



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



In the matter of:)	
)	
)	ISCR Case No. 09-04269
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

August 9, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns caused by her recent and long-term abuse of alcohol and her history of abusing a variety of controlled substances. Clearance is denied.

On February 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines H (drug involvement) and G (alcohol consumption). Applicant’s response to the SOR was received by DOHA on March 5, 2010. She admitted all SOR allegations and requested a decision based on the record without a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Department Counsel prepared a File of Relevant Material (FORM) on April 19, 2010, which was mailed to Applicant the same day. Applicant was notified she had 30 days from receipt of the FORM to submit her objections thereto or any additional information she wanted considered. Applicant acknowledged receipt of the FORM on April 27, 2010. She did not submit a response to the FORM or object to anything contained in the FORM within the time allowed her. The case was assigned to me on July 7, 2010.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 24-year-old single woman who has been employed as a receptionist by a defense contractor since January 2009. She graduated from high school in May 2004, and she obtained a bachelor's degree in May 2008. She worked as an intern for a U.S Congressman from June to August 2008. She was then unemployed until she obtained her current position.

Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) on February 16, 2009, in which she candidly admitted a rather extensive history of abusing both alcohol and drugs. She acknowledged in the e-QIP that she had been charged with public intoxication in October 2004, October 2005, and April 2008. She was given a deferred sentence in each case which included, as one of a number of terms of the sentences, that she attend alcohol awareness classes. She successfully completed all the requirements that were imposed upon her in each of these cases.

Applicant also acknowledged in the e-QIP that she had repeatedly abused marijuana, cocaine, and ecstasy between May 2001 and July 2008. More specifically, she admitted using ecstasy four times in the preceding six years; marijuana as a sometimes habitual abuser from May 2001 until July 2008; and cocaine experimentally from 2003-04, frequently during the summer of 2004, and about ten times while she attended college.

In the course of an interview conducted on March 19, 2009, Applicant provided more details about her history of alcohol and drug abuse. She reported that she began using ecstasy in March 2008, and thereafter used it three or four times over the course of the following two or three month period. She became concerned about the possible consequences of continuing the use of ecstasy based on horror stories she saw in commercials, and, therefore, decide to discontinue using the drug.

Applicant reported that she didn't like marijuana when she first began using it, but she then began using the substance as a way to relax before going to sleep. Her use of marijuana was random until her senior year of college. She estimated she used the drug four to five times a week between October 2007 and April 2008. She last used marijuana in July 2008, and she stated she has no intention of using it in the future.

Applicant began using cocaine in 2004 with her then boyfriend. She used it four or five times a week during the summer of 2004, and once a month or less while she attended

college. She only used cocaine three times during her senior year of college, and she last used this drug in early 2008. She does not intend to use cocaine in the future.

Applicant began consuming alcohol in either 2003 or 2004 while she was still a high school student. When she started college, Applicant refused to drink beer and, instead, would only drink hard liquor. After her first arrest for public intoxication, Applicant reduced her alcohol consumption to once or twice a week from her prior pattern of drinking about three times a week. She became intoxicated every time she consumed alcohol during this time period. Following this arrest, she decided to switch her intoxicant of choice to beer.

Following her second public intoxication arrest, Applicant abstained from consuming alcohol for three or four weeks. Thereafter, she resumed her prior pattern of drinking alcohol about three times a week. Applicant continued to consume alcohol after her third public intoxication charge and after she began working as a Congressional intern. While working as an intern, Applicant became intoxicated once or twice a week. Applicant believes she became an alcoholic after her Congressional internship ended in August 2008, because she was depressed about not having any job prospects. She was consuming alcohol four to five times a week at this time.

In October 2008, Applicant sought counseling from a minister because of problems in her relationship with her boyfriend that were exacerbated when they had been drinking. The minister referred her to a psychologist and the church paid for three counseling sessions between December 2008 and January 2009. The psychologist provided an Axis I diagnosis of Major Depressive Disorder for Applicant. Applicant discontinued the counseling sessions in January 2009, after the church stopped paying for them.

During the March 2009 interview, Applicant reported that she still gets drunk on occasion but not in bars. She also reported that she does not drive home when she gets drunk but, instead, takes a taxi. Applicant revealed that her consumption of alcohol had negatively impacted her by causing her to report to work late or not at all when she interned for the Congressman and to report late for work when she was in college.

On September 21, 2009, in response to interrogatories propounded to her by the Department of Defense, Applicant stated she consumed 3-4 glasses of red wine weekly and five to six glasses of vodka or bourbon a month. She also reported that she became intoxicated twice a month or less, that she last consumed alcohol on September 7, 2009, and she last became intoxicated on August 29, 2009.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Clearance decisions must be fair and impartial decisions based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole,

Guidelines G (alcohol consumption) and H (drug involvement), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁶ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

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. (Adjudicative Guideline [AG] ¶ 21)

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Applicant began consuming alcohol while she was still in high school. She was charged on three occasions between October 2004 and April 2008 with public intoxication. Following each of those arrests, she was given a sentence of a deferred adjudication with various conditions imposed, including that she attend alcohol awareness classes. Her alcohol consumption exacerbated problems in her relationship with her boyfriend resulting in her seeking counseling with a psychologist who diagnosed her as suffering from a major depressive disorder. While serving as a Congressional intern, Applicant would sometimes either not report for work or report late to work as a consequence of her excessive alcohol consumption. As recently as September 2009, Applicant reported that she still consumed alcohol to the point of intoxication as often as twice a month and as recently as August 29, 2009.

Disqualifying Conditions (DC): 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 DC 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.

As of September 2009, Applicant continued to consume alcohol to excess, despite the arrests and relationship problems she experienced as a result thereof. Accordingly, Mitigating Conditions (MC) 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*; and MC 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)* do not apply. The remaining mitigating conditions have no applicability to the facts of this case.

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, rules, and regulations. AG ¶ 24

Applicant reported she used ecstasy four times, either in the preceding six years before she submitted her e-QIP in 2009, or during the span of a few months in 2008. She used marijuana, sometimes on an habitual basis, from May 2001 until July 2008. She used cocaine experimentally from 2003-04, frequently during the summer of 2004, and about ten times while she attended college. DC 25(a): *any drug abuse* applies.

Applicant's last reported abuse of a controlled substance was in July 2008, and she has repeatedly stated that she has no intention of ever abusing any controlled substance in the future. However, while two years have passed since Applicant last used a controlled substance, as of at least September 2009, she continued to abuse alcohol.

Applicant has been repeatedly arrested because of her abuse of alcohol. Her relationship problems with her boyfriend were exacerbated by their alcohol use. She found it necessary to seek counseling, and she was diagnosed as suffering from a major depressive disorder. She discontinued counseling after only three sessions because the church would not pay for further sessions. She continued to at least the date she responded to interrogatories to drink to intoxication on a more or less regular basis.

Applicant's continuing alcohol abuse, despite the problems it has caused her in the past, calls into question her ability to control her desire to consume substances that create problems in her life. As such, it prohibits a finding that she will not abuse controlled substances in the future. Therefore, I find that MC 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*; and MC 26(b): *a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation* do not apply. The remaining mitigating conditions have no application to the facts of this case.

I have considered all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Applicant failed to mitigate the security concerns caused by her abuse of alcohol and controlled substances. She failed to overcome the case against her or satisfy her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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
Subparagraphs 1.a-c:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-d:	Against Applicant

Conclusion

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

Henry Lazzaro
Administrative Judge

