



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



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|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 08-06495 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: John Scott Boyer, Esq.

May 17, 2010

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on September 17, 2007. On August 18, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline G. DOHA acted 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 adjudicative guidelines (AG) implemented within the Department of Defense on September 1, 2006.

Applicant received the SOR on September 2, 2009; answered it on September 23, 2009; and requested a hearing before an administrative judge. Department Counsel

was ready to proceed on January 10, 2010, and the case was assigned to me on January 19, 2010. DOHA issued a notice of hearing on January 27, 2010, scheduling the hearing for February 17, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through I, which were admitted without objection. DOHA received the transcript (Tr.) on February 25, 2010.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the allegations in the SOR and offered explanations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old engineer employed by a defense contractor since June 2000. She worked for a defense contractor after graduating from college in 1986, and then began working in private industry in 1994. (Tr. 66-67.) She is married and has two children, ages 17 and 13. She received a security clearance in June 2000.

Applicant began consuming alcohol in high school, when she was 15 years old. She consumed one or two beers at parties about once a month. In college, she increased her consumption to two or three beers twice a month, but every two or three months she would drink three or four beers and become intoxicated. After college she continued to drink beer but started drinking wine and mixed drinks, and she became intoxicated every two or three months. (GX 4 at 3-4.)

Applicant reduced her drinking between 1992 and 1996 after her children were born. She continued to drink wine, but not to the point of intoxication. Between early 1997 and 2005, she stopped drinking beer but continued to drink wine and mixed drinks, and she drank to intoxication about every other month. (GX 4 at 4.)

Applicant found the combination of the demands of being a spouse, a mother, and a professional engineer difficult and stressful. In 2005, she began using alcohol to relax at the end of the day, and her consumption increased to about two bottles of wine a week. (GX 4 at 4; Tr. 73.)

Applicant's husband became concerned about her excessive drinking and encouraged her to seek help. She consulted with her physician, who did not treat her for alcohol abuse, but prescribed anti-anxiety medications and recommended that she seek treatment from an alcohol addiction counselor and a psychiatrist. (GX 4 at 5.) She followed her physician's advice. Her psychiatrist diagnosed her as alcohol dependent. (AX A.) She completed a three-day inpatient detoxification program from January 25 through January 28, 2006, followed by an intensive outpatient program in February and March 2006. She began attending Alcoholics Anonymous (AA) meetings regularly after completing the outpatient program. (Tr. 77-78.)

Applicant resumed her alcohol use in the summer of 2006. She underwent a one-week inpatient detoxification and treatment from October 20-26, 2006, and she was diagnosed by a medical doctor as suffering from depression and alcohol dependency. Recommended aftercare included intensive outpatient treatment and AA participation. (GX 7 at 5-6). She participated in an intensive outpatient program from October 30, 2006 to November 27, 2006. Upon discharge, she was diagnosed as suffering from major depression and alcohol dependence, and she was given a referral to a psychiatrist and a therapist. (GX 9 at 2.)

In December 2006, her husband notified the police that she was intoxicated when she drove away from their home to attend an AA meeting. She was arrested for driving while intoxicated (DUI) and reckless driving. After she pleaded guilty, her driver's license was suspended for seven months, she was fined, and she was required to attend an intoxicated driver's training program. She voluntarily entered an intensive outpatient program in December 2006, completed it in January 2007, and was diagnosed as alcohol dependent. The discharge summary contains no prognosis. (GX 10 at 3.)

After relapsing, Applicant entered a one-week detoxification program in February 2007, followed by a 30-day residential treatment program that she completed in late March 2007. (GX 5 at 4; Tr. 84-85.) She relapsed again almost immediately, and was admitted to a detoxification program on March 27, 2007, which she completed on April 2, 2007. (GX 8 at 29-34.) She was diagnosed as alcohol dependent and in post-intoxication withdrawal, with major depression, generalized anxiety disorder, and substance-induced sleep disorder. (GX 8 at 29-37.) She received additional treatment in April and May 2007. (GX 5 at 4; AX B; Tr. 87-88.) She relapsed again, entered an intensive outpatient treatment program in May 2007, and completed it in July 2007. (AX C; Tr. 89-90.)

Following another relapse, Applicant completed a one-week inpatient treatment program in October 2007. (GX 5 at 4; Tr. 80-81.) She abstained from alcohol until she "had a small slip" in April 2008, when she purchased a bottle of wine, brought it home, and consumed a glass of it. (Tr. 90, 134.) She testified she had a "mild physical reaction" to the Antabuse she had been taking when she consumed the wine. (Tr. 135.) She has abstained from alcohol since her relapse in April 2008.

Applicant currently takes an antidepressant, a drug to suppress alcohol craving, Antabuse, and a sleep aid. (Tr. 99-100.) She continues to attend AA meetings about once a week. (Tr. 102-03.) She does not have a regular AA sponsor. She testified that she finds it very difficult to share her thoughts and feelings with others, making it difficult to form a bond with a sponsor. (Tr. 105-06.)

