



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 08-11325
)
)
Applicant for Public Trust Position)

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

August 3, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to ADP I/II/III sensitive information is denied.

On March 11, 2008, Applicant signed a Questionnaire for Public Trust Position Application (SF 85P). On March 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline G (Alcohol Consumption). 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 Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 29, 2010, and elected to have the case decided on the written record in lieu of a hearing. On April 20, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 11 Items,

and mailed a copy of it to her the same day. Applicant received the FORM on April 23, 2010, and had 30 days from its receipt to file objections and submit additional information. She did not submit any additional information. On July 7, 2010, DOHA assigned the case to me.

Findings of Fact

In her Answer to the SOR, Applicant admitted the four allegations contained in the SOR. Those admissions are incorporated into the following findings.

Applicant is 25 years old and unmarried. In August 2006, she began a position with a defense contractor for a health services company. Prior to that, she worked as an office assistant from July 2005 to May 2006. She was a waitress from September 2000 to May 2006.

Applicant has a history of alcohol abuse. In October 2003, Applicant was arrested and charged with (1) Driving While Intoxicated (DWI); (2) DWI 4th Degree, and (3) Operating a Motor Vehicle Without One Headlight. She plead guilty to DWI 4th Degree and was placed on two years of supervised probation and ordered to undergo an alcohol assessment. The other two counts were dismissed. She was fined \$1,000 of which \$700 was stayed, Her driver's license was suspended for one year. She was 17 years old. (GE 7, 8.)

In December 2004, Applicant was arrested and charged with Minor in Consumption. She pled guilty and was placed on unsupervised probation for eight months. She paid a \$100 fine and court costs. Prior to the arrest she attended a party with high school friends. (GE 7, 9.)

In June 2006, Applicant was arrested and charged with (1) DWI – Operate Motor Vehicle Under the Influence of Alcohol, and (2) DWI -Operating Motor Vehicle – Alcohol Concentration 0.08 Within 2 Hours. In June 2007, she pled guilty to Count 1, and was sentenced to 365 days in jail, 335 days suspended, fined \$3,000, and placed on probation for two years, until July 2009. Her driver's license was suspended for one year. She was ordered to pay \$217 in court fees, which included the cost of a Chemical Dependency Evaluation. She attended a party before the arrest. (GE 7, 10.)

During an interview with a government investigator in October 2008, Applicant stated that she was never diagnosed as abusing alcohol or being alcohol dependant. She started consuming alcohol in June 2001, when she was 17 years old. She admitted that prior to June 2006 she consumed four to six beers about three times a week and occasionally to the point of intoxication. From June 2006 to the time of the interview, she claimed that she had not consumed any alcohol and did not intend to consume it in the future. She realized that consuming it was not in her best interests. Other than being involved in the legal system three times for issues related to alcohol consumption, she does not believe that her alcohol consumption has caused problems in her life. (GE 7 at 4.) On February 27, 2009, Applicant completed a set of Interrogatories, in which she

acknowledged that she consumed two beers on New Year's Eve. (GE 6.) She also stated that she learned from her mistakes and is a good employee. (*Id.*)

Applicant submitted no character references or other evidence tending to establish current good judgment, trustworthiness or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Positions designated as ADP I, ADP II, and ADP III are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). 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 [sensitive] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel,

and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that “[a]ny determination under this order adverse to an applicant shall be a determination 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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying:

(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; and

(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.

In 2003, 2004, and 2006, Applicant was arrested and convicted of DWI. Based on that evidence, the Government raised a security concern under AG ¶ 22(a). She admitted that from June 2001 to December 2008, she occasionally consumed alcohol to excess and the point of intoxication, which facts are sufficient to raise a disqualifying condition under AG ¶ 22(c).

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation. Conditions that could mitigate those disqualifications are provided under AG ¶ 23:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(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; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, 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.

None of the above mitigating conditions apply. Applicant has a history of consuming alcohol to excess, spanning from June 2001 to December 2008. Given that history and three DWI convictions, her behavior casts doubt on her current trustworthiness and good judgment. AG ¶ 23(a) does not apply. Applicant denied that she has a problem with alcohol consumption. In October 2008, she asserted that she had stopped consuming alcohol from June 2006 to that point and had no intention to consume it in the future. In January 2009, she admitted that she had two beers on December 31, 2008. To-date, she did not provide any independent evidence to establish a pattern of responsible alcohol consumption or to corroborate her assertions, which is necessary to apply AG ¶ 23(b). The record does not contain evidence to support the application of AG ¶ 23(c) or AG ¶ 23(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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 public trust position must include an overall commonsense 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 relevant facts and circumstances surrounding this case. Applicant is a 25-year-old woman, who has worked for a defense contractor since August 2006. She was convicted three times for incidents involving alcohol. In July 2009, she completed her probationary period for the third conviction. Although she stated that she no longer abuses alcohol, she did not present any independent evidence to corroborate that assertion. Given her three convictions, two driver's license suspensions, and the imposition of probationary terms in 2003, 2004, and 2007, her written statements are insufficient evidence upon which to conclude that her alcohol consumption no longer poses a security risk.

On balance, Applicant did not present sufficient evidence to mitigate reliability and trustworthiness concerns arising from her alcohol consumption. Overall, the record evidence leaves doubt as to Applicant's present eligibility and suitability for a public trust position.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to ADPI/II/III sensitive information is denied.

SHARI DAM
Administrative Judge