



ISCR Case No. 08-05433

Applicant initially answered the SOR on March 3, 2009. She failed to respond to SOR 1.e, and her answer was returned to her. On November 27, 2009, Applicant filed a complete response and she requested a hearing. On December 29, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for her. On January 8, 2010, I scheduled a hearing for February 4, 2010.

On February 2, 2010, counsel for Applicant entered his appearance, and he requested a brief continuance, which was granted. With the parties agreement, on March 9, 2010, I rescheduled the hearing for March 31, 2010. I convened the hearing as rescheduled. Six Government exhibits (Ex. 1-6) and three Applicant exhibits (Ex. A-C) were admitted without objection. Applicant and two witnesses also testified on her behalf, as reflected in a transcript (Tr.) received on April 9, 2010. Based on review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The SOR alleged under Guideline G, alcohol consumption, that Applicant consumed alcohol, at times to excess and intoxication, from about 1974 to at least February 2008 (SOR 1.a); that she was convicted of drunk driving offenses committed in June 1994 (SOR 1.b) and February 2006 (SOR 1.c); that she received alcohol-related treatment from May 12, 2006 to June 27, 2006, for diagnosed alcohol dependence but did not complete the program (SOR 1.d); and that she was charged with driving under the influence (DUI) in December 2008 (SOR 1.e). Applicant denied that she had a problem with alcohol in 1994, although she acknowledged that she had consumed to excess on the occasion of her DUI, and that she had been arrested for drunk driving as alleged in February 2006 and in December 2008. Applicant admitted receiving alcohol treatment in mid-2006 and that she failed to attend the last two meetings. As of March 2009, she was attending AA and a weekly substance abuse treatment program. After considering the record evidence, I make the following findings of fact.

Applicant is a 54-year-old material technical aide, who has worked for her present employer since 1979, with the exception of two years when she went out on strike. (Tr. 89.) She holds a Secret security clearance that was last granted to her in February 2001. (Ex. 1.)

After Applicant reached drinking age in 1974, she began consuming coffee brandy or Kahlua mixed with milk about twice a month on the weekends while socializing with friends. While in college from 1974 to 1979, Applicant consumed about two to three glasses of wine at a sitting, three to six times a month. (Ex. 2, 6.) In the early 1990s, she began drinking alone at home or with friends at bars. When out at bars, she usually limited herself to two or three glasses of wine. (Ex. 6.) She consumed one or 1.5 bottles of wine to intoxication at home some weekends. Work was stressful because she had a lot of responsibility and received no support from her supervisor. (Ex. 2, Tr. 110-11.)

On June 19, 1994, Applicant, whose weight varies from 96 to 98 pounds (Answer), consumed three or four mixed drinks with a friend. Although she felt intoxicated, she proceeded with plans to meet family. En route to her parents' home, she was arrested for driving while intoxicated after she failed field sobriety tests. She submitted to breathalyzer testing, which registered her blood alcohol level at .385% about a half hour after her arrest. (Ex. 5.) She was sentenced to complete a ten-session alcohol education class (Tr. 117-19.), to pay a fine, and her license was suspended for three months. After Applicant completed the DUI education program, she was required to attend ten weeks of alcohol counseling and once weekly AA meetings because of her high blood alcohol content when she was arrested. (Ex. 2, 6.) She completed the outpatient program, which included AA meetings once a week. Applicant did not find the AA meetings supportive, and she stopped attending when they were no longer required. (Tr. 121.)

Five weeks into her counseling, Applicant was interviewed by a Defense Security Service investigator on November 17, 1994. Applicant indicated that as a result of her alcohol counseling, she realized that she was drinking too much. Abstinent since beginning her alcohol education classes, Applicant averred that she might not drink alcohol again, and that she would "probably severely decrease [her] consumption" if she drank. (Ex. 6.)

In the mid-1990s, she was hired into her current department at work. Her duties were much less stressful than in her previous job. (Tr. 113.) Around 1997, she resumed drinking, one or two glasses of wine a night. (Tr. 126.) But she also drank one to 1.5 bottles of wine to intoxication at home some weekends. She was convinced that she could control her drinking (Tr. 129), and she continued drinking in this pattern until February 2006, when she was arrested on suspicion of DUI. After she had consumed at least 1.5 bottles of wine at home (Tr. 129.), Applicant decided to drive to the store, even though she felt "tipsy." She was pulled over for erratic driving, and failed field sobriety tests. Based on breathalyzer results, she was charged with DUI. In March 2006, she was sentenced to attend an eight-week DUI school at a substance abuse treatment facility (facility X), fined \$500, and her driving privileges were suspended for three months. (Ex. 2; Tr. 129-30.)

After completing the DUI program, Applicant voluntarily attended an intensive outpatient treatment program at the facility from May 12, 2006 to June 27, 2006. (Tr. 91, 131.) At intake, she reported an increase in alcohol consumption over the past year, that she had consumed 1.5 bottles of wine on 20 of the last 28 days, and that she needed help to stop drinking long-term. She also reported a history of depression, well controlled on Effexor medication. (Ex. 3.) Applicant was ambivalent about becoming involved in recommended AA. She went to a couple of AA meetings while in treatment, but she did not like the religious overtones. (Tr. 94.) Applicant left facility X's outpatient program early against medical advice because her insurance would no longer cover the cost. (Ex. 2; Tr. 133.) Discharge documentation reflects she was diagnosed by a staff licensed clinical social worker with alcohol dependence and anxiety disorder, not otherwise specified, and that she was unwilling to attend self-help groups. (Ex. 3.) Applicant came to believe that she is an alcoholic (Tr. 134.), but she resumed drinking

after she left the outpatient treatment program, in part due to stress over issues involving her mortgage. (Tr. 136.) She consumed one glass of wine each evening and more on weekends (Ex. 2.), although at one point, she abstained for three months. (Tr. 96.)

On January 4, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for an update of her Secret clearance. She disclosed her February 2006 DUI and indicated that she was treated at alcohol treatment facility X from May 2007 to July 2007 [sic].<sup>1</sup> (Ex. 1.) On February 19, 2008, Applicant was interviewed by a government investigator about her treatment and her alcohol consumption. Applicant indicated that she voluntarily pursued alcohol treatment at alcohol treatment facility X because she felt she had a problem with alcohol. Applicant denied she had been diagnosed with an alcohol problem. She admitted she was drinking 12 alcohol drinks per month, although she no longer drove after drinking. Applicant expressed her intent to reduce her alcohol intake. She had no explanation for why she continued to drink. (Ex. 2.)

On December 6, 2008, Applicant was arrested for DUI after she rear-ended a vehicle that was stopped at a traffic intersection. She had been drinking wine at a holiday party, but felt that she could drive safely. (Ex. 4; Tr. 139-40.) In February 2009, she was convicted of the charge, and sentenced to one year probation, 100 hours of community service, and fines. She lost her driving privileges for 14 months. (Tr. 97.) Applicant completed her community service for a human services organization within walking distance of her work. (Tr. 99.)

To regain her license, Applicant was required to attend a substance abuse treatment program recognized by the state department of motor vehicles (DMV). She completed Phase I, consisting of a 48-hour weekend retreat, on February 15, 2009. She attended Phase II, consisting of at least 20 hours of aftercare counseling sessions, and AA three times a week, between February 24, 2009 and April 14, 2009 (Tr. 141.), and her license was restored to her in February 2010. (Tr. 101.) She had not commenced Phase III as of her security clearance hearing. Three of the four required meetings were scheduled for April 10, 2010, July 10, 2010, and October 9, 2010. The last session is to be held in 2011 on a date that had not been determined as of March 2010. (Ex. C; Tr. 98, 101.)

Applicant drank alcohol, "a few glasses of wine here and there" after her December 2008 DUI, including on March 18, 2009. (Tr. 61, 96-97, 145.) On March 24, 2009, at the request of adult probation, Applicant was evaluated by a state-certified alcohol and drug counselor affiliated with a nonprofit substance abuse treatment agency. (Ex. A; Tr. 58-59.) Applicant reported to the clinician that she had consumed a glass of wine on March 18, 2009, which she did not think was a problem for her. (Tr. 61.) The counselor did not make a referral for further treatment because Applicant was "doing what she needed to do" in attending the program mandated by the DMV. The counselor told Applicant to call if she felt she needed additional treatment. (Tr. 58, 72.)

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<sup>1</sup>Treatment records reflect that she attended the outpatient program in 2006. (Ex. 3.)

In August 2009, Applicant voluntarily began attending a women's support group run by the counselor because she wanted support beyond AA. From August 14, 2009 to November 16, 2009, Applicant attended 12 group sessions (18 hours total), which stressed the value of 12-step groups, spirituality, and triggers to alcohol use, in the context of relapse prevention. (Ex. B; Tr. 48-50.) Applicant denied any temptation to drink throughout her treatment (Tr. 64.), and she attended different types of AA meetings in compliance with her treatment plan, so that she could figure out for herself what was best for her. (Tr. 68, 75.) About halfway through her group sessions, Applicant realized that if alcohol had ever been a problem for her, one drink of wine could be a problem. She also came to see that AA was not an imposition, but rather it provided her support and insight away from a formal group setting. (Ex. B; Tr. 51, 61, 71, 102.) The counselor considered Applicant to be an alcohol abuser rather than alcohol dependent (Tr. 74.), but she advised Applicant to abstain from alcohol because Applicant was on antidepressant medication and had problems in the past with alcohol. (Tr. 76.) Applicant had told the counselor that she had identified a sponsor in AA and the clinician advised Applicant to continue in AA with her sponsor. (Tr. 67.)

As of March 2010, the counselor considered Applicant's prognosis for maintaining sobriety to be excellent, provided Applicant stays involved in AA and has a sponsor. (Ex. B; Tr. 53, 66, 77.) This assessment was based on her facilitation of Applicant's group sessions from August to November 2009. The counselor had no contact with Applicant after the group therapy sessions apart from a recent conversation with Applicant about testifying at the hearing on Applicant's security clearance eligibility. Applicant informed her at that time that she was doing well. (Tr. 69.)

Applicant considers herself to be a "recovering alcoholic." (Tr. 144.) She drank alcohol twice after completing her counseling in November 2009, most recently in February 2010 when she consumed "a very large glass of wine" in her home. She purchased the wine. (Tr. 160.) Applicant had no explanation for what led her to drink. (Tr. 152-54.) She poured out the remainder of the bottle and went immediately to an AA meeting after she drank. (Tr. 153.)

Applicant has attended AA at least once a week since late February 2009, and she tries to get to at least three meetings a week. (Tr. 95, 156-57.) Applicant does not intend to consume alcohol in the future because she recognizes, by her own efforts to quit drinking or reduce her consumption in that past, that "sooner or later one glass of wine is going to be more than one glass of wine." (Tr. 102-03.) She completed the first step of the AA program in that she admitted to herself that she is powerless in the face of alcohol. She has not completed other steps of the AA program (Tr. 143.), although she plans to complete the other 11 steps eventually. (Tr. 151.) Applicant has yet to find a sponsor. There is one woman in AA with whom Applicant talks, but this woman addresses recovery in religious terms. (Tr. 147.) Applicant has not called anyone in AA since December 2009. (Tr. 163.) She did not think about contacting anyone in AA before she drank the wine in February 2010. (Tr. 164.)

Applicant has not been in a bar in the past two years. She has been in the presence of family members while they have been drinking on special occasions, such

as the Christmas holiday, but they usually do not drink when she is dining with them. (Tr. 114.)

Applicant is currently under the care of a psychiatrist for her antidepressant medication (Effexor). In February 2010, she started taking Campral, which suppresses the desire for alcohol, which for her is more mental than physical. She feels more secure in her recovery taking the drug. (Tr. 103-04, 144.) The psychiatrist suggested she take the Campral after she told him that she had relapsed. (Tr. 161.) In March 2010, she began once weekly counseling to help her remain sober. (Tr. 148-50.)

Applicant has never reported to work under the influence of alcohol. (Tr. 103.) Applicant enjoys her present work for the defense contractor. (Tr. 107.) Applicant's direct supervisor for the past six years has never observed her to be under the influence of alcohol on the job (Tr. 26.), and he has no concerns about her judgment and reliability at work. (Tr. 33.) Applicant has not discussed the specifics of her alcohol problem with him other than to indicate that she did not enjoy her rehabilitation. (Tr. 33) He learned from Applicant's father that she had been arrested for DUI. (Tr. 29.) In 2008 and again in late summer 2009 or early fall 2009, Applicant's supervisor was required to counsel her about absenteeism because she had no vacation or personal time left. (Tr. 34-36.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 to obtain 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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 untrustworthiness.” Applicant has three drunk driving convictions that implicate AG ¶ 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.” Despite her abusive relationship with alcohol from the early 1990s, there has been no impact on her work performance, so AG ¶ 22(b), “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” is inapplicable.

However, the responsibility for protecting classified information is not limited to duty hours. She showed extremely poor judgment in driving with a blood alcohol content of .385% in June 1994. After two years of abstinence, she resumed drinking wine in quantities of up to 1.5 bottles to intoxication at home on some weekends. By 2006, she had developed a serious alcohol problem, as evidenced by her second DUI and her abusive drinking thereafter, leading to her third DUI. AG ¶ 22(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,” applies.

Furthermore, because Applicant was diagnosed with alcohol dependency by a licensed clinical social worker at facility X in May 2006, and with alcohol abuse by the state-certified counselor who assessed her at the request of adult probation in March 2009 and then treated her in the fall of 2009, AG ¶ 22(e), “evaluation of alcohol abuse

or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” is implicated. The evidence also supports application of AG ¶ 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.” Because of her premature departure from facility X’s intensive outpatient program in 2006, it cannot be said that Applicant completed that alcohol rehabilitation program. She also has yet to complete Phase III of the substance abuse treatment program mandated after her third DUI. But she successfully completed two months of women’s group therapy facilitated by a state-certified drug and alcohol counselor. By November 2009, Applicant had received sufficient alcohol rehabilitation treatment to fulfill the treatment component of AG ¶ 22(f). Her consumption of alcohol on two occasions thereafter, including in February 2010 when she drank “a very large glass” of wine, qualify as relapses, whether or not she became intoxicated, given she had been advised by substance abuse treatment professionals to abstain from alcohol.

Although Applicant’s drinking has been limited since August 2009, when she entered the women’s group, her history of abuse is too recent and recurrent to favorably consider mitigating condition AG ¶ 23(a), “so much times 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.” AG ¶ 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),” is implicated only in part. Applicant admits she is powerless over alcohol and considers herself a recovering alcoholic. She took steps to address the problem by voluntarily entering facility X’s intensive outpatient program in 2006, and the women’s group in 2009. But her recent purchase and consumption of alcohol against therapeutic advice, and her reliance on Campral medication to make her feel more stable in her recovery from alcohol, are consistent with the diagnosis of alcohol dependency rather than alcohol abuse. Moreover, the counselor who diagnosed Applicant with alcohol abuse rather than alcohol dependence may not have been fully aware of Applicant’s alcohol consumption history. She knew little about Applicant’s prior DUI offenses or her alcohol rehabilitation treatment at facility X. (Tr. 64.) Applicant drank alcohol, “a few glasses of wine here and there” after her arrest, including on March 18, 2009, before her evaluation for adult probation. She did not drink while attending the women’s group from August to November 2009, but relapsed at least twice since then. Abstinence lasting a few months is not enough to establish a pattern in light of her history, which includes two DUI offenses after she had been free of alcohol for as long as 2.5 years in the past, from June 1994 to 1997.

AG ¶ 23(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,” is designed to encourage employees to seek treatment without fear of denial or loss of their clearance eligibility. At the same time, the Department of Defense justifiably requires current employees to make the progress necessary to avoid a relapse and to meet their need for treatment. Applicant’s decision



to purchase and drink wine in February 2010, knowing that she risked her sobriety by doing so, raises concerns about her commitment to recovery.

In addition to completing outpatient counseling, Applicant has not gone a week without going to an AA meeting since late February 2009, when she was required to attend under Phase II of a mandated substance abuse treatment program. However, despite her treatment and the regularity of her attendance at AA, Applicant has yet to demonstrate a “clear and established pattern” of abstinence, which is required of those with diagnosed dependency for mitigation under AG ¶ 23(d). See AG ¶ 23(d) (stating, “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, such as participation in meetings of Alcoholics Anonymous or a similar organization 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”). Limited relapses are not unexpected, even by persons committed to their recovery, but Applicant does not have a sufficiently sustained period of abstinence. Moreover, while Applicant was given an excellent prognosis for maintaining her sobriety, the prognosis was rendered by a clinician who considered it significant that Applicant continue with her sponsor in AA.<sup>2</sup> This clinician, whose therapeutic relationship with Applicant ended in November 2009, seemed to not know that Applicant never had a sponsor in AA or that Applicant had relapsed since November 2009 despite regular attendance at AA. The evidence does not show that this counselor was fully aware of the extent of Applicant’s alcohol use over the years.

### **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 conduct and all the circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>3</sup>

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<sup>2</sup>The counselor who facilitated Applicant’s group therapy in the fall of 2009 gave Applicant an excellent prognosis (Ex. B), but with the following caveat:

Well, I have to couch that a little bit. Because if she’s doing AA and if she’s still got her sponsor, and if she is under any kind of—of she’s getting any kind of mental health or counseling treatment—all of those things, I truly believe—I’m a behaviorist—I truly believe that we can rewire our brains. Does that mean I think she should drink again or could? No, because for her, it’s been a problem. (Tr. 77.)

<sup>3</sup>AG ¶ 2(a) requires consideration of the following nine factors:

(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.

Serious judgment concerns are raised by Applicant's repeated drunk driving and her history of relapse after counseling. Applicant is credited with taking some steps on her own to deal with her serious alcohol problem, and there is no evidence that she became intoxicated from consuming a "very large glass" of wine in February 2010. I have no reason to doubt her testimony that she stopped after that one drink, and that she emptied out the rest of the bottle. She exercised good judgment in going to an AA meeting immediately. That said, her commitment to the AA program is only in its infancy at this point, despite her regular attendance at AA meetings since late February 2009. Until October 2009, she viewed AA as more of an imposition than an aid to her recovery. She did not consider contacting anyone in AA before she drank in February 2010, and had not found a sponsor in AA by late March 2010. Counseling and Campral medication initiated weeks before her hearing appear to be helping her feel more secure in her recovery, but these treatments are too recent to rely on in assessing the risk of a relapse. While Applicant has not allowed her off-duty drinking to affect her work performance, I am unable to conclude that it is clearly consistent with the national interest to grant or continue a security clearance for her.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented in this case, 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.

Elizabeth M. Matchinski  
Administrative Judge