Applicant continues to see her psychiatrist at about three-week intervals. (Tr. 114.) In a letter written to DOHA in September 2009, her psychiatrist states that her problems with anxiety "are currently in remission" and she is "quite stable in her recovery from alcohol dependence and stable psychiatrically as well." (AX A at 2.) In a

letter prepared for the hearing, her psychiatrist describes Applicant as “quite stable in her recovery from alcoholism,” a “vastly different person,” and fully fit for duty. He states that her condition “has been completely and successfully treated and no further impairment exists.” (AX A at 1.)

Applicant’s husband stopped consuming alcohol in 2000 because he thought it was important for them to have a “sober household.” (Tr. 92.) They have begun sharing family responsibilities. They have stopped attending social events centered on alcohol. They now have a smaller group of friends who are mostly non-drinkers. (Tr. 148.)

Applicant’s performance evaluations for two rating periods from October 2001 through September 2003 reflect a “fully successful” rating, in the middle of a five-point scale. She was rated as “excellent,” the second highest rating, for October 2003 through September 2004. She was rated as “outstanding,” the top rating, for October 2004 through September 2005. In December 2005, she was promoted to a more responsible position. Her rating for October 2005 through September 2006 was “excellent.” Her rating for October 2006 through September 2007 dropped to “fully successful.” (AX D and E.) She received performance awards in March 2002, November 2003, and September 2004. (AX F, G, H, and I.)

Applicant’s manager since December 2005 testified that she is a “successful contributor.” After she returned from sick leave in 2007, she was productive and valuable. (Tr. 35-36.)

Applicant’s team leader since December 2007 testified he made her his deputy because he has confidence in her ability to fully manage the team as well as fulfill her individual engineering assignments. He would rate her performance as “excellent.” Even though she works less than full time (30 hours per week), she gives “110 percent.” On several occasions, she has worked on her day off to make sure that commitments are met. She is honest, responsible, and capable of performing under pressure. (Tr. 51-54, 60-61.)

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in

conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline G, Alcohol Consumption

SOR ¶ 1.a alleges Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1980 to at least April 2008. SOR ¶¶ 1.b-1.k, 1.m, and 1.n allege multiple periods of treatment for alcohol abuse and alcohol dependence between December 2006 and July 2007. SOR ¶ 1.l alleges a DUI arrest in December 2006 and a subsequent conviction.

The security concern relating to Guideline G is set out in AG ¶ 21 as follows: “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.” Applicant’s history of alcohol abuse, alcohol dependence, treatment for alcohol dependence, and multiple relapses raise the following disqualifying condition under this guideline: AG 22(a) (“alcohol-related incidents away from work, such as driving while under the influence”); 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”); AG ¶ 22(d) (“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence”); and AG ¶ 22(f) (“relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program”).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 22(a), (c), (d), and (f), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

Security concerns under this guideline may be mitigated if “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.” AG ¶ 23(a). Applicant has maintained sobriety since October 2007, with one relapse in April 2008. Thus, the focus is on the first prong of AG ¶ 23(a) (“so much time has passed”).

There are no “bright line” rules for determining how much time must pass to establish AG ¶ 23(a). The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows that “a significant period of time has passed” without any evidence that the excessive alcohol consumption has recurred, then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

After a long struggle and many relapses, Applicant finally gained control of her alcohol dependence in October 2007. Her single relapse was more than two years ago. She has surrounded herself with a strong support structure, including her spouse, AA, and her psychiatrist. Although she has found it difficult to form a close bond with an AA sponsor, she has a long-standing, open, and beneficial relationship with her psychiatrist. Her husband stopped drinking in order to be more supportive of her continued sobriety. She and her husband have reduced the domestic stress level by adjusting their division of family responsibilities. They have adjusted their lifestyle to avoid alcohol-centered activities. Applicant has continued to perform well as an engineer. She is determined to maintain sobriety. I conclude AG ¶ 23(a) is established.

Security concerns also may be mitigated if “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).” AG ¶ 23(b). This mitigating condition is established, because Applicant has acknowledged her alcohol problem, taken extensive and repeated actions to overcome it, has relapsed only once since October 2007, and has been continuously abstinent since April 2008, more than two years ago.

Security concerns under this guideline also may be mitigated if “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.” AG ¶ 23(c). This mitigating condition is not established because Applicant has a history of previous treatment and relapse.

Finally, security concerns under this guideline may be mitigated if --

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.

AG ¶ 23(d). This mitigating condition is established. Applicant has completed several inpatient and outpatient programs, attends AA meetings regularly, and has received a strong and favorable prognosis from her psychiatrist.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature, soft-spoken, introverted, intelligent woman. She is a perfectionist. She tried to balance her roles as a spouse, mother, and professional engineer and was overwhelmed. From December 2006 to October 2007, she repeatedly sought professional help, relapsed several times, and persisted in her rehabilitative efforts until she finally made a breakthrough. She has adjusted her lifestyle to make it less stressful and found new friends. She has continued to participate in AA and seek the counsel of her psychiatrist on a regular basis. She is controlling her anxiety and depression with prescribed medications. She was calm, thoughtful, and candid as she testified about her struggle with alcohol dependence. In spite of her repeated treatment and relapses she has retained the respect of her colleagues and supervisors.

After weighing the disqualifying and mitigating conditions under Guideline G, and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on alcohol consumption. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):      FOR APPLICANT

Subparagraphs 1.a-1.n:      For Applicant

### **Conclusion**

In light of all of the circumstances, I conclude it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge