigated the criminal conduct concern.

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. I considered Applicant’s past struggles with alcohol. I considered that she successfully completed several counseling programs, including a 28-day treatment program in October 2007. I considered that her alcohol use never affected her job performance. I considered that Applicant was sober from the fall 2007 to June 2008. She suffered a one-day relapse as a result of some shocking news that she received. Since the relapse, she has remained sober. She has the support of her mother, daughters and brother in fight to remain sober. She successfully completed the terms of her probation. She does not intend to drink alcohol in the future. I also considered the favorable comments of Applicant’s superiors and her recent performance report. While Applicant relapsed on one occasion, there is substantial evidence to conclude that her alcohol problem is currently under control. She is aware that future alcohol use could jeopardize her ability to maintain a security clearance. Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct, are found 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, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge