



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



In the matter of:)	
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)	ISCR Case No. 08-04806
Applicant for Security Clearance)	

Appearances

For Government: Francisco J. Mendez Jr., Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

February 28, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. She was in a troubled marriage that ended in divorce in 1998. The evidence also shows that during 1994–2008, she was involved in numerous incidents indicative of questionable judgment. The incidents include domestic disputes with her husband. There were alcohol-related incidents such as drunk driving. And there were incidents where she engaged in self-inflicted injury and attempted suicide by hanging. She has been under the care of a psychiatrist since 1994, and she has been hospitalized, for brief periods, for mental-health reasons four times since 1994, the last occurring in 2002. Her psychiatrist is of the opinion that Applicant now suffers from chronic depression, which has essentially been in remission for the last several years. The psychiatrist is also of the opinion that her judgment is now sound and her prognosis is good. Even though Applicant presented substantial evidence of mitigation, it is outweighed by a long-term pattern of behavior that is indicative of questionable judgment. Given that the last incident took place less than three years ago in 2008, it is too soon to tell if this part of Applicant’s life is safely in the

past or will recur yet again. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 20, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it sets forth the factual basis for the action under the security guideline known as Guideline E for personal conduct. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

On April 21, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me August 10, 2010. The hearing took place pursuant to written notice on October 12, 2010. The hearing transcript (Tr.) was received October 20, 2010.

Procedural Matters

Department Counsel withdrew the allegation in SOR ¶ 1.c. Accordingly, a formal finding in Applicant's favor will be entered. In addition, Applicant denied the allegation in SOR ¶ 1.g, and Department Counsel conceded there was no evidence to support it. Accordingly, a favorable formal finding will be entered as well. Neither allegation will be discussed further.

Findings of Fact

In general, the SOR alleges that Applicant is unsuitable for a security clearance under Guideline E for personal conduct based on a series of incidents, and a falsification allegation, all of which demonstrate questionable judgment. In her Answer to the SOR, Applicant admits, with explanations, the majority of the factual allegations in the SOR, but she denied, with explanations, the allegations in SOR ¶¶ 1.d, 1.k, and 1.l. In addition, the following facts are established by substantial evidence.

Applicant is a 48-year-old employee of a federal contractor. She is seeking to retain a security clearance previously granted to her by the Defense Department. Her

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

educational background includes a bachelor's degree awarded to her in 1984.² She married the same year. She was a full-time housewife and mother from 1986 to 1997. She had three daughters, born in 1986, 1988, and 1989. In 1997, she began employment as an officer manager for a federal contractor. She remained in that job until early 2002, when she was laid off. After a few months of unemployment, she began her current position as an executive assistant for a federal contractor. In her capacity as an executive assistant, she works as a contractor to a large executive office for one of the military departments.

Applicant's employment history includes working as a contractor at the Pentagon on September 11, 2001. Her office was located on an interior ring near the location where the commercial jet was crashed into the outer ring of the building.³ The explosion had an impact on her office and there was soon smoke in the office. It was necessary for her and her colleagues to evacuate the building and they did so successfully. Applicant suffered no physical injuries.

Applicant has a good employment record. Her favorable employment record, along with her suitability for a security clearance, is supported by the testimony of several witnesses, written performance assessments from her employer, performance awards, and many letters of recommendation.⁴ The central theme of this information is that Applicant is a reliable, dedicated, and competent employee and a trustworthy person. She is also active in her church and its community outreach ministry; indeed, one of the letters of recommendation is from her pastor.⁵

Applicant's marriage was troubled for a period of years. It ended in the alienation of her three daughters as well as a divorce in 1998. The evidence also shows that during 1994–2008 (during her marriage and after her divorce), Applicant was involved in numerous incidents indicative of questionable judgment. The incidents included domestic disputes with her husband. There were also alcohol-related incidents, including drunk driving. And there were incidents where she engaged in self-inflicted injury and attempted suicide by hanging. The incidents alleged in the SOR are discussed below.

In January 1994, Applicant was involved in a domestic dispute with her husband. (SOR ¶ 1.a) The police described the event as "drunk in public/domestic dispute."⁶ It stemmed from an argument between Applicant and her husband while hosting a holiday social event for her family. The police issued her a citation or summons for disorderly

² Exhibit A.

³ Exhibits K and L.

⁴ Exhibits B–I, O–DD.

⁵ Exhibit DD.

⁶ Exhibit 5 at 20.

conduct, and she resolved the matter by a prepaid fine in lieu of a court appearance. She had drunk alcohol before this incident.

In May 1994, Applicant was involved in a domestic dispute with her husband. (SOR ¶ 1.b) The police described the event as “police service” as they responded to a call for assistance.⁷ It stemmed from an argument between Applicant and her husband when he returned from a fishing trip intoxicated. The argument escalated to a point where Applicant, probably having a severe anxiety attack, struck herself in the leg with a shovel. She may have threatened to hit her husband with the shovel. She had feelings of wanting to hurt herself further. She was admitted to the hospital “by the detention process” with an admission diagnosis of major depression, borderline personality disorder.⁸ According to the discharge summary, she arrived in the hospital “in an agitated state, displaying impaired impulse control, exhibiting bizarre behavior and impaired judgment. She was sleep disturbed, anxious. She described suicidal ideation and homicidal ideation.”⁹ Although her husband initially pressed criminal charges, they were dropped. She was discharged from the hospital after a few days.

In September 1996, Applicant attempted suicide by hanging herself with an electrical cord in her garage. (SOR ¶ 1.e) She was initially hospitalized and then transferred to the psychiatric unit of the hospital of her treating psychiatrist, who was treating her on an outpatient basis.¹⁰ The incident stemmed from an argument between Applicant and her husband. In a peak of anger, Applicant left the house and walked out to the garage where she hanged herself. She was discovered by a neighbor who was at the home during the argument. The neighbor was assisted by Applicant’s husband in coming to the aid of Applicant.

In May 1997, Applicant cut herself on the wrist or forearm in an attempt to get her husband’s attention. (SOR ¶ 1.d) She denies slitting her wrist as alleged in the SOR.¹¹ She explained she did so as a coping mechanism to deal with the emotional pain she was experiencing at the time.

In June 1998, Applicant was involved in a domestic dispute with her husband. (SOR ¶ 1.f) The police described the event as “domestic assault.”¹² It stemmed from an argument between Applicant and her husband when he returned from a trip to the beach with two of his daughters and Applicant was hosting a previously agreed to party

⁷ Exhibit 5 at 22.

⁸ Exhibit 9.

⁹ Exhibit 9.

¹⁰ Exhibit 11.

¹¹ Tr. 179–181.

¹² Exhibit 5 at 25.

for coworkers. She had consumed alcohol, several beers, during the party. The argument escalated to the point that many of the party guests departed, which made Applicant more distraught and angry. As her husband was attempting to leave in a vehicle, she struck the vehicle's side mirror with a rock and then threw the rock through a closed window. Applicant was arrested and charged by the police based on her husband's report that she scratched him. She spent a night in jail. She appeared in court and the charge was *nolle prosequere*. But her husband also obtained a child-protective order based on her emotional state and past history, and she was removed from the household for 30 days. Applicant and her husband divorced some months later in 1998.

About a month after the 9/11 terrorist attack, Applicant was arrested for and charged with driving while intoxicated (DWI); she was also charged with the felony offense of assault and battery on a police officer based on her conduct in the police station.¹³ (SOR ¶ 1.h) This incident stemmed from Applicant's drinking too many beers at a party hosted by her softball team. While in the police station, Applicant began to hit her head against a wall. A law-enforcement officer was kicked by Applicant when she engaged in unruly and erratic behavior that included flailing her legs. Applicant appeared in court and pleaded guilty to the misdemeanor drunk driving offense. The other charge was *nolle prosequere*. The court's sentence included confinement for 180 days, suspended, a \$400 fine plus court costs, and suspension of her driver's license for 12 months.

In January 2003, Applicant was arrested and charged with the offense of public swearing/intoxication.¹⁴ (SOR ¶ 1.i) This was an alcohol-related incident as Applicant had consumed beer after taking prescribed anxiety medicine. The incident also took place a few days after the funeral for Applicant's father, and she remained upset that none of her daughters attended the funeral of their grandfather. Acting on her emotions or impulses, Applicant went to her former residence, which her ex-husband was renting to a mutual friend. Applicant thought the tenant would be able to provide the information about her daughters. She was invited inside the home and then called the residence of her ex-husband. The call was answered by her ex-husband's wife (a former mistress during their marriage) who then called the police. The ex-husband and his wife, along with the police, went to the residence and the police determined trespassing was not valid as Applicant was a guest. Applicant and the former mistress were having words during this encounter, and as Applicant stepped outside the home, she called the former mistress a "fat [expletive expletive]," and she was arrested.¹⁵ Applicant spent the night in jail and was released the next day. The misdemeanor offense was eventually resolved when she paid a small fine and court costs.

¹³ Exhibit 6.

¹⁴ Exhibit 7.

¹⁵ Tr. 309–310.

In January 2008, Applicant received a summons to appear in juvenile and domestic relations court for the misdemeanor offense of making annoying phone calls to her ex-husband.¹⁶ (SOR ¶ 1.j) This incident stemmed from Applicant's repeated phone calls to the residence of her ex-husband in an effort to speak with her daughters. Applicant appeared in court, paid a small fine, and was ordered to have no further contact.¹⁷

In addition, the record contains documentary evidence showing Applicant was listed as the complainant or victim on six occasions during 1993–2005.¹⁸ The records from the county police department reported the following about Applicant: (1) the complainant in assault, domestic violence case with injuries of a bloody nose in 1993; (2) the victim in domestic dispute case in 1993; (3) the complainant in domestic dispute case in 1994; (4) the complainant in domestic assault case with injuries of lacerations to leg and elbow in 1998; (5) the victim in domestic dispute case in 2001; and (6) the complainant in telephone harassment case in 2005. It is probable that her ex-husband was less than an ideal spouse, and it is probable that he emotionally and physically abused Applicant.

Applicant has been under the care of a psychiatrist since 1994. She has been hospitalized, for brief periods, for mental-health reasons four times since 1994, the last occurring in 2002. The first hospitalization took place in May 1994, when she argued with her husband and struck herself with the shovel.¹⁹ (SOR ¶ 1.b) The diagnosis then was major depression and borderline personality disorder.²⁰ Based on this event, Applicant was referred to a psychiatrist and she has since been under his care.²¹ The psychiatrist's initial diagnostic impression in June 1994 was Applicant suffered from a dysthymic mood disorder and adjustment reaction with depressed mood.

The second hospitalization took place in September 1996, when Applicant attempted suicide by hanging.²² (SOR ¶ 1.e). The Axis I diagnosis remained the same, dysthymic mood disorder and adjustment reaction with depressed mood.

¹⁶ Exhibit 5 at 33–34.

¹⁷ Tr. 314–318.

¹⁸ Exhibit 5 at 36–41.

¹⁹ Exhibit 9.

²⁰ Exhibit 9.

²¹ Exhibit 10.

²² Exhibit 11.

The third hospitalization took place in April 1998, toward the end of Applicant's marriage.²³ She was admitted to the psychiatric unit for protection, assessment, inpatient treatment, and stabilization after an argument with her husband when she confronted him about taping her conversations. An unloaded handgun was also involved in the argument and led to her husband throwing her to the floor in an effort to take the firearm from her. The Axis I diagnosis was adjustment reaction with depressed mood and major depression, recurrent.

The fourth hospitalization took place in March 2002.²⁴ It stemmed from the combined impact of the anxiety Applicant experienced from the events of 9/11 and the October 2001 DWI offense. She admitted herself to the psychiatric unit for treatment. She was there on an inpatient basis for a week and then did a second week of daily therapy on an outpatient basis.

Applicant's treating psychiatrist testified at the hearing. He has been a licensed and practicing psychiatrist for more than 30 years and has treated thousands of patients.²⁵ His current diagnostic impression of Applicant is the same as it has been since at least 2008, when he concluded it was dysthymic mood disorder (chronic depression in laymen's terms), and that her prognosis is good with continuous treatment (daily doses of Paxil), because it is a lifetime illness that requires treatment.²⁶ He believes Applicant has been in remission for some time (perhaps since 2005), meaning that she sleeps normally, her memory is good, her judgment is good, her function mentally and physically is good, she is not in crisis, and she requires minimal medication. Concerning a major source of Applicant's interpersonal strife, the psychiatrist believes that she has come to terms with the lack of a relationship with her daughters.²⁷

Applicant has been in a close and intimate relationship with a gentleman for the last several years. The gentlemen met Applicant while working at the Pentagon and he was working in the same office on September 11, 2001. He is now a retired military officer and a member of the federal government's senior executive service. He made the following observations about Applicant: (1) she went through a difficult transition period after the divorce and loss of her daughters, and that she is now a bedrock of stability; (2) her outlook and temperament are 100 percent better than in 2005; (3) he thinks she has come to closure with her lack of relationship with her daughters; (4) her consumption of alcohol is moderate, limited to social drinking; (5) she is no longer self-absorbed, but is stable and comfortable with her situation; and (6) he has no

²³ Exhibit 12.

²⁴ Tr. 367–369; Exhibits 4 and 4a.

²⁵ Exhibit EE.

²⁶ Tr. 227–230; Exhibit 3.

²⁷ Tr. 269–270.

reservations recommending her for a security clearance, although he would have had such reservations in 2002.²⁸

Applicant's current consumption of alcohol is moderate. It consists of one or two beers, or perhaps a glass or two of wine with dinner.²⁹ The last time she drank to the point of intoxication was in 2003.

Applicant completed security clearance applications in 1996 and 2006.³⁰ In her 1996 application, she disclosed her mental-health treatment with the psychiatrist, and she disclosed a 1996 disorderly conduct offense. In her 2006 application, she disclosed her mental-health treatment with the psychiatrist, and she disclosed her 2001 DWI offense in response to a question about alcohol-related offenses, but she did not disclose the 2003 public swearing/intoxication offense. She explained that she omitted this incident because she forgot about it.³¹ On this point, I found her testimony to be credible and worthy of belief.

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.³² As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."³³ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

²⁸ Tr. 137–148.

²⁹ Tr. 318–320.

³⁰ Exhibits 1 and 2.

³¹ Tr. 320; Exhibits 4 and 4a.

³² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

³³ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.³⁴ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴⁰ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴¹

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁴² Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

³⁴ Directive, ¶ 3.2.

³⁵ Directive, ¶ 3.2.

³⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁷ Directive, Enclosure 3, ¶ E3.1.14.

³⁸ Directive, Enclosure 3, ¶ E3.1.15.

³⁹ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁰ *Egan*, 484 U.S. at 531.

⁴¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴² Executive Order 10865, § 7.

Analysis

Under Guideline E for personal conduct,⁴³ the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] 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.⁴⁴

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The first issue here is the truthfulness of Applicant's answer to a question on her 2006 security clearance application, when she failed to disclose the 2003 arrest and charge for public swearing/intoxication, which should have been reported as an alcohol-related offense. Based on the evidence as a whole, including Applicant's disclosure of other adverse matters, I conclude Applicant answered the question incorrectly because she genuinely forgot about it, and I am persuaded that she made no deliberate effort to hide, conceal, or omit information. On this basis, the falsification allegation in SOR ¶ 1.1 is decided for Applicant.

The second issue here is the broader question of Applicant's suitability for a security clearance in light of the numerous incidents indicative of questionable judgment. Taken together, the incidents demonstrate a long-term pattern of behavior that was for the most part related to her failed marriage, which led to her acting out in anger or frustration or both to the point that she required hospitalization more than once. This pattern often included law-enforcement intervention. This pattern also included the periodic abuse of alcohol, although that is not a current concern. This overall pattern of behavior raises a security concern and may be disqualifying under the following condition:

¶ 16(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,

⁴³ AG ¶¶ 15, 16, and 17 (setting forth the security concern and the disqualifying and mitigating conditions).

⁴⁴ AG ¶ 15.

unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The guideline also has seven conditions that could mitigate security concerns.⁴⁵ The most pertinent here are:

¶ 17(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;

¶ 17(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.

Applicant presented substantial evidence in mitigation, which is not limited to the following: (1) a difficult and abusive marriage that contributed to many of the incidents; (2) an outstanding employment record; (3) a long-term personal relationship that is a positive factor in her stability, outlook, and ability to cope; and (4) an improved mental-health situation, with the last hospitalization taking place in 2002, ongoing treatment for chronic depression with minimal medication, and a good prognosis. Nevertheless, Applicant's evidence in mitigation is outweighed by a well established pattern of behavior that is indicative of questionable judgment. Given that the last incident took place less than three years ago in 2008, it is too soon to tell if this part of Applicant's life is safely in the past or will recur yet again.⁴⁶ What is missing here is a long-term track record of Applicant conducting herself as a stable, responsible, and law-abiding citizen. Considering the numerous incidents, along with the multiple hospitalizations, a period longer than three years without further problematic incidents is necessary to fully mitigate the security concern.

To conclude, the facts and circumstances surrounding Applicant's pattern of behavior and questionable judgment justify current doubts about her suitability for a security clearance. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept⁴⁷ and Applicant's favorable evidence. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

⁴⁵ AG ¶ 17(a)-(g).

⁴⁶ AG ¶ 2(a)(9).

⁴⁷ AG ¶ 2(a)(1)-(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline E:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Withdrawn
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge