



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01002
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

April 22, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SCA) on August 7, 2008. On October 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised Adjudicative Guidelines (AG).

In an October 28, 2009, response, Applicant admitted all allegations set forth in the SOR under Guideline G and Guideline H, and three of the four allegations raised under Guideline E. She declined a hearing, but the government requested a hearing on November 4, 2009.¹ DOHA assigned the case to me on December 16, 2009. The parties proposed a hearing date of February 10, 2002. A notice setting that date for the

¹ Tr. 61-62.

hearing was issued on January 24, 2010. The hearing ultimately was postponed until March 3, 2010, due to inclement weather. An amended notice was issued on February 18, 2010, reflecting that change. I convened the hearing as rescheduled. Applicant gave testimony and presented four documents, accepted into evidence without objection as exhibits (Exs.) A-D. Department Counsel offered eight documents, admitted as exhibits (Exs.) 1-8 without objection. The transcript (Tr.) of the proceeding was received on March 11, 2010, and the record was closed on March 15, 2010. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to all of the guidelines raised. Clearance denied.

Findings of Fact

Applicant is a 35-year-old administrator working for a defense contractor. She was first employed by that company in 2007 as a temporary employee, but was made a permanent employee in April 2008. Applicant has completed some college. She is a single mother and presently engaged to be married.

In high school, at age 15, Applicant started using marijuana. Her use was recreational and social. At age 21, she began dating a man who was “heavily involved in drug addiction.”² By the time their relationship began to end, in 1998 or 1999, Applicant was in her early 20s. She had begun using other drugs in lieu of marijuana.³ Specifically, she started using phencyclidine (PCP) and crack cocaine (crack). She also began relying on alcohol. In February 1999, she was driving with a male friend when a snow storm forced them to stay at a hotel. There, they used a liquid form of PCP. She blacked out and awoke disoriented. The hotel room was in disarray and the door was open. Having arrested her friend down the block, the police arrived to find her. The police took her to their car and seized the drugs and paraphernalia her friend had left in the room. She was taken to the hospital, arrested, and charged with possession of a controlled deadly substance and possession of drug paraphernalia. The case did not go before a court for adjudication. In lieu of prosecution, she was directly placed on conditional discharge with one year of probation, which she successfully completed.⁴

Although Applicant quit using drugs and alcohol when she discovered she was pregnant in 2001, she resumed her substance abuse pattern after her daughter was born.⁵ Despite her efforts to regain control of her life and be a good mother, Applicant eventually returned to alcohol and drugs about a year later. She eventually sought help

² Tr. 15.

³ Tr. 18, 32. Applicant is unsure when she gave up marijuana, but noted that it was “definitely” before her 1999 arrest. She did, however, try PCP in high school. Applicant concedes that her dates of alcohol and drug abuse are often approximate. Tr. 47-51.

⁴ Tr. 30-31.

⁵ Tr. 44-45. Applicant’s pregnancy and her cessation of illegal drugs and alcohol in early December 2008 are her longest periods of being substance-free since her problems began.

at a short-term substance abuse residential treatment center⁶ from May 2005 through June 2005, where she was diagnosed with PCP and cocaine dependency.⁷ After completing the program, it was recommended that she obtain continuing care and attend Narcotics Anonymous (NA) and Alcoholics Anonymous (AA). She followed the recommendations for a few months, but then was injured in a car accident.⁸ The incident led to a relapse regarding alcohol. She prepared to begin an intensive alcohol program and to return to the treatment center in December 2006 for out-patient services. The night before starting these programs, she abused illegal drugs.⁹ While the programs helped her abstain from alcohol and drugs for “a long period,” she eventually relapsed again in 2008.¹⁰

Applicant’s 2008 relapses occurred on weekends in February 2008 and in August 2008 due to “stupidity.”¹¹ She last used illegal drugs and alcohol between late November and December 6 or 7 of 2008.¹² Her most recent relapses were caused by a number of personal, domestic and professional stressors, many of which she has since resolved.¹³ Neither her drug nor alcohol use ever impacted her work. She never used drugs or alcohol before or during the workday. She reported her 2008 relapses to her superiors at work on the Monday mornings following her weekend relapses.¹⁴ She has not repeated treatment since December 2008.¹⁵ Instead, she now relies extensively on both NA and AA, which she attends at least three days a week. She prefers AA, finding its approach to sustained sobriety more effective, and feeling it provides sufficient overlap with drug abuse to serve her present needs.¹⁶ She speaks with her AA sponsor and a network of female supporters daily. She also has the support of her parents and a devoted fiancé, who does not abuse drugs. All of these individuals have been invaluable resources given her current child custody litigation and pursuit of substance-free living.¹⁷ She has not had the urge for liquor despite her current problems, an urge

⁶ The name of one of the two institutions cited denotes that it is a “treatment center.” See SOR.

⁷ Ex. 6 (Treatment Center Medical Record, dated Jun. 17, 2009). The medical record does not indicate whether the diagnosis was made by a medical doctor or licensed specialist.

⁸ Tr. 20.

⁹ Tr. 21.

¹⁰ Response to the SOR, dated Oct. 28, 2009, at 2.

¹¹ Tr. 35-36.

¹² See, e.g., Tr. 35.

¹³ Tr. 24.

¹⁴ Tr. 37.

¹⁵ Tr. 41.

¹⁶ Tr. 21-22.

¹⁷ Tr. 25.

she previously found difficult to control and usually triggered her drug use.¹⁸ She feels she now has the control and support she needs to maintain sobriety.

In completing her August 2008 SCA, Applicant failed to disclose her 1999 arrest in response to Section 23 (Have you ever been charged with or convicted of any offense[s] related to drugs or alcohol.). At the time, she was told by a superior that the question implied a 10-year time-frame, she thought the incident occurred in 1998, and also understood that her completion of the probation effectively removed the arrest from her record.¹⁹ She admitted intentionally concealing her PCP and crack cocaine use in Section 24, where she only noted marijuana use from June 1990 until July 1992.²⁰ She also admitted failing to disclose the secondary intensive outpatient program for alcohol she briefly attended in 2006 during or after her 2006 treatment, which she does not consider to have been a treatment or counseling facility.²¹ During an October 2008 interview with an investigator, she denied using illegal drugs in the May 2006 “time frame” referenced by the investigator because her subsequent drug relapses occurred at the end of 2006 and in 2008, well outside the scope of the May 2006 “time frame” at issue. Applicant was ultimately granted an interim security clearance after her August 2008 SCA, but the date it was granted was never established.²²

Now in control of her life, Applicant works about 45 hours a week and attends AA, NA, or related meetings about 10-15 hours a week.²³ Otherwise, she spends her time with her young daughter, her family, and fiancé. At work, she is well-regarded by her peers and receives superior appraisals with regard to her work performance and character.²⁴ She does not conceal her past abuse of alcohol and drugs, nor does she conceal her struggle to stay substance-free.²⁵ She has never been diagnosed as alcohol dependent.²⁶

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised AG. In addition to brief introductory

¹⁸ *Id.*

¹⁹ Tr. 30-31, 55.

²⁰ See Response to the SOR, dated Oct. 28, 2009, at 3 (SOR allegation ¶ 3.b).

²¹ See Response to the SOR, dated Oct. 28, 2009, at 3 (SOR allegation ¶ 3.c); Tr. 52.

²² Tr. Tr. 39-40. Applicant thinks she may have been wearing summer clothes when she received her interim security clearance, but there is no evidence as to when she received an interim status.

²³ Tr. 27.

²⁴ Tr. 30; Ex. A-C.

²⁵ Tr. 63.

²⁶ Tr. 65.

explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ²⁸

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁹ Any reasonable doubt about whether an applicant should be allowed access

²⁷ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁹ *Id.*

to sensitive information must be resolved in favor of protecting such sensitive information.³⁰

Based upon consideration of the evidence, Guideline H (Drug Involvement), Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline G – 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.³¹ In this case, Applicant admits that she abused alcohol, a substance which can trigger her illegal use of drugs. In 2006, it led her to seek professional assistance regarding alcohol. Alcohol Consumption Disqualifying Condition (AC DC) 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) and AC DC 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) apply.

Applicant acknowledges the risks associated with her use of alcohol, especially with regard to its potential to trigger her abuse of illegal drugs. She also acknowledges that she has sought and received counseling regarding her alcohol use. While she is now diligent in attending AA, has amassed a highly supportive network of friends and associates to help her maintain sobriety, and credibly testified that it is her intent to remain alcohol-free, Applicant is aware of the difficult and daily challenge ahead of her in maintaining the sobriety she recently recommenced in December 2008. Given these facts, none of the available Alcohol Consumption Mitigating Conditions (AC MC) apply and related security concerns remain unmitigated.³²

Guideline H – Drug Involvement

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws,

³⁰ *Id.*

³¹ Revised Adjudicative Guideline (AG) ¶ 21.

³² See AG ¶¶ 23a-d.

rules, and regulations.³³ “Drugs” are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances.³⁴ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.³⁵

Applicant admitted she used marijuana from about the age of 15 until she was in her early 20s. While her admitted abuse of that illegal substance was distant in time, she also admitted to being arrested for possession of illegal drugs and drug paraphernalia, to receiving a diagnosis of PCP and crack cocaine dependency, and to using PCP and crack cocaine intermittently until December 2008. Such facts give rise to Drug Involvement Disqualifying Condition AG ¶ 25 (a) (any drug abuse), AG ¶ 25 (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia), and either AG ¶ (d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or ii) of a drug abuse or drug dependence) or AG ¶ 25 (e) (evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member or a recognized drug treatment program).³⁶

Applicant admits that she is a long-term drug abuser who unsuccessfully sought treatment for her drug dependence on more than one occasion. She also admits that she last quit using illegal drugs in December 2008. Neither Drug Involvement Mitigating Condition AG ¶ 26 (a) (the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) nor AG ¶ 26 (d) (satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional) applies. While she may have changed her choice of friends and social venues in her attempt to remain drug-free, thus potentially raising AG ¶ 26(b)(1) (disassociation from drug-using associates and contacts) and (2) (changing or avoiding the environment where drugs were used), there is insufficient evidence to raise AG ¶ 26 (b)(3) (an appropriate period of abstinence) or (4) (a signed statement of intent with automatic revocation of clearance for any violation). AG ¶ 26 (c) (abuse of prescription drugs was after a severed or prolonged illness during which these drugs were prescribed, and abuse has since ended) is not applicable. Consequently, drug involvement security concerns remain unmitigated.

³³ AG ¶ 24.

³⁴ *Id.* at ¶ 24(a)(1-2).

³⁵ *Id.* at ¶ 24(b).

³⁶ As noted above, the medical record (Ex. 6) does not reflect the name or staff position of the individual who made the diagnosis of PCP and crack cocaine dependence.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”³⁷ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.³⁸

Here, personal conduct concerns arose because when Applicant completed her August 7, 2008, SCA, she only noted her marijuana use between 1990 and 1992 in Section 24 and failed to mention her drug relapse in 2006 in response to Section 25 (SOR allegations ¶¶ 3.b-3.c, respectively). She admitted these omissions. In addition, she failed to note her 1999 arrest in response to Section 23 and, when questioned by investigators in October 2008, she failed to acknowledge that she had used drugs in the May 2006 “time frame” (SOR allegations ¶¶ 3.a and 3.d, respectively).

If shown to be true, such facts are sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16 (a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) and AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

As a preliminary matter, Applicant credibly explained that she thought her 1999 arrest occurred in 1998, outside what she was instructed by a superior was a 10-year window for the question in Section 23. She also plausibly explained why she did not mention drug use in the May 2006 “time frame.” Given her credible testimony, and in light of her truthful admission of the other allegations under this guideline, I find that she did not intend to mislead with these answers, thus mitigating related security concerns.

Having admitted that she intentionally denied SOR allegations ¶¶ 3.b-3.c and did not note her admission until after the issuance of the 2009 SOR, neither Personal Conduct Mitigating Condition AG ¶ 17 (a) (the individual made prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted by with the facts) nor AG ¶ 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) applies. At most, Applicant’s candor with her family, associates, and employer regarding her past drug and alcohol problems raise AG ¶ 17 (e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation,

³⁷ AG ¶ 15.

³⁸ *Id.*

manipulation, or duress). None of the other mitigating conditions apply. Given Applicant's admission that she intentionally concealed information on her SCA, personal conduct security concerns remain unmitigated.

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 an applicant's conduct and all the 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 a security clearance must be 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 the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a credible, mature, and well-spoken woman whose depiction of her struggle for sobriety and a drug-free life was both blunt and highly moving. She makes no excuses for that struggle and takes full responsibility for it. Her sincerity when expressing her desire to lead a substance-free life is beyond question. As an employee, she is successful and well-regarded. Applicant is fighting to maintain the love, respect, and trust of her family, fiancé, and friends. She is committed to making strides one day at a time. Her testimony was nothing less than compelling.

At the same time, Applicant is highly realistic. She understands the difficult road ahead of her in terms of alcohol and drugs, just as she understands the high burden placed on an applicant in this process. While she is optimistic about maintaining her current lifestyle, she appreciates the fact that her current attempt at remaining alcohol- and drug-free only dates back to early December 2008, and represents the longest period of time she has maintained such a lifestyle since she was a teen. In light of her long history of alcohol and drug abuse, 16½ months is an insufficient period to establish and demonstrate a maintained history of abstinence. Consequently, alcohol consumption and drug involvement security concerns remain unmitigated.

As for personal conduct security concerns, Applicant's omissions on SCA Section 23 and her response to an investigator in October 2008 were not technically false, nor is there evidence she intended to mislead the interviewer. While she did not consider "intensive outpatient program" for alcohol use to be the same as "alcohol-

related treatment or counseling,” she fully admitted that she intentionally omitted information in responses to Sections 24 and 25 of the SCA. Such falsity sustains personal conduct security concerns.

At present, Applicant appears to have all the resources necessary to maintain an alcohol and drug-free life. Hopefully, with continued dedication and the personal resolve she demonstrated at the hearing, that goal will be realized. Currently, however, security concerns under all three guidelines raised remain unmitigated. Clearance denied.

Formal Findings

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

Paragraph 1, Guideline H:	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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